

ENDING DOMESTIC VIOLENCE THROUGH NON-VIOLENCE: A MANUAL FOR PWDVA PROTECTION OFFICERS

Protection of Women from Domestic Violence Act, 2005

**Lawyers Collective
Women's Rights Initiative**

In Association with
**Ministry of Women and Child Development, Government of India
& National Commission for Women**

Supported By
United Nations Trust Fund to End Violence Against Women/UNIFEM

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Women's Rights Initiative**

**Ending Domestic Violence Through Non-Violence:
A Manual for
PWDVA Protection Officers**

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**UN Trust Fund to End Violence
Against Women/UNIFEM**

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Finally, this *Manual* is inspired by the Protection Officers for whom it is written. Over the course of our extensive interactions with POs across the country, we have been impressed by the dedication, resourcefulness and compassion with which they fulfil their duties under the PWDVA and provide much-needed aid to women in distress. We dedicate this *Manual* to POs in the hope that it will reinforce their ability to work skilfully and effectively to counter the phenomenon of domestic violence in India.

List of Abbreviations

CEDAW	United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979
CMA	Christian Marriage Act, 1872
CPC	Code of Civil Procedure, 1908
CrPC	Code of Criminal Procedure, 1973
DEVAW	United Nations Declaration on Violence against Women, 1993
DIR	Domestic Incident Report
DMMA	Dissolution of Muslim Marriages Act, 1939
DPA	Dowry Prohibition Act, 1961
FIR	First Information Report
GWA	Guardians and Wards Act, 1890
HAMA	Hindu Adoption and Maintenance Act, 1956
HMA	Hindu Marriages Act, 1955
HMGAA	Hindu Minority and Guardianship Act, 1956
HSA	Hindu Succession Act, 1956
IDA	Indian Divorce Act, 1869
IEA	Indian Evidence Act, 1872
IPC	Indian Penal Code, 1860
LCWRI	Lawyers Collective (Women's Rights Initiative)
MWA	Muslim Women (Protection of Rights on Divorce) Act, 1986
NCR	Non-Cognisable (Offence) Report
NGO	Non-Governmental Organisation
PC & PNDT Act	Pre-Conception and Pre-Natal Diagnostic (Prohibition of Sex Selection) Act, 1994
PCMA	Prohibition of Child Marriages Act, 2007
PMDA	Parsi Marriage and Divorce Act, 1936
PO	Protection Officer
PWDVA	Protection of Women from Domestic Violence Act, 2005
PWDVR	Protection of Women from Domestic Violence Rules, 2006
SMA	Special Marriages Act, 1954
SP	Service Provider

About the *Manual for PWDVA Protection Officers*

Who Can Use this Manual?

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) was brought into force on October 26, 2006. This *Manual for PWDVA Protection Officers* is intended to provide comprehensive, step-by-step guidance to Protection Officers (POs) on how best to fulfil their duties under the Act, from the time that they are approached by an aggrieved person through to the litigation stage, including their Court-directed duties. Written especially for a predominantly non-legal readership and based on LCWRI's extensive legal knowledge of and practical experience with the PWDVA, the *Manual* is an essential training resource for POs, empowering them to implement the law effectively, resourcefully and in a manner consistent with their legal obligations and the law's overall objective of human rights and gender equality.

This *Manual* shall also be useful to the police, service providers, medical facilities, shelter homes and other civil society groups working on domestic violence, as well as to women seeking recourse to the law.

How to Use This Manual

The *Manual for PWDVA Protection Officers* has been structured to follow the journey of the Act's legislation and the course of its implementation. Thus, Chapter 1 describes the socio-legal history of legislating on violence against women in India, followed by Chapter 2 that locates the PWDVA within its legal genealogy: namely, the context of human rights and Constitutional guarantees. Chapter 3 introduces the PWDVA by providing a broad overview of its provisions and some related laws.

Chapters 4-8, which form the core of the *Manual*, describe the Act in detail with reference to the duties of POs. Chapter 4 introduces these duties; Chapters 5-8 follow the course of the law's implementation: i.e., they begin with how an aggrieved person approaches a PO and continue on through to a discussion of the PO's Court-mandated duties.

Chapters 3-8 each start with a Chapter Outline. Although we recommend that the entire *Manual* be perused with care, this Outline allows the reader quick access to the most relevant sections of the law depending on their needs at different points in time.

For the reader's convenience, the Annexures contain the entire text of the Act, its Rules and relevant provisions of other laws relating to domestic violence.

Related Resources Available from LCWRI

As mentioned above, this *Manual* has been written with a specific purpose and for a targeted audience. However, readers might also wish to consult LCWRI's range of other publications on the PWDVA:

- *Handbook on Law of Domestic Violence* (2009): A technical exposition on the Act designed for the judiciary.
- *Staying Alive: Second Monitoring & Evaluation Report 2008 on the Protection of Women from Domestic Violence Act, 2005.*
- *Staying Alive: First Monitoring & Evaluation Report 2007 on the Protection of Women from Domestic Violence Act, 2005.*
- *Law of Domestic Violence: A User's Manual for Women* (2007, 2nd Edition)

Please contact LCWRI to order these publications

Updating the *Manual* and How to Contact LCWRI

A document of this scope requires regular review and updating. LCWRI welcomes your feedback and suggestions for improvements in this regard.

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Selected Statistics on Violence against Women in India

Women's Status¹

Sex ratio	927 females per 1,000 males
Maternal mortality	540 per 100,000 live births
Female literacy	47.8% (compared to the male literacy rate of 73.4%)

Violence against Women²

Overall, one in three women aged 15-49 years has experienced physical violence and about one in 10 has experienced sexual violence.

- Nearly two in five married women have experienced some form of physical or sexual violence by their husband.
- One in four married women has experienced physical or sexual violence by their husband in the 12 months preceding the survey.
- Only 1% of married women have ever initiated violence against their husband.

Never married women also experience physical and sexual violence.

- 16% of never married women have experienced physical violence since they were 15 years of age, generally by a parent, sibling or teacher.
- 1% of never married women report having never been sexually abused by anyone.
- Among never married women who have been sexually abused, 27% say that the perpetrator was a relative.

Most women do not seek help when they are abused.

- Only one in four abused women has ever sought help to try to end the violence she has experienced.
- Two out of three abused women have not only never sought help, but have also never told anyone about the violence.
- Abused women most often seek help from their families. Very few abused women seek help from institutional sources. Only 2% of abused women have ever sought help from the police.

¹ Census 2001 & Human Development Report, 2006

² National Family Health Survey III, 2007

Crimes against Women³

According to data available in 2007, in total, crime against women has increased by 12.5% over 2006 and 31.8% over 2003.

Cruelty by husband and family (Section 498A, IPC)

- Constitutes 3.8% of total IPC crimes, with a conviction rate of 20.9%.
- From 2005 to 2006, there was an 8.2% increase in the rate of cases filed.

Dowry Deaths (Section 304B, IPC)

- Constitutes 0.7% of total IPC crimes.
- From 2006 to 2007, there was a 6.2% increase in the rate of cases filed.

Myths and Facts about Domestic Violence

Myth Domestic violence is rare. Most violence against women is perpetrated by strangers.

Fact Domestic violence is very common the world over, including in India. Women are far more likely to be assaulted by intimate family members than by strangers.

Myth Domestic violence occurs only in poor, poorly educated or dysfunctional families.

Fact Domestic violence can happen to anyone. It is not limited to any particular socioeconomic class, educational level, occupation, age, race, religion, caste or sexual orientation.

Myth Perpetrators of domestic violence are mentally ill or have drug or alcohol problems.

Fact Only an extremely small percentage of perpetrators suffers from mental or substance abuse problems.

Myth When there is violence in the family, it is not only the perpetrator's fault, but also that of the woman. All members of the family are participating in the dynamic; therefore, all must change for the violence to stop.

Fact Only the perpetrator has the ability to stop the violence. Changes in the behaviour of other family members will not increase or decrease the perpetrator's propensity towards violence.

Myth Domestic violence is used by perpetrators to get victims to do what the perpetrator wants.

Fact Domestic violence is a pattern of learned behaviour that occurs over time and can be controlled by the perpetrator.

Myth The problem is not really the abuse of women; it is spousal abuse. Women are just as violent as men.

Fact In over 95% of domestic assaults, the perpetrator is the man.

Myth Women who do not leave violent domestic situations must not really want to leave or must think that the violence is justified.

Fact Often circumstances compel women to remain in violent domestic situations. Women tend to be economically dependent on their husbands, fathers, brothers, etc., and have nowhere else to go and/or no sustainable sources of institutional support.

³ National Crime Records Bureau, 2007

Chapter I

Introduction

The history of a nation is also the history of its law making. At the same time, laws do not have an autonomous existence but are responses to the felt needs of our times. Analyzing the history of a law, therefore, gives a glimpse of how we have, as a nation, dealt with our challenges.

While we plot and map these laws and try to make sense of them, what we are in fact trying to do is to make sense of and engage with our hopes, desires and lived realities. It is with this perspective that we must understand the Protection of Women from Domestic Violence Act, 2005 (PWDVA): we must begin by looking at the historical evolution of laws relating to violence against women, in the hope that it will lead us to a better life for women.

There is no doubt that the journey began when, emerging from colonial rule, we gave to ourselves a Constitution, which guaranteed the right to equality and non-discrimination based on sex¹. Based on this equality guarantee, the Indian State has enacted several laws to deal with the phenomenon of violence against women.

The first law enacted on this issue in the post-independence era was the Dowry Prohibition Act of 1961 (DPA). This law penalized the act of giving and taking of dowry. The demand for dowry reflects the degraded status of women in society and is only a symptom of a much larger malaise, namely the treatment of women as commodities, rather than as human beings who are bearers of human rights, including the right to equality. Unfortunately, the enactment of the DPA prevented neither the demand for dowry nor the act of giving it.

In fact, through the early 1980s, not only did the practice of giving and taking of dowry continue, but its association with violence and death in the matrimonial home became more evident. It was the mothers who marched on the streets, demonstrating against the burning to death of young brides in their matrimonial homes, who brought to public notice the deadly mix of dowry and death. At that time, it was still a crime without a name. The death of a woman, invariably in the kitchen, through kerosene burns, was regarded as being “accidental” or as a “suicide” and was rarely prosecuted as murder. It was the mothers of these young women who brought to focus the phenomenon that was later described and legislated upon as “dowry death”.² The campaign against dowry and the violence associated with it also forced the realization that violence is a reality in the Indian matrimonial home.

¹ Article 15(1) of the Constitution of India states, “the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.” (Emphasis added)

² Section 304B of the Indian Penal Code inserted by amendment Act 43 of 1986.

The Indian Penal Code (IPC) was further amended in 1983 to introduce “cruelty” to a married woman as an offence under Section 498A. The concept of cruelty was borrowed from personal laws on marriage where “cruelty” was a gender-neutral ground for divorce. The major contribution made by Section 498A was its recognition of “cruelty” as a gendered act, directed specifically against women within the space of the Indian matrimonial home which could no longer be regarded complacently as a safe haven for women. In that sense, Section 498A represents a major breakthrough and paved the way for the PWDVA which came into force over 20 years later.

However, violence against woman did not disappear with the enactment of Section 498A. No law can act as a magic wand; it can only hold up to society a mirror of society’s diseased state and offer options towards creating a more just society. It would appear, however, that laws relating to violence against women had not been able to offer effective options. Women continued to die in the matrimonial home and, eventually, it became necessary to enact Section 304B (IPC), to deal with the death of a woman in the matrimonial home.

In its very structure, Section 304B is meant to be invoked at the post-Section 498A stage, thus acknowledging that 498A had been unable to prevent the woman from dying and all that the law was capable of doing was to prosecute the accused. This is a damning recognition of the failure of the State to prevent women from dying as a consequence of the cruelty they faced. As I have said elsewhere, the journey from Section 498A to Section 304B is a journey from life to death.³ How and why did we fail to prevent women from dying despite our criminal laws in place? This is a question for researchers and sociologists to answer, but it is clear that patriarchy and misogyny cannot be made an obsolete merely by enacting laws.

Criminal law, by its very nature, requires the State and its agencies to activate it. It is based on the fundamental premise that the accused is presumed innocent until proven guilty. In a country which is known for its proverbial delays in litigation, this could mean presumed innocent forever. Moreover, criminal law also necessitates the police to act, to make an arrest, to investigate and to prosecute. Hence, more often than not, the law was defeated by sheer inaction. This inaction was institutionalized all over the country by the policy of diversion: the policy of ‘counselling, conciliation and mediation’ adopted by the police in dealing with cases of violence within the home. Official orders were issued by Commissioners of Police that no offence under Section 498A would be registered unless an attempt was made towards reconciliation between the parties.

Reconciliation with violence is the very antithesis of justice for women. It leaves them defenceless against violence at the hands of their husbands and extended families. Judges were not immune from this approach. The case of a young woman – let us call her K – whom LCWRI represented in the mid-1990s best illustrates this death wish handed down by the law. K had been facing severe violence and decided to move out of her matrimonial home. However, her husband and his family did not allow her to take her son along with her. All K wanted was the custody of her son. She lodged a complaint under Section 498A and her husband applied for anticipatory bail. When her matter reached the High Court, the judge

³ Indira Jaising; “One Step closer to Equality for Women”; Little Magazine; 2008

recommended the parties undergo reconciliation before proceeding further. K was terrified of reconciliation and wanted to reject the recommendation, but she feared that by doing so, she would jeopardise her case. In spite of my repeated assurances that she was under no obligation to attempt a reconciliation, my attempts to persuade her not to return to her matrimonial home failed. Repeated visits to the Court had led her to the conclusion that it was necessary for her to do so if she wished to gain a favourable order from the judge. She went back to her 'home' and never returned. She was found dead at her husband's commercial office. He was a kerosene dealer and claimed that K came to his office, poured kerosene over herself and set herself on fire. Several years later, her father still walks the courts prosecuting her husband, while her son – the very same son whose custody she had requested from the Court – is called as a witness to her death. A more poignant example of the failure of the law would be difficult to find.

The demand for a law on domestic violence was made in this context of continuing violence. While Section 498A was confined to protecting married women, the women's movement strongly believed that there was a need to extend the ambit of the law to other categories of women in the shared household such as mothers, sisters and women in relationships in the nature of marriage, to name a few. The success of this campaign led to the enforcement, on October 26, 2006, of the PWDVA.

Unlike the earlier criminal laws, the PWDVA is a civil law. Its major distinguishing feature is that it is a far more democratic remedy, not requiring police initiative to activate it. Civil law puts the victim at the centre and does not allow for the presumption of innocence that automatically puts the aggressor at an advantage vis-à-vis the victim. The imbalance of criminal laws had to be corrected and this law has gone a long way in doing so. At the same time, the criminal law has been retained, reiterating the value that society places on outlawing violence against women.

Another major contribution of the PWDVA has been its introduction of a definition of domestic violence that includes emotional and sexual violence. Moreover, while our criminal law does not recognize rape within marriage as an offence,⁴ the PWDVA has made marital rape and other forms of sexual violence actionable by constituting them as domestic violence. To this extent, the PWDVA can be said to have made a major advance over criminal laws.

The main features of the PWDVA are as follows:

- A clear declaration of the basic intent of the law, namely, the prevention of domestic violence.
- A clear and unambiguous statement of the right of women to be free from domestic violence and the recognition of domestic violence as a violation of the human rights of women.
- A definition of domestic violence that captures women's experience of abuse in its manifold forms.

⁴ Exception to Section 375, IPC states that sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape. The only circumstance under which non-consensual sexual intercourse by a husband is recognized as an offence under the IPC is when the woman is living separately under a decree of judicial separation or under any custom or usage (Section 376A, IPC).

- The recognition of a woman's right to reside in the shared household and her protection from illegal dispossession.
- Access to immediate orders to prevent further acts of violence, to provide remedies for violence faced and to prevent destitution of women.
- Infrastructure available to women to facilitate access to justice both in terms of court-mandated remedies and other support services.
- Provision of a coordinated response to domestic violence by recognising and building upon the experience of other agencies and disciplines that have traditionally provided assistance to women in distress. For instance, non-governmental organisations (NGOs), doctors and other medical or health professionals, counselling centres, and shelters are required to coordinate with each other in the common enterprise of ensuring a woman's safety.

The PWDVA is intended to restore a woman to a position of equality within the home. It attempts to give her the time and space to decide on what she wants to do with the rest of her life and whether or not she wants to continue in the relationship and, if so, on what terms. This is a choice the individual woman has to make keeping in mind her best interest and circumstances. The PWDVA is an acknowledgment of the fact that such important decisions can only be made in a violence-free atmosphere. Therefore, the Act is aimed at stopping the violence in order to provide a peaceful and secure physical and mental space, wherein a woman is in a position to take free and informed decisions. Had the PWDVA been in place in the mid-90s, perhaps K would be alive today.

Facilitating access to justice is itself a guaranteed right. Traditionally women have relied on their own natal families for this purpose. With the growth of the activism of the women's movement, individuals, organisations and networks of women have taken on the responsibility of supporting women in their struggle for justice. The Tata Institute of Social Sciences has, in association with the state governments, created Special Cells of social workers who are physically located within police stations to assist women approaching the police with complaints of violence. Family counselling centres have been put in place by the State to provide counselling services to women. The PWDVA builds on these emerging strategies and puts in place an infrastructure to facilitate access to justice.

The Protection Officer (PO) is considered to be a crucial bridge between the woman in need of relief/s and agencies providing such relief/s. The primary duty of the PO is to facilitate a woman's access to relief/s provided under the PWDVA. On the one hand, this requires the PO to facilitate a woman's access to available support services and the Court; on the other hand, it requires her/him to render assistance to the Court while dispensing justice. A PO, therefore, has to work not only on her/his own initiative, but also in close coordination with other State agencies and NGOs. The PO can be seen as the civil equivalent of the police and the public prosecutor (a role that has not quite been clearly worked out as yet).

POs may best be seen as the arm of the State charged with the duty of protecting women from domestic violence. NGOs that register as Service Providers under the Act also perform several functions similar to those of POs. The idea was to create multiple gateways to justice. Hence, the challenge before

POs is to translate this vision into reality and act as facilitators of justice rather than as the gatekeepers who prevent entry through the doorway to justice.

The purpose of this *Manual for PWDVA Protection Officers* is to provide a detailed explanation of the PWDVA and their duties under this law to POs, so as to enable them to perform these duties in consonance with the aims and objectives of the law. If the *Manual* serves this purpose in some measure, our task will have been a success. A companion publication, *Handbook on Law of Domestic Violence* (Lawyers Collective & Lexis Nexis Butterworths; 2009), is now in circulation for those wanting a more technical exposition of the law.

We look forward to your feedback and comments, which will further enrich our ongoing efforts.

Indira Jaising
Director, LCWRI
February 26, 2009

Chapter 2

PWDVA : Setting the Human Rights Context

The Preamble to the Protection of Women from Domestic Violence Act, 2005 (PWDVA) states that this law is aimed at providing, “effective protection of the rights of women guaranteed under the Constitution who are victims of any kind of violence occurring within the family”. The Act’s Statement of Objects and Reasons refers to the Constitutionally guaranteed right to equality under Articles 14 and 15 and the right to life under Article 21. While domestic violence is clearly a violation of a woman’s right to a life of dignity, the violation of equality rights requires some explanation.

First, we need to understand the concept of *human rights*. The term human rights was coined in international law with the adoption of the Universal Declaration of Human Rights (UDHR) in 1945. The Indian Constitution was drafted almost immediately after and adopted in 1950. Hence, many of the rights mentioned in the UDHR were incorporated into Part III of our Constitution as *fundamental rights*. Legally speaking, fundamental rights vest in individuals to claim remedies for violations committed by State agencies or to enforce State accountability for the protection, promotion and fulfilment of fundamental rights. However, domestic violence occurs within the home and is perpetrated by private or non-State actors. This being case, the first question that arises is: why is the State obligated to take measures to address violence within the home?

To answer this question one has to understand the nature of State obligations. Article 14 of the Indian Constitution declares that the State shall not deny any person equality before the law or the equal protection of laws.¹ Further, Article 15 (1) of the Constitution declares that the State shall not discriminate against any citizen on the basis of (among other factors) sex. The guarantees contained in these two Articles reflect the earliest model of equality formulated by the Greek philosopher, Aristotle. This model is known as the *formal equality model* or the *equal treatment model*. This model relies on ‘sameness’ or similarity as an aid for classification and mandates equal treatment for equals; the corollary bring that dissimilar classes need not be treated similarly.

¹ The term “equality before the law” means that all persons shall be treated equally; the term “equal protection of laws” means that laws shall apply to all persons equally.

For Example
Applying the Formal Equality Model

A government hospital issues an advertisement inviting applications to the post of a gynaecologist. **X** and **Y** respond to the advertisement. **X** is a registered medical practitioner with a post-graduate degree in gynaecology. **Y** has a basic medical degree and no post-graduate qualification. The hospital selects **X** for the post. **Y** cannot complain of unequal treatment because **X** and **Y** are not similar due to the differences in their qualifications. The hospital's decision, therefore, does not violate the right to equality as it is based on a reasonable difference. **Y**'s complaint would have been valid if she had the same qualifications as **X**, but was disqualified due to other factors such as, for example, her caste status.

The formal equality model legitimises differences based on sex, as men and women are biologically different. Further, ascribed stereotypical gender roles are also used as a basis for differentiating between the sexes.

For Example
Difference on the Basis of Sex

Women can bear children; men cannot.

For Example
Difference on the Basis of Gender

Women are better than men at looking after children.

Though this model is useful in guarding against direct discrimination, it does not take into account historical and social disadvantages and may result in indirect discrimination as dissimilar groups are impacted disparately.

For Example: State Action Resulting in Indirect Discrimination

The government issues a notification stating that all ration shops will be open from 10:00 p.m. to 3:00 a.m.

This notification applies equally to men and women in that it does not state that only men shall access the ration shop and not women.

However, in practical terms, it is most likely that a majority of women will not be able to access the ration shop at these hours due to concerns of safety. Hence, although this notification is *prima facie* non-discriminatory, it shall result in discrimination. This form of discrimination is called *indirect discrimination*.

These examples illustrate that the adoption of the formal equality model alone will not be adequate in realizing the goal of equality. In Justice Tanaka's words:

“The principle of equality before the law does not mean absolute equality, namely the equal treatment of men without regard to individual, concrete circumstances, but it means...relative equality, namely the principle to treat equally what are equal and unequally what are unequal...To treat unequal matters differently according to their inequality is not only permitted but required.”

Ensuring the equality of opportunity and the equality of result requires substantive measures to overcome and undo past or current differences. To create equality of opportunity requires measures to ensure equal access to power or resources. To create equality of result requires not only a consideration of the purpose of the measure taken, but also a consideration of the result or impact of the measure taken. Both these approaches constitute the *substantive equality model*.

Under the substantive equality model, it is the State’s obligation to ensure that there is no direct or indirect discrimination against women in its laws and that women are protected against discrimination. *Direct discrimination* has been defined as laws that are *prima facie* discriminatory. *Indirect discrimination*, on the other hand, occurs when laws, policies and programmes are based on seemingly gender-neutral criteria which, in actual effect, have a detrimental impact on women. Gender-neutral laws and policies may unintentionally perpetuate consequences of past discrimination as they may inadvertently take the male standard as the norm and, thus, fail to take into account aspects of women’s experiences which may differ from men.

For Example : Approaches to Ensure Equality of Opportunity and Result

Continuing from the previous example, if both men and women are to benefit equally from the ration shop, then the shop should be kept open during the day to allow women equal access. This would meet with the requirement of creating equal opportunity.

However, the creation of equal opportunities may not amount to equality of results. To ensure equality of results requires positive action to be taken by the State. In this instance, the government would have to provide adequate lighting and make security arrangements to ensure that women’s safety is not compromised when they visit the ration shop.

The Constitution of India envisages substantive equality for women. Hence, in addition to the guarantees contained in Articles 14 and 15(1), Article 15(3) allows the State to take special measures for women and children. All laws and legal provisions that specifically relate to women are premised on this provision. Some examples of gender specific laws are the Equal Remuneration Act, 1976 and the Maternity Benefit Act, 1961.

Let us now return to our original question: how is domestic violence a violation of women’s equality rights?

Gender-based violence, in all its forms, has been interpreted to be an aspect of discrimination in international law. The clarification provided is as follows:

“[V]iolence that is disproportionately directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender based violence may breach specific provisions of the Convention [on the Elimination of All Forms of Discrimination Against Women (CEDAW)], regardless of whether those provisions expressly mention violence.”²

Further, the UN Declaration on Violence against Women, 1993 (DEVAW) affirms that:

“[V]iolence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms...[V]iolence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”

These CEDAW and DEVAW statements acknowledge the unfortunate truth that violence is a fact of every woman’s life and that such violence is manifested in multiple forms. More often than not, a woman’s condition seems to be defined by the violence that she faces, be it in the private or public domain; at the hands of intimate partners, strangers or forces of the State. This renders violence against women systemic, pervasive and of epidemic proportions in our societies. Like any system, violence too must serve some function; since it is overwhelmingly directed against women, one obvious function of violence is to subjugate women to a position of subordination amounting to inequality. Therefore, taking steps to prevent and remedy violence is a crucial step in realizing women’s equality rights.

Factors That Perpetuate Domestic Violence

Cultural	Gender-specific socialization Cultural definitions of appropriate sex roles Expectations of roles within relationships Belief in the inherent superiority of males Values that give men proprietary rights over women and girls Notion of the family as the private sphere and under male control Customs of marriage (bride price/dowry) Acceptability of violence as a means to resolve conflict
Economic	Women’s economic dependence on men Limited access to cash and credit Discriminatory laws regarding inheritance, property rights, use of communal lands, and maintenance after divorce or widowhood Limited access to employment in formal and informal sectors Limited access to education and training for women

² General Comment 19 of the CEDAW Committee, 1992

Factors That Perpetuate Domestic Violence (con't.)

Legal	Lesser legal status of women either by written law and/or by practice Laws regarding divorce, child custody, maintenance and inheritance Legal definitions of rape and domestic abuse Low levels of legal literacy among women Insensitive treatment of women and girls by police and judiciary
Political	Under-representation of women in power, politics, the media and in the legal and medical professions Domestic violence not taken seriously Notions of family being private and beyond control of the state Risk of challenge to status quo/religious laws Limited organization of women as a political force Limited participation of women in organized political system

[Source : Radhika Coomaraswamy; UN Special Rapporteur on Violence Against Women; “Domestic Violence against Women and Children; Innocenti Digest; No.6, June 2000; UNICEF]

Of the various forms of violence faced by women, family violence is perhaps the most debilitating as it occurs behind closed doors and often has social sanction. In international law, it has been observed that:

“Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships, women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence and coercion. These forms of violence put women’s health at risk and impair their ability to participate in family life and public life on a basis of equality.”³

Domestic violence also violates the right to life and personal liberty under Article 21 of the Indian Constitution. The right to live with “dignity” is the most important indicator of the fulfilment of Article 21’s guarantee. Domestic violence is not only a violation of the right to equality, but also of the basic right to live with dignity. Significantly, Article 21 requires the State not only to put in place safeguards, but also to exercise due diligence to protect and fulfil the right to a life with dignity.

It is based on this rationale that the Indian state enacted the PWDVA. Thus, too, the reference to Articles 14, 15 and 21 in the Act’s Statement of Objects and Reasons.

³ General Comment 19, CEDAW Committee, 1992

Chapter 3

An Overview of the PWDVA, Related Laws and the Criminal Justice System

Chapter 3 provides a bird's eye view of the Protection of Women from Domestic Violence Act (PWDVA) and Protection of Women from Domestic Violence Rules (PWDVR). As per Section 36 of the PWDVA, this law applies in addition to other laws. Consequently, Chapter 3 also provides an overview of other relevant laws that can be applied in cases of domestic violence. Finally, this Chapter provides information on the structure of the criminal justice system, particularly the hierarchy of courts and the police.

It is recommended that readers study the entire Chapter, especially if they are unfamiliar with the contours of the Indian legal system. Those readers who are familiar with the legal system may prefer to focus on Part 3.1, deferring Parts 3.2-3.4 for another time. All readers are advised to read this Chapter in conjunction with Annexures I, II and III, containing the PWDVA, PWDVR and selected provisions of other laws relevant to domestic violence respectively.

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3.1 PWDVA : An Overview

The PWDVA is a civil law that defines domestic violence, recognizes a woman's right to reside in a violence-free home and provides remedies in cases of violation of this right. The PWDVA operates in addition to all other existing criminal and civil laws. Under the PWDVA, the Protection Officer (PO) plays a crucial role in facilitating a woman's access to justice and her interaction with the justice system. In order to perform this role effectively and as mandated by the law, a PO must have an understanding of the PWDVA's underlying rationale, its provisions and remedies and its location within the overarching legal system.

All laws can broadly be divided into five components. As far as the PWDVA is concerned, these components are:

- (i) Preamble or Statement of Objects and Reasons
- (ii) Definitions
- (iii) Rights and remedies
- (iv) Mechanisms for implementation
- (v) Procedures to be applied and enforcement of orders

The PWDVA has to be read in conjunction with the PWDVR. While the Act lays down the substantive law, the Rules, which are a form of delegated or subordinate legislation, flesh out the procedures and mechanisms required to activate the substantive law. In simple terms, the Act lists out *what is* while the Rules prescribe *how to*.

3.1.1 Statement of Objects and Reasons

Although not legally binding, the Statement of Objects and Reasons that form the Preamble of a law provide an insight into the need and rationale for that particular law and the spirit with which it ought to be implemented.

In its Statement of Objects and Reasons, the PWDVA recognizes domestic violence as a serious human rights concern and deterrent to development. It further mentions that since existing criminal law does not address this phenomenon in its entirety, there is a need to enact a civil law aimed, “to provide for more effective protection of rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family”.

3.1.2 Definitions

Definitions provide the coverage and ambit of the law: i.e., to whom the law applies, the acts prohibited under the law and the authorities vested with the responsibility of implementing the law.

In the PWDVA, definitions are provided in Sections 2 and 3.

Section 2 demarcates the coverage of the PWDVA by defining the parties to the dispute. This is contained in the four sub-clauses below:

- (i) *Aggrieved person*¹ defines who can initiate proceedings under the PWDVA. This includes women who allege that they have faced domestic violence from the *respondent*.
- (ii) *Respondent*² defines the person against whom proceedings can be initiated under the PWDVA. This includes adult males who are in a *domestic relationship* with the aggrieved person. It also includes relatives of the husband or male partner of the aggrieved person. The term “relative” used in this definition includes female members of the husband’s family.
- (iii) *Domestic relationship*³ is defined to include all forms of relationships between those living together in a *shared household*. This includes relationships through marriage or relationships in the nature of marriage, consanguinity or between family members living together as a joint family.
- (iv) *Shared household*⁴ is the household where the aggrieved person and the respondent have lived together in a domestic relationship. The household need not be owned by either of the parties. All that needs to be established is that both parties have resided in the place together.

Section 2 also defines other commonly used terms in the PWDVA such as *Domestic Incident Report*,⁵ *Magistrate*,⁶ *Protection Officer*,⁷ *Service Providers*,⁸ *Medical Facilities*,⁹ *Shelter Homes*,¹⁰ etc.

¹ Section 2(a)

² Section 2(q)

³ Section 2(f)

⁴ Section 2(s)

⁵ Section 2(e). The DIR is the format used for recording complaints of domestic violence.

⁶ Section 2(i). The term Magistrate used in the PWDVA alludes to either the Judicial Magistrate of the first class or the Metropolitan Magistrate with jurisdiction over the place where either the aggrieved person or respondent resides or the place at which domestic violence has taken place.

⁷ Section 2(n)

⁸ Section 2(r)

⁹ Section 2(j)

¹⁰ Section 2(t)

Section 3 provides a comprehensive definition of *domestic violence* in all its forms including physical, sexual, verbal/emotional and economic abuse. Since the PWDVA is a civil law, the standard of “balance of probabilities” is applied to prove injuries/harm sustained due to acts of domestic violence.¹¹

3.1.3 Rights and Remedies

Rights and Remedies are provided over a number of sections. These sections give effect to the Statement of Objects and Reasons.

The PWDVA recognizes three important *rights*:

- (i) The *right to be free from violence*, which is to be inferred from the definition of domestic violence contained in Section 3.
- (ii) The *right to reside* in the shared household is recognised in Section 17.
- (iii) The *right to seek remedies* is provided for in Section 12.

Remedies prescribed under the PWDVA are in the form of orders that can be obtained from the Court. These include:

- (i) *Protection orders*: Injunctive orders to prevent domestic violence or the commission of any act that adversely affects the aggrieved person’s rights within the home.¹²
- (ii) *Residence orders*: To prevent the aggrieved person’s dispossession and to prevent any act that impacts upon her peaceful occupation of the shared household.¹³
- (iii) *Monetary relief*: To reimburse the aggrieved person actual expenses incurred due to domestic violence, such as medical expenditure and the loss of earning, as well as maintenance.¹⁴
- (iv) Orders granting *temporary custody* of children.¹⁵
- (v) *Compensation orders*: For mental torture and emotional distress caused to the aggrieved person, which may be in addition to orders for monetary relief.¹⁶
- (vi) *Interim and ex parte orders*: Can be granted before final orders on proof of a *prima facie* case to maintain status quo and to prevent the respondent from committing any act that detrimentally affects the rights of the aggrieved person recognized under the PWDVA.

¹¹ The civil standard of “balance of probabilities” is lower than the standard of “proof beyond reasonable doubt” used in criminal law. In using the “balance of probabilities” scale, the decision of the Court is based on which of the two competing claims is most likely to have happened. On the other hand, decisions in criminal law are based on “proof beyond reasonable doubt,” wherein no reasonable person can have any doubt on what actually occurred.

¹² Section 18

¹³ Section 19

¹⁴ Section 20

¹⁵ Section 21

¹⁶ Section 22

3.1.4 Mechanisms for Implementation

The method of implementation of the law is built into the law by providing for the appointment of implementing agencies.

Under the PWDVA, the authorities responsible for implementation are:

- (i) *Courts*: Vested with considerable powers to adopt appropriate procedure and an implementing structure at their disposal to ensure efficacious relief/s to women facing domestic violence. In accordance with the objective of ensuring easy access to emergency relief/s, the PWDVA allows an aggrieved person to directly approach the Court with complaint/s of domestic violence. Jurisdiction is vested with Magistrates. In addition, applications under this law may also be filed in pending proceedings that involve both parties.
- (ii) *Protection Officers*¹⁷: Facilitate a woman's access to court remedies and other support services. In addition, POs are vested with the responsibility of assisting the Court in the discharge of its functions.¹⁸
- (iii) *Service Providers*¹⁹: Organisations, registered under the PWDVA, that provide assistance to aggrieved persons in terms of shelter, counselling, legal aid, medical aid, vocational training, etc.²⁰ SPs are also authorised to receive and record complaints of domestic violence.
- (iv) *Medical Facilities*: Those facilities notified under the PWDVA by State Governments.²¹ Notified medical facilities cannot refuse to provide medical aid to an aggrieved person.²² They are also authorised to record DIRs.²³
- (v) *Shelter Homes*: Those notified under the PWDVA by the State Governments under the PWDVA.²⁴ Notified shelter homes cannot refuse to provide shelter to an aggrieved person.²⁵
- (vi) *Police*: Although the police have a limited role in the implementation of PWDVA, they are duty bound to provide information to the aggrieved person about the rights and remedies provided under PWDVA, facilitate her access to the PO,²⁶ initiate criminal proceedings when needed and act on the directions of the Court to assist in the enforcement of orders.²⁷

¹⁷ Section 8

¹⁸ Section 9

¹⁹ Section 2(r)

²⁰ Section 10

²¹ Section 2(j)

²² Section 7

²³ Rule 17(3)

²⁴ Section 2(t)

²⁵ Section 6

²⁶ Section 5

²⁷ Section 19(5) & (7)

3.1.5 Procedures to be Applied and Enforcement of Orders

To get a sense of the general trajectory of a case under the PWDVA, it is helpful to divide it into the following stages:

(i) *Stage 1 : The Complaint*

An aggrieved person may approach a PO or SP with a complaint of domestic violence; this complaint is recorded in a DIR.²⁸ Once the DIR is recorded, the PO must forward copies of the DIR to the Magistrate, the local police station and SPs.

(ii) *Stage 2 : The Application*

If the aggrieved person is desirous of initiating legal procedures, an application is prepared and filed in Court.²⁹ The DIR is attached to the application.

In cases where the aggrieved person approaches the Court directly, the Court may direct the PO to record and file a DIR after the application is received.

An affidavit³⁰ seeking immediate interim or *ex parte* relief may be filed along with the application.

Applications under the PWDVA are to be filed in the court of the Judicial Magistrate of the first class or the Metropolitan Magistrate within whose local limits either parties reside or are gainfully employed or where the domestic violence has allegedly been committed.³¹

The procedure laid down in the Code of Criminal Procedure, 1973 (CrPC), particularly the procedure prescribed under Section 125, is to be applied in dealing with applications under the PWDVA.³² The Court may also lay down its own procedure in dealing with such applications.³³

(iii) *Stage 3 : Service of Notice*

Once the application is filed, the Court shall issue notice to the respondent to appear in Court. The PO is vested with the responsibility of ensuring that notice is served. The notice is to be served within two days from the date of filing.

The first date of hearing is to be fixed after two days of the application being filed.

The Court may grant an *ex parte* interim order at this stage provided that the application shows, on a *prima facie* basis, that domestic violence has either been committed or that there is a likelihood of its commission.

²⁸ Form I is the format to be used to record a complaint of domestic violence.

²⁹ Form II is the format to be used in preparing an application under the PWDVA.

³⁰ Form III is the format to be used in preparing an affidavit for interim/*ex parte* relief.

³¹ Section 27(1)

³² Section 28(1)

³³ Section 28(2)

Rule 12 of the PWDVR provides a comprehensive procedural code that incorporates principles from the CrPC and the Code of Civil Procedure, 1908 (CPC).

(iv) Stage 4 : The Trial

Once the notice is served, the trial commences with the first hearing at which both parties appear. The respondent is given time to file a written response to the application filed. Thereafter, evidence may be taken by the Courts through affidavits filed by the parties.³⁴ Written orders may be passed on affidavits and oral arguments. In addition, the court may summon the parties or witnesses for the purposes of examination and cross-examination.

If the respondent fails to appear, then the Court may pass an *ex parte* order (interim or final) against him.

The Court may grant an interim order at any stage of the proceedings. The Court may also direct the parties to either singly or jointly undergo counselling under Section 14 of the PWDVA read with Rule 14 of the PWDVR, at any stage of the proceeding. The procedure to be applied in Court-mandated counselling is detailed in Rule 14.

(v) Stage 5 : The Order

After all the evidence has been recorded, the Court grants the final order. An order granted by the Court under the PWDVA can be enforced in any part of India.³⁵

In addition to the remedies mentioned in Part 3.1.3, the Court may also grant additional orders.³⁶

The procedure laid down in the CrPC, particularly under Section 125 CrPC, is to be applied in the enforcement of Court orders. In addition, each of the provisions on remedies also provides powers to the Courts to issue additional orders to effect enforcement.³⁷ The Courts may also direct the PO³⁸ and the police for assistance in ensuring the enforcement of orders.

(vi) Stage 6 : Post-Order

The breach of a protection order is a cognisable and non-bailable offence under Section 31 of the PWDVA. The warrants procedure prescribed under the CrPC is to be applied in cases of breach.

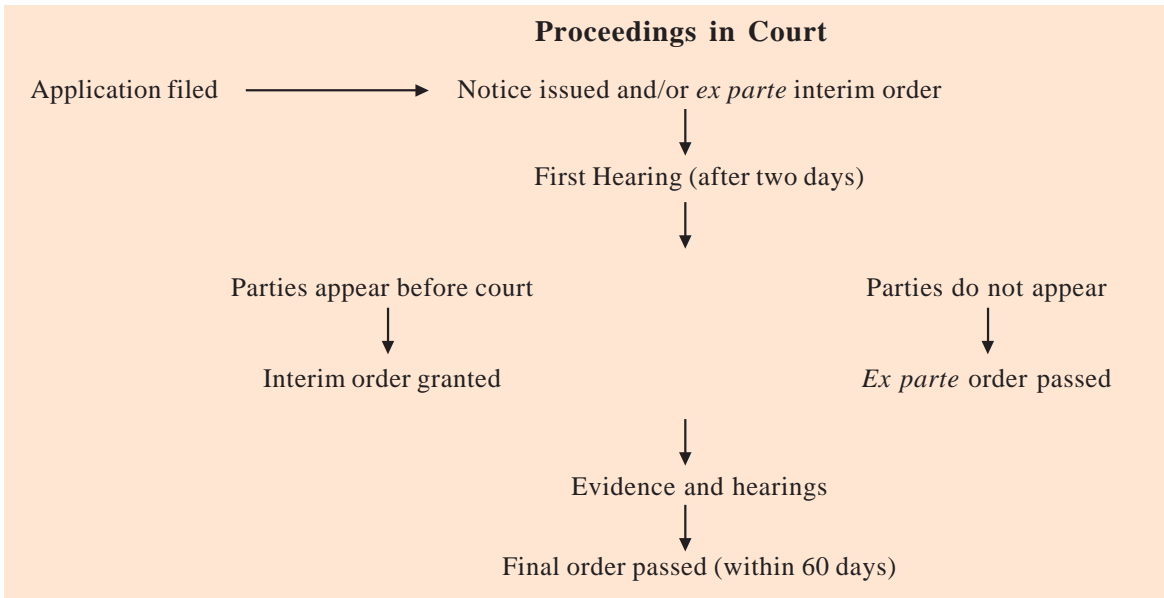
³⁴ The CrPC provides for a “summary procedure” under Chapter XXI, Sections 262, 263 and 264 which allows the Court to take evidence through affidavits. This procedure is commonly used in claims for maintenance made under Section 126 of the CrPC. For further information on maintenance claims, see Part 3.2.3.2 below.

³⁵ Section 27(2)

³⁶ Rule 10(1)(c) & (d)

³⁷ For instance, Section 19(3) provides that in order to prevent the commission of future acts of violence, the Court may direct the respondent to furnish a bond to maintain peace.

³⁸ Rule 10(1)(e)



3.1.6 Other Relevant Provisions

Discharge, Alteration/Modification and Revocation of Orders Granted under the PWDVA

The aggrieved person may file for a discharge of a protection order under Section 25 if she feels that is no longer needed.³⁹ Either of the parties can also file an application to the Magistrate for the alteration, modification⁴⁰ or revocation⁴¹ of any order made if there is a change in circumstances.⁴²

Appeals

Additionally, either of the parties can file an appeal, before the Court of Sessions, against any order, both interim and final, granted by the Magistrate.⁴³ The appealing party must do so within 30 days of the date on which the order was served on the party last.

Additional Relevant Clauses

Section 36 of the PWDVA states that provisions of the Act are in addition to, and not in derogation of, any other law. This means that, in addition to the PWDVA, various other provisions under the general laws as well as specific statutes can be used simultaneously in a situation of domestic violence.

³⁹ For instance: an aggrieved person was granted a protection order against her husband to prevent him from committing any further acts of violence. After five months of the issuance of this order, the parties reach an amicable settlement and the husband moves to another country. In such cases the aggrieved person may apply for a discharge of the protection order.

⁴⁰ The terms *alteration* and *modification* used in Section 25(2) are interchangeable in that they both mean change.

⁴¹ The term *revocation* is not the same as the term *discharge*. In cases of revocation, which may be sought by either of the parties, there may be a subsequent order granted after an earlier order has been revoked by the Court. In the case of discharge, the aggrieved person asserts that she no longer wishes to continue with the proceedings: for instance, where a settlement is reached between both the parties.

⁴² Section 25(2)

⁴³ Section 29. For more on the structure of the judicial system, see Part 3.3 below.

Section 26 of the Act provides that the remedies available under it may be sought by the aggrieved person in any legal proceedings that have an impact on any of her rights and involve the respondent. This can be done even where the Court does not have direct jurisdiction under the PWDVA.⁴⁴

Consequently, Part 3.2 below provides an overview of other laws that might be applicable in cases of domestic violence.

3.2 Overview of Other Relevant Laws Applicable in Cases of Domestic Violence

The aggrieved person has to take a decision on the appropriate legal recourse based on her circumstances and requirements. The PO should be cognisant of the various laws and offences which get implicated in a situation of domestic violence and may be used by the aggrieved person in addition to filing an application under the PWDVA.⁴⁵ Knowledge of other legal provisions allows the PO to provide information to the aggrieved person on her rights and remedies under the law.⁴⁶ However, it is recommended that an aggrieved person consult a lawyer before initiating any legal proceedings.

3.2.1. Distinction between Criminal and Civil Law

Laws can be either criminal or civil in nature and the main distinction between the two lies in their objectives: while criminal law is aimed at punishing offenders, civil law is directed towards providing remedies and compensating those affected due to a violation of their rights. Other distinctions between criminal and civil law are listed in the Table below.

Criminal Law	Civil Law
<ul style="list-style-type: none">• Recognises certain acts as <i>offences</i> punishable with imprisonment or penalty.• Objective is to punish the offender and not provide relief for violation of rights.• May be brought into action by making a complaint to the police or to a magistrate.• Anyone can file a complaint, except in a few cases as mentioned in the CrPC.• The Court decides what punishment is to be awarded.• Prosecution is by the State and the state prosecutor takes the lead. However, the woman can hire a private lawyer, who can assist the prosecutor.	<ul style="list-style-type: none">• Recognizes civil wrongs and contractual rights.• Objective is to provide remedies or compensation for civil wrongs.• Brought into action by filing a suit or petition in Court.• Only affected party can file suits or petitions.• One can request the Court to grant a specific type of relief.• One will have to hire an advocate or can appear in person.

⁴⁴ Appeals in such cases lie to the forum in which appeals ordinarily lie from the Court hosting the pending proceedings. For example, in cases of special courts such as Family Courts, appeals will lie to the High Court in accordance with the appellate authority specified under the Family Courts' Act.

⁴⁵ For additional information on laws applicable in situations of domestic violence, see LCWRI's *Law of Domestic Violence: A User's Manual for Women*; 2nd Edition; Universal Law Publishing Co; New Delhi; 2007.

⁴⁶ This is part of the Protection Officers' duty as mentioned in Section 5 of the PWDVA. This duty shall be further discussed in the subsequent chapters.

Criminal Law

- Magistrates, Sessions Courts and the High Courts deal with criminal cases.

Civil Law

- City Civil Judges, Munsifs, District Judges, Family Courts, and the High Courts deal with civil cases.

It must be understood that the PWDVA is aimed at providing emergency and immediate relief/s to women facing domestic violence and does not provide permanent solutions to domestic or familial disputes. For a final resolution of familial disputes, other civil laws, particularly on divorce, maintenance, guardianship/custody and inheritance have to be applied. Secondly, in cases of grave injuries, criminal law should be applied, as the deterrent effect of criminal law cannot be replicated by civil laws.

The other laws that are of relevance to situations of domestic violence can broadly be categorized as follows:

- Criminal laws: Relevant provisions of the Indian Penal Code, 1860 (IPC) and other special statutes.
- Civil remedies: On divorce, maintenance, guardianship and custody, inheritance and injunctive reliefs under general tort law.

Criminal Law Provisions that are Relevant to the PWDVA

- Cruelty by the husband or his relatives
- Dowry death
- Abetment of suicide
- Causing miscarriage and infanticide
- Causing hurt and grievous hurt
- Rape and sexual offences
- Criminal breach of trust, if the husband refuses to return belongings and *stridhan*
- Culpable homicide and murder and attempt to murder
- Deceitful marriage and bigamy
- Taking dowry or even asking for dowry
- Prohibition on child marriages
- Prohibition on sex selection and sex selective abortions

Civil Law Provisions that are Relevant to the PWDVA

- Judicial separation, divorce and restitution of conjugal rights
- Maintenance (includes the provision of food, clothing, residence, education, medical treatment, etc.)
- Injunctions to ensure that the abuser does not do anything that could harm the interest of the aggrieved person
- Damages or compensation for the harm done to you or your interests
- Custody and guardianship of children
- Inheritance rights

3.2.2 Provisions in Criminal Law

Criminal law lays down the acts that constitute an offence under the law and provides punishment for such offences. A crucial objective of criminal law is to punish the offender. It is the State which is vested with the power to prosecute the offender on behalf of the aggrieved person. Criminal law does not and cannot provide any remedial measures to the aggrieved person.

Offences under criminal law provisions are contained in IPC. The CrPC provides the procedure to be followed in criminal trials. Many of the provisions of the IPC define offences that may be of relevance to a woman subjected to domestic violence. They range from grave offences, such as dowry death and suicide, to other offences, such as assault. A comprehensive listing of IPC provisions that can be applied in cases of domestic violence is provided in the Table below.

Provisions of the Indian Penal Code Relevant to Cases of Domestic Violence	
Category	Offences and Relevant Provisions
Offences posing a danger to life	<ul style="list-style-type: none"> ● Murder (S. 302); Culpable homicide not amounting to murder (S. 304) ● Dowry death (S. 304B) ● Abetment of suicide (S. 306)
Offences posing or causing bodily harm short of death	<ul style="list-style-type: none"> ● Hurt & Grievous hurt (S. 323-338) ● Wrongful restraint & Wrongful confinement (S. 341-348)
Offences of a sexual nature	<ul style="list-style-type: none"> ● Word, gesture or act intended to insult modesty of woman (S. 509) ● Assault with the intent to outrage the modesty of a woman (S. 354) ● Rape (S. 376, 376B, 376C, 376D) ● Sexual intercourse with one's separated wife (S. 376A)
Offence of cruelty	Cruelty by husband or relative (S. 498A)
Offence connected with property	Criminal breach of trust (S. 406)
Offences against marriage	<ul style="list-style-type: none"> ● Bigamy (S. 494) ● Fraudulent marriage ceremony undergone without lawful marriage (S. 496) ● Deceitfully causing a person to believe that she is lawfully married (S. 493) ● Adultery (S. 497)

Each of these offences can further be classified into classified into *cognisable/non-cognisable*,⁴⁷ *bailable/non-bailable*⁴⁸ and *compoundable/non-compoundable*⁴⁹ offences. The First Schedule of the CrPC provides a list of cognisable/non-cognisable offences as well as bailable/non-bailable offences. Section 320 of the CrPC provides a list of compoundable offences. The Table below provides details on each of the provisions including details on where such cases are be tried and the punishment prescribed.

Description of Offences under the IPC						
Offence	Relevant Section of the IPC	Cognisable/ Non-cognisable	Bailable/ Non-bailable	Compoundable/ Non-compoundable	Who can try the offence	What is the punishment for the offence
Dowry death	304B	Cognisable	Non-bailable	Non-compoundable	Sessions Court	Minimum imprisonment of 7 years up to life imprisonment and fine
Abetment of suicide	306	Cognisable	Non-bailable	Non-compoundable	Sessions Court	10 years imprisonment and fine
Cruelty	498A	Cognisable on information being given by the woman, her relatives or public servant	Non-bailable	Non-compoundable	Magistrate of First Class or Metropolitan Magistrate	3 years imprisonment and fine
Voluntarily causing hurt	323	Non Cognisable	Bailable	Compoundable by the person to whom hurt is caused	Any Magistrate	1 year imprisonment or fine or both
Hurt using dangerous weapons or means	324	Cognisable	Non-bailable	Non-compoundable	Any Magistrate	3 years imprisonment or fine or both

⁴⁷ Usually, to arrest a person, the police require a warrant that is issued by the Magistrate. However, there are some serious offences for which an arrest can be made without a warrant, on the basis of suspicion. Such offences are called *cognisable* offences. Other offences, for which the police needs a warrant to make an arrest, are called *non-cognisable* offences.

⁴⁸ *Bail* is the release of an accused pending trial. When a person is first arrested, it is only on a suspicion of having committed an offence. This is not a punishment. A person is punished only once the Court concludes, after the trial is complete, that he/she is guilty. In the meantime, the person may be released from custody if he/she can get bail. Bail is, therefore, a type of bond whereby the person arrested gives the Court some surety or security to ensure that he/she will attend Court whenever the case is heard and co-operate in the investigation. The power of granting bail is a matter of judicial discretion and the chief consideration in the exercise of that discretion is the likelihood of the person failing to appear at the trial.

Bailable and non-bailable offences: For some offences under the IPC, a person has the right to be released on bail. These are usually minor offences and are termed bailable offences. In other offences, a person cannot get bail as of right. These are called non-bailable offences. A person accused of a non-bailable offence can move for cancellation, at which point the prosecution should oppose grant of bail.

⁴⁹ *Compoundable* offences are those offences that can be settled out of Court. To illustrate: suppose a person who files a criminal complaint later decides either to compromise or drop the case. In order to do this, the offence will have to be compounded. This means that the prosecution has to be dropped. Parties usually compound an offence if they are able to come to an out-of-court settlement. Such a settlement could involve a payment of compensation. However, only some offences, that are relatively minor in nature, are compoundable. Others are called *non-compoundable* offences.

Description of Offences under the IPC (con't.)						
Offence	Relevant Section of the IPC	Cognisable/ Non-cognisable	Bailable/ Non-bailable	Compoundable/ Non-compoundable	Who can try the offence	What is the punishment for the offence
Grievous hurt	325	Cognisable	Bailable	Compoundable by person to whom hurt is caused with permission of the Court	Any Magistrate	7 years imprisonment and fine
Grievous hurt using dangerous weapons or means	326	Cognisable	Non-bailable	Non-compoundable	Magistrate of First Class or Metropolitan Magistrate	Up to life imprisonment and fine
Wrongful restraint	341	Cognisable	Bailable	Compoundable by person restrained	Any Magistrate	Simple imprisonment of 1 month or fine of Rs. 500 or both
Wrongful confinement	342, 343 and 344	Cognisable	Bailable	Compoundable by person confined and for Section 343 and 344, only with permission of the court	Any Magistrate	Imprisonment of 1, 2 or 3 years depending on the period of confinement
Outrage of modesty	354	Cognisable	Bailable	Compoundable by the woman outraged with permission of the court	Any Magistrate	Imprisonment of 2 years or fine or both
Sexual intercourse during separation	376A	Non-Cognisable	Bailable	Non-compoundable	Sessions Court	Imprisonment of 2 years and fine
Criminal breach of trust	406	Cognisable	Non-bailable	Compoundable by the owner of the property if value of property does not exceed Rs. 2,000, with permission of the court	Magistrate of First Class or Metropolitan Magistrate	Imprisonment of 3 years and fine

Description of Offences under the IPC (con't.)						
Offence	Relevant Section of the IPC	Cognisable/ Non-cognisable	Bailable/ Non-bailable	Compoundable/ Non-compoundable	Who can try the offence	What is the punishment for the offence
Bigamy	494 and 495	Non-Cognisable	Bailable	Compoundable if marriage is not concealed from first wife with permission of court	Magistrate of First Class Or Metropolitan Magistrate	Imprisonment of 7 or 10 years depending on whether first marriage was concealed and fine
Adultery	497	Non-Cognisable	Bailable	Non-compoundable	Magistrate of First Class or Metropolitan Magistrate	Imprisonment of 5 years or fine or both

In addition, there are special laws that can be applied to specific instances of violence within the home. These are:

- Dowry Prohibition Act, 1961 (DPA), which criminalises the giving and taking of dowry.
- Prohibition of Child Marriage Act, 2007 (PCMA), which prohibits the solemnisation of child marriages.
- Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PC & PNDT Act), which regulates the provision of pre-conception and pre-natal diagnostic techniques with an aim to prevent sex selective abortions.

We now provide a brief analysis of the most important and commonly used of the above provisions.⁵⁰

3.2.2.1 Cruelty (Section 498A, IPC)

Women facing violence in matrimonial relationships most commonly turn to Section 498A, IPC. An aggrieved woman has the right to file a complaint under Section 498A simultaneous with filing an application under the PWDVA.

Section 498A defines *Cruelty* to mean:

- Willful conduct that is likely to drive the woman to commit suicide.
- Willful conduct that is likely to cause grave injury to the life, limb or health of the woman. Health refers to both physical and mental health.
- Harassment with the view to forcing the woman or her relatives to give some property.
- Harassment because the woman or her relatives did not give some property.

⁵⁰ For further details on criminal provisions that may be used in cases of domestic violence, see Annexure III.

Section 498A includes harassment related to the demand for dowry, but is not restricted to it. It is also unique in that it expressly recognises grave injury to the mental health of a woman to constitute the offence of cruelty.

“Willful conduct” means that the behaviour must be deliberate.

3.2.2.2 Dowry (DPA)

The term *dowry* used in the PWDVA has been defined in relation to the DPA. As mentioned earlier, the DPA criminalises the giving and taking of dowry. The definition of dowry contained in Section 2 of the DPA is as follows:

- Any property or valuable security given or agreed to be given either directly or indirectly.
- By one party to the marriage to another party to the marriage or their parents or any other person to the other party or his parents.
- At or before or at any time after the marriage in connection with the marriage of the parties.
- It does not include *mahr* or dower in case of Muslims.
- It does not include customary gifts or presents that are given at the time of marriage to the bride or the groom without any demand having been made in that behalf, provided that the presents are entered into a list maintained by the parties.
- The value of the customary gifts should not be excessive having regard to the financial status of the person by whom or on whose behalf such presents are given.

The DPA criminalises all demands made for dowry. Dowry is not confined to that given or demanded before or at the time of marriage and there is no time limit as long as the property is demanded and is in connection to the marriage. The DPA also provides that items given as dowry belong to the woman and that she is entitled to the same.

3.2.2.3 Criminal Breach of Trust (Sections 405 and 406, IPC)

In addition to the PWDVA, provisions relating to criminal breach of trust may be used by the aggrieved person when the perpetrator (husband and/or in-laws) deprives her from the enjoyment of or refuse to return to her *stridhan*⁵¹ or other assets or effects that are exclusively owned by her.

Refusal to return *stridhan* in a situation where either the woman is thrown out of the shared household or where she decides to walk out is one of the most common forms of abuse perpetrated on the woman.

⁵¹ The term *stridhan* refers to the woman’s property, commonly given to her at the time of marriage. The Supreme Court, in *Pratibha Rani v Suraj Kumar* (AIR 1982 SC 628), held that, “*stridhan* is a property that always remains in the possession of the wife and if the husband or any other member of her family fails to hand over *stridhan* to the wife, they will be liable for the offence of criminal breach of trust under Sections 405 and 406 of the IPC”.

3.2.2.4 Provisions on Sexual Violence

Section 375 of the IPC penalises non-consensual penetrative sexual intercourse with a woman as rape. However, Section 375 creates an exception to the offence of rape when the forced sexual intercourse is with a wife who is not under 15 years of age.⁵² Sexual abuse within marriages or intimate relationships is one of the most common yet unacknowledged forms of violence against women. It is a violation of the inherent dignity of the woman and is an act degrading to her person and self-worth. By not recognising the exception in Section 375, the PWDVA, in effect, recognises marital rape as constituting “sexual abuse”.

3.2.2.5 Provisions Applicable in Cases where the Parties are not in a Marital Relationship

The offences mentioned in Parts 3.2.2.1 – 3.2.2.3 are applicable in cases where the parties are in a marital relationship. IPC provisions that apply to situations where violence is faced in non-marital relationships are as follows:

- (i) *Hurt and Grievous Hurt (Sections 319-326)*: Criminal law recognizes two types of physical hurt: hurt and grievous hurt (see Table below). In a case of domestic violence, where the women alleges physical abuse, a majority of acts characterised as abuse under the PWDVA would constitute either hurt or grievous hurt under the IPC.

Distinction between Hurt and Grievous Hurt	
Hurt	Grievous Hurt
<p>Relevant provisions: Sections 319, 321, 323 and 324, IPC</p> <p>If anyone causes one:</p> <ul style="list-style-type: none"> ● Bodily injury, or ● Disease, or ● Infirmity, <p>He/she will be considered to have caused hurt.</p>	<p>Relevant provisions: Sections 320, 322, 325 and 326, IPC</p> <p>Some serious forms of hurt have been classified as "grievous". These are:</p> <ul style="list-style-type: none"> ● Emasculation ● Loss of sight in one or both eyes ● Loss of hearing in one or both ears ● Loss of a member or joint ● Destruction or permanent impairment of the powers of any member or joint ● Permanent disfiguration of the head or face ● Fracture or dislocation of a bone or tooth ● Any hurt which puts one’s life in danger ● Any hurt which causes severe bodily pain for 20 days or more ● Any hurt because of which one cannot carry on with one’s normal work or lifestyle for 20 days or more

⁵² However, Section 376A penalises sexual intercourse by a man with his wife during separation.

- (ii) *Wrongful Restraint and Wrongful Confinement (Sections 339 & 340)*: This provision becomes applicable in a situation of violence in intimate relationships when the perpetrator, through the use of physical force, coercion or intimidation or a combination of them, restrains the movement of the woman; for example: restrains her from leaving the home. (See Table below)

Distinction between Wrongful Restraint and Wrongful Confinement	
Wrongful Restraint	Wrongful Confinement
<p>Relevant provision : Section 339, IPC</p> <p>Someone is considered to be wrongfully restraining a person if:</p> <ul style="list-style-type: none"> • He/she stops her from proceeding in any direction • Where the person has a right to proceed in this direction • The person is obstructing her voluntarily 	<p>Relevant provision : Section 340, IPC</p> <p>The perpetrator is wrongfully confining the woman if:</p> <ul style="list-style-type: none"> • He/she is wrongfully restraining her • Because of this wrongful restraint she is prevented from proceeding beyond certain circumscribed limits • If the husband locks her up or threatens her with violence or violence against the children if she leaves the house, he can be punished for wrongful confinement. • If a person wrongfully confines one for three days or more, he/she will be liable for a greater punishment. If a person wrongfully confines one for ten days or more, he/she will be liable for even greater punishment.

3.2.3 Remedies under Civil Law

Remedies available under civil laws can be broadly categorized as follows:

- (i) Claims under family law
- (ii) Injunctive and compensatory relief under the law of torts

In India, codified religious laws govern rights within the family: these are called personal laws. All religious communities are covered by separate laws. The issues covered under personal laws include marriage, divorce, maintenance, inheritance, guardianship and custody. (See Table below) In addition to personal laws, there are also secular civil codes that apply to all religions, such as the Guardianship and Wards Act, 1890 (GWA) and Section 125 CrPC on maintenance. Finally, the Special Marriages Act, 1954 (SMA) allows civil marriages in cases where the couples do not want to marry under the religious law applicable to them.

Laws on Marriage, Divorce and Custody Applicable to Persons Belonging to Different Religious Communities	
Civil marriages	Special Marriages Act, 1954 (SMA)
Hindu, Buddhist, Jain, Sikh	<ul style="list-style-type: none"> ● Hindu Marriages Act, 1955 (HMA) ● Hindu Adoption and Maintenance Act, 1956 (HAMA) ● Hindu Succession Act, 1956 (HSA) ● Hindu Minority and Guardianship Act, 1956 (HMGA)
Muslim	<ul style="list-style-type: none"> ● Sharia law ● Dissolution of Muslim Marriages Act, 1939, (DMMA) ● Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWA)
Parsi	Parsi Marriage and Divorce Act, 1936 (PMDA)
Christian	<ul style="list-style-type: none"> ● Christian Marriage Act, 1872 (CMA) ● Indian Divorce Act, 1869 (IDA)

Part 3.2.3 briefly discusses some of the important remedies accessed by women facing violence within marriages.

3.2.3.1 Divorce on the Ground of Cruelty

Before the PWDVA, a married woman facing domestic violence could take recourse to the civil law provision of divorce on the ground of cruelty. This remedy still continues to exist in case the woman wants to bring the relationship to an end. The aggrieved person shall be subject to the laws of the religion to which she belongs.

Cruelty as a ground for divorce is available to Hindu, Muslim, Christian and Parsi marriages and marriages registered under the SMA.⁵³ The term “cruelty” includes both mental and physical acts and has been defined to include every act, omission or negligence whereby unjustifiable physical pain, suffering or death is caused or permitted. The definition is also subjective depending on the way of life of the parties, their social and economic condition, status, customs and traditions. Disharmony or incompatibility does not amount to cruelty.

To entitle the complaining spouse to secure divorce, cruelty should be such as to satisfy the conscience of the Court that the relationship between the parties has deteriorated to such an extent, due to the conduct of the other spouse, that it would be impossible for the parties to live together without mental agony, torture or distress.

⁵³ Grounds of divorce are available under the statute under Section 27 of the SMA; Section 2 of the DMMA; Section 32 of the PMDA; Section 10 of the IDA and Section 13 of the HMA, on fault grounds.

3.2.3.2 Maintenance

The right to maintenance is recognised under personal laws as well as under Section 125 CrPC which is applicable to all women irrespective of the religion to which they belong. Maintenance orders granted under these laws may be interim or final in nature.

Married women and children have a right to claim maintenance from the husband/father under laws governing marriage and divorce. Under these laws, claims for maintenance can be made along with a suit for maintenance or judicial separation.

Provisions on Claiming Maintenance Along with a Suit for Judicial Separation or Divorce	
Religious Denomination	Relevant Provisions
Civil, Religious ceremony	Section 37, SMA
Hindu	Section 25, HMA
Muslim	Sections 3 and 4, MWA
Parsi	Section 40, PMDA
Christian	Section 37, IDA

Maintenance under Section 125 CrPC

Additionally, women and other dependents of all religious denominations have the right to claim maintenance under Section 125 CrPC. This provision is interpreted as, “a measure of social justice extended to protect women and children with the object to prevent vagrancy and destitution...”⁵⁴

The significance of Section 125 with regard to the PWDVA is that the PWDVA allows for the provision of civil relief/s with the use of criminal procedure. Hence, the PWDVA builds on and uses the procedure prescribed for enforcing orders under Section 125 CrPC.

Section 20 of the PWDVA empowers the Court to pass an order of monetary relief. The proviso to Section 20(d), states that the order for maintenance under the PWDVA shall be in addition to an order of maintenance under Section 125 CrPC.

There are many similarities between the PWDVA and Section 125 CrPC. Like the PWDVA, imprisonment under Section 125 CrPC is ordered only if the accused wilfully defaults on the maintenance orders issued. Second, the requirement that the application under the PWDVA be disposed of in 60 days is similar to the Proviso to Section 125(1) CrPC, which states that an application for monthly allowance for interim maintenance shall, as far as possible, be disposed of within 60 days from the date of the service of notice.

⁵⁴ *Dwarka Prasad Satpathy v Bidyut Praya Dixit* [AIR 1999 SCC 3348]

Coverage under Section 125 CrPC

The right to maintenance under Section 125 CrPC is available to married women during the pendency of the marriage as well as to a woman who is divorced, but has not remarried.⁵⁵ In certain cases, divorced women are eligible for maintenance if it is shown that the divorce was granted on the basis of desertion or adultery. Courts have also recognised the right of a woman in a relationship in the nature of marriage to claim maintenance if she cannot prove a valid marriage under the law.⁵⁶

Another commonality with the PWDVA is that the right to maintenance under Section 125 CrPC is not restricted to women in matrimonial relationships or relationships in the nature of marriages. Women can claim an order under Section 125 against their fathers and sons as well.

Quantum of Maintenance under Section 125 CrPC

Under the amended section, the Court may grant a monthly maintenance at such rate as it deems fit.⁵⁷ The maintenance order granted under Section 125 CrPC can be enhanced on an application under Section 127 CrPC, where it must be proved that there has been a change in the wife's or husband's circumstances that would justify an increase. This is also provided under the PWDVA.

3.2.3.3 Custody Orders

A custody order may be sought under the Guardians and Wards Act, 1890 (GWA) in a District Court having jurisdiction over the place where the minor resides. The application can also be filed in the form of a letter by a collector. The application must contain a declaration of willingness of a person to act as the guardian, and attested by two witnesses.

A custody order may also be sought under the personal laws that apply to women belonging to various religious denominations (see Table in Part 3.2.3). The provisions of the GWA can be said to supplement the personal laws. In fact, there are several instances where Muslim couples have relied on the GWA to seek custody orders.⁵⁸ It must also be noted that, under the HMGA, the natural guardian of a minor, including an unmarried daughter, is the father and, after him, the mother. However, judicial decisions on custody have consistently been based on the paramount consideration of the "welfare of the child" and not on the rights of the parents under a statute for the time being in force.⁵⁹

3.3 Structure of the Judicial System

Most Protection Officers will occasionally be required to attend Court and may sometimes be called as expert witnesses. A PO who is unfamiliar with the various types of Courts and their rules, regulations and procedures may commit serious (although unintentional) errors during her/his interaction with Courts and Court officials. Therefore, Part 3.3 outlines the judicial system.

⁵⁵ Explanation to Section 125(1) CrPC

⁵⁶ *Dwarka Prasad Satpathy v. Bidyut Praya Dixit* [AIR 1999 SCC 3348];

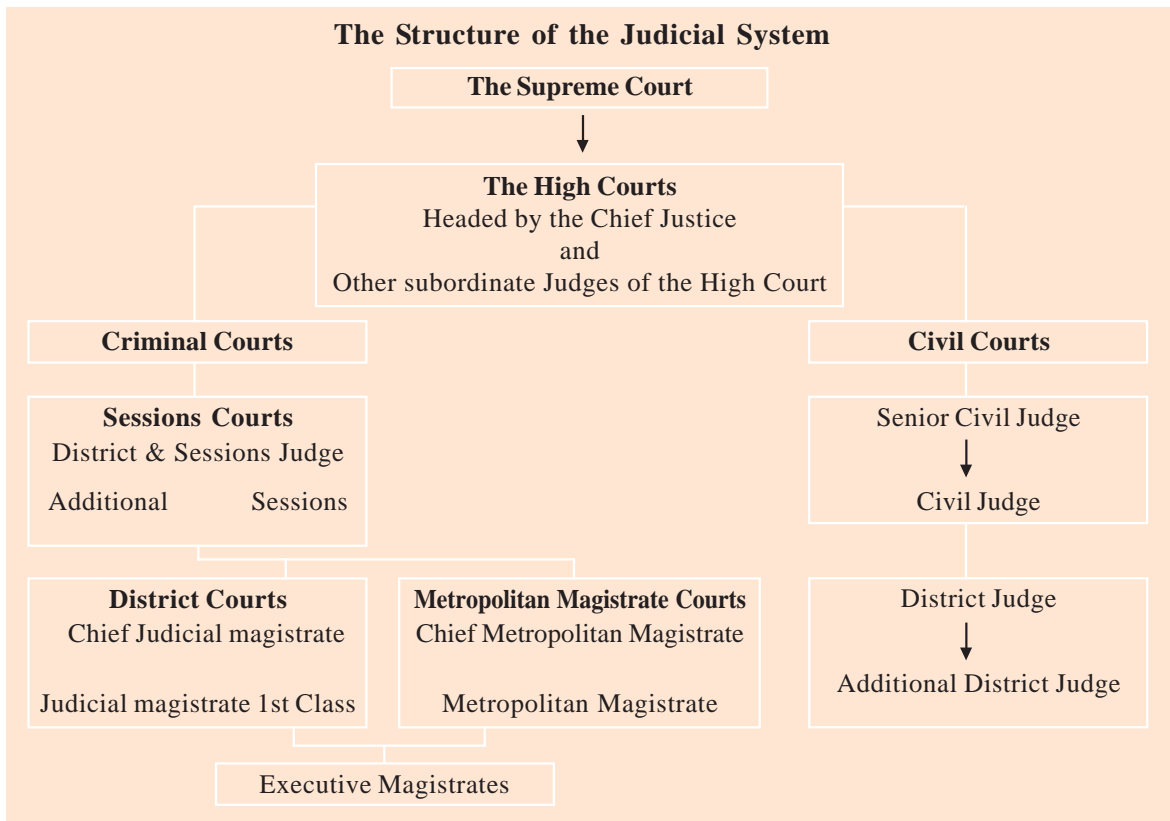
⁵⁷ Section 125 (1)(d) CrPC, amended by Act 50 of 2001, S.2 (w.e.f 24-9-2001)

⁵⁸ *Mohammad Shafi v. Shamin Banoo* [AIR 1979 Bom 156]; *Zynab Bi alias Bibijan v. Mohammad Ghouse Mohideen* [AIR 1952 Mad 284]

⁵⁹ *Gaurav Nagpal v. Sumedha Nagpal* (Civil Appeal Nos. 491 of 2006 and 5099 of 2007); *Saraswathibai Shripad v. Shripad VasANJI* [AIR 1941 Bom 103]

The various types of criminal courts in India, in order of their powers are:

- (i) Supreme Court
- (ii) High Courts
- (iii) Sessions Courts, which can be:
 - District and Sessions Courts, presided over by the District and Sessions Judge.
 - Additional District and Sessions Courts, presided over by the Additional District and Sessions Judge.
 - Assistant Sessions Court, presided over by the Assistant District and Sessions Judge.
- (iv) Magistrate's Courts presided over by:
 - Chief Judicial Magistrate. In any metropolitan area (cities with a population of over one million), these are designated as Chief Metropolitan Magistrates.
 - Judicial Magistrates of the First Class. In any metropolitan area, these are designated as Metropolitan Magistrates.
 - Judicial Magistrates of the Second Class
 - Executive Magistrates



3.4 Structure of the Police System

The PWDVA uses criminal procedure even though it is a law aimed at providing civil relief/s. As a result, applications for relief/s under the PWDVA lie before the Magistrate. Magistrates have the power to direct the police to perform various functions, particularly with regard to discharging their duties under the PWDVA. Additionally, any breach of an order granted by a Magistrate is an offence under Section 31 of the PWDVA. A Protection Officer is, therefore, advised to work closely with the police and rely on police assistance while discharging her/his duties under the PWDVA. The Table below illustrates the manner in which the police system is organised.



Chapter 4

Introducing the Protection Officer

At this point, you should be familiar with the legal and historical context of the PWDVA and have an elementary understanding of other relevant criminal and civil laws. Chapters 4-8 will now address each aspect of the PWDVA in detail so as to give you maximum guidance in the day-to-day discharge of your duties. To begin, Chapter 4 introduces the Protection Officer (PO) and her/his duties under the Act.

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4.1 Who is a Protection Officer?

The Protection Officer is the key authority appointed under the PWDVA to implement the Act.

Under Section 8 of the PWDVA, the State Government appoints POs. The number of POs to be appointed and their jurisdiction is left to the discretion of the State Government. The State Government should make this decision after considering a number of factors, including the population of the state, the volume of reported cases of gender violence and the number of individuals or agencies that can provide infrastructural or other support to POs in the discharge of their duties.

Although the terms and conditions of a PO's service are to be prescribed by the State Government, Rule 3 of the PWDVR states that the minimum tenure of a PO must be of three years.¹ Further, Rule 3 provides that POs may be recruited from either the government or from members of non-governmental

¹ Rule 3(3)

organisations (NGOs).² All POs should have at least three years of experience in the social section,³ a term that encompasses persons either qualified or experienced in social work, law, social sciences, psychology, counselling, etc. Rule 3 also states that preference shall be given to women to be appointed as POs. Finally, Rule 3 obligates the State Government to provide the necessary office assistance to POs for the efficient discharge of their duties.⁴

In Practice

At the time of the publication of this *Manual*, POs had been appointed in all states. A significant number of POs are drawn from the government cadre: Social Welfare Officers, Women and Child Development Officers or Child Development Project Officers. However, in some states, such as NCT Delhi and West Bengal, State Governments have invited applications from, and subsequently appointed, qualified individuals (such as those with qualifications in Social Work or Law) to the post of POs. Most PO appointments are at the district level and many of those drawn from the government cadre already have part-time or full-time employment in another capacity, which means that their PO duties are an additional charge.

4.2 Duties of the Protection Officer

The duties of Protection Officers are provided in Section 9 of the PWDVA read with Rules 8, 9 and 10 of the PWDVR. These duties can be broadly categorized into two stages:

- (i) Pre-litigation duties that are to be performed before the aggrieved person approaches the Court.

Under the PWDVA, a PO is the first *official* person to whom an aggrieved person shall turn for assistance. Upon being approached, the PO's primary objectives are to minimize the aggrieved person's exposure to additional violence and provide for her safety; to facilitate her access to support services such as shelter homes and medical facilities; and to assist with the preparation of the Domestic Incident Report (DIR) and applications to Court. Rules 8 and 9 provide a listing of the PO's duties of at this first stage.

- (ii) Duties that are to be performed after an application is filed in Court.

After the aggrieved person files an application under the PWDVA, the Court assumes supervision and directs the PO to perform various functions stipulated in the law. Rule 10 lists the duties of the PO at this second stage, when she/he functions as an officer of the Court.

We shall now briefly examine the specific duties that are attached to each of the two stages delineated above. These duties are discussed in detail in Chapters 5-8 of the *Manual*.

² Rule 3(1)

³ Rule 3(2)

⁴ Rule 3(4)

A PO must undertake her/his duties bearing in mind the overall objectives mentioned in Rule 8(2):

- (a) To protect the aggrieved person from domestic violence...;
- (b) To take all reasonable measures to prevent recurrence of domestic violence against the aggrieved person....

4.2.1 Duty to Receive Complaints of Domestic Violence

The primary duty of the Protection Officer is to receive complaints of domestic violence and take necessary action based either on her/his assessment of the complaint or on a specific request made by the aggrieved person.

When an aggrieved person approaches the PO with a complaint of domestic violence, the complaint has to be converted into a Domestic Incident Report (DIR),⁵ provided as Form I of the PWDVR. The PO assists the aggrieved person in completing the DIR.⁶ Once the DIR is completed, the PO ensures that all details are filled in accurately, confirms that the accompanying documentation is complete and, finally, countersigns the DIR.⁷

A PO may not always receive complaints directly from the aggrieved person. Sometimes, the PO may also receive reliable information, verbally or in writing, from a third party who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed.⁸ This could happen in cases where the aggrieved person is unable to approach the PO herself. In such cases, the information received verbally must be written down and signed by the informant. If the informant is not in a position to furnish written information, the PO must record the identity of the informant.⁹

A PO may also receive complaints in cases of emergency either through an email or a telephone call from either the aggrieved person or a third party. In such cases, the PO may seek the assistance of the Police who shall accompany the PO to the place of occurrence to record the DIR.¹⁰

Once the DIR is recorded, the PO is required to forward copies of the same to the Magistrate, the police officer in charge of the police station and registered Service Providers within local limits or within whose jurisdiction the domestic violence is alleged to have been committed.¹¹ The PO must also ensure that the aggrieved person is provided with a copy of the DIR free of cost.

4.2.2 Duty to Inform the Aggrieved Person of Her Legal Rights and Remedies

The Protection Officer must inform the aggrieved person of her legal rights and remedies under the PWDVA and other relevant laws. The duty to provide information and the nature of information to be

⁵ Section 2(e)

⁶ As per Rule 8(1)(e), Service Providers and medical facilities under the PWDVA also have the authority to record a DIR.

⁷ For details on how to complete the DIR, see Chapter 6.

⁸ Section 4

⁹ Rule 4(2)

¹⁰ Rule 9

¹¹ Section 9(1)(b)

provided is described in Section 5 of the PWDVA.¹² The PO may use Form IV to supply this information: this Form not only gives information of rights and remedies available to the aggrieved person, but also presents illustrations of different forms of violence to help the aggrieved person identify the kind/s of abuse to which she may have been subjected. If the aggrieved person is unable to understand English, then the PO must ensure that such information is provided in the vernacular or local language.¹³

4.2.3 Duty to Facilitate the Aggrieved Person's Access to Support Services and to take Protective Measures

You must bear in mind the fact that an aggrieved person may require many different kinds of assistance in addressing domestic violence: legal, medical, psychological, etc. Moreover, access to support services may be crucial in preventing or minimising future incidents of domestic violence and in guarding against victimisation or pressurisation as a consequence of having reported the incidence of domestic violence.¹⁴ The duties of the Protection Officer that arise in this regard are:

- (i) To take the aggrieved person to a safe shelter home, if she so requires, and to forward copies of the record of having lodged her in such a home to the Magistrate and the police station in whose jurisdiction the shelter home is situated.¹⁵ A PO may also have to assist in arranging transportation to convey the aggrieved person (and her children, as needed) to the shelter home.¹⁶
- (ii) To have the aggrieved person medically examined if she has sustained bodily injuries and to forward copies of the medical report to the Magistrate and the police station in whose jurisdiction the alleged act of domestic violence has occurred.¹⁷ Here too, the PO may have to arrange for transportation to convey the aggrieved person (and her children, as needed) to reach the medical facility.¹⁸
- (iii) To provide information on available support services and registered Service Providers in the area, particularly counselling services, to enable the aggrieved person to access such services on her own.

In order to provide information on support services available, a Protection Officer is duty-bound to take the following steps:

- (a) To maintain an up-to-date list of registered Service Providers, notified medical facilities and shelter homes within her/his jurisdiction. Service Providers may be chosen from among those providing legal aid, counselling, medical and shelter services.¹⁹ It is advisable that the PO

¹² Under Section 5, information to be provided to the aggrieved person includes:

- (a) Her right to make an application to obtain relief/s under the PWDVA;
- (b) The availability of the services of Service Providers;
- (c) Her right to legal aid;
- (d) Her right to file a complaint under Section 498A of the Indian Penal Code (IPC).

¹³ Rule 8(1)(ii)

¹⁴ Rule 8(1)(xii)

¹⁵ Section 9(1)(f)

¹⁶ Rule 8(1)(vii)

¹⁷ Section 9(1)(g)

¹⁸ 8(1)(vi)

¹⁹ Section 9(1)(e) and Rule 8(1)(xiv). For details on building a multi-agency response system, see Chapter 5, Part 5.3.

obtain this list as well as information on available government schemes for women from the appropriate department of the State Government.

- (b) To maintain an up-to-date list of counsellors associated with Service Providers or functioning independently.²⁰
- (c) To liaise between the aggrieved person, police and Service Providers.

Another important method of taking protective action to stop further acts of domestic violence is to prepare a “Safety Plan,” as per Form V of the PWDVR.²¹ A PO should prepare a Safety Plan in consultation with the aggrieved person after making an assessment of her situation and the kind of support that she may require. Although the PWDVR provides for the Safety Plan to be prepared after an application for relief is filed in court,²² this is an assessment tool that can be useful even before an application is filed.

4.2.4 Duty to Facilitate an Aggrieved Person’s Access to Court

The Protection Officer is a crucial link between the aggrieved person and the Court. In order to facilitate an aggrieved person’s access to court, a PO is required to take the following measures:

- (i) To prepare or assist in preparing an application to obtain relief/s under the PWDVA as per Form II of the PWDVR.²³ A copy of the DIR is to be attached to the application. In cases where the aggrieved person requires immediate relief, the PO may also file an affidavit as per Form III of the PWDVR to seek an interim order from the Court.
- (ii) In cases where the aggrieved person is unable to afford the services of a lawyer, the PO must ensure that she is provided legal aid under the Legal Services Authorities Act and make available the prescribed form for obtaining such aid free of cost.²⁴

4.2.5 Duty to Comply with the Orders of the Court

As we have mentioned earlier, in addition to providing aid to the aggrieved person, the Protection Officer is also required to assist the Magistrate in discharging his/her functions under the PWDVA.²⁵ At this stage of her/his duties, the PO is under the control and supervision of the Magistrate²⁶. Hence the PO must receive an order from the Court before undertaking any of the following duties:

- (i) Ensure that notices are served on the respondent to appear in court.²⁷
- (ii) Conduct a home visit of the shared household premises if the Court requires any clarifications prior to granting an *ex parte* order.²⁸

²⁰ Rule 8(1)(viii), (ix) and (x)

²¹ Safety Plans are discussed in detail in Chapter 8, Part 8.2.

²² Rule 8(1)(iv)

²³ Section 9(1)(c) and Rule 8(1)(iii). For further details on how to prepare an application, see Chapter 7.

²⁴ Section 9(1)(d)

²⁵ Section 9(1)(a)

²⁶ Section 9(2)

²⁷ Section 13 read with Rule 12. For further details on the service of notice, see Chapter 8, Part 8.1.

²⁸ Rule 10(1)(a). For further details on conducting a home visit, see Chapter 8, Part 8.3.1.

- (iii) Make enquiries and file a report on the economic status of the respondent by examining emoluments, assets, bank accounts and other relevant documents.²⁹
- (iv) Restore an aggrieved person's personal effects to her, such as gifts and jewellery, and restore her in the shared household.³⁰
- (v) Assist an aggrieved person in regaining custody of her children and secure visitation rights as may be ordered by the Court.³¹
- (vi) Assist the Court in the enforcement of orders in the manner directed by the Court.³² Additionally, Section 9(1)(h) obligates POs to ensure that orders for monetary relief are complied with and executed in accordance with the procedure prescribed under the Code of Criminal Procedure, 1908 (CrPC).
- (vii) Confiscate weapons used to commit domestic violence with the assistance of the police.³³

The general objective of Rule 10 is to ensure that the PO is available to render any assistance that the aggrieved person or the Court may require. Therefore, the PO may be directed to perform other functions by either the State Government or the Magistrate to give effect to the provisions of the PWDVA.³⁴ In addition to issuing directions provided for in Rule 10, the Magistrate can also issue directions for general practice for better handling of cases under the PWDVA. The PO is duty-bound to carry out these additional directions as well.³⁵

4.3 Guidelines for Protection Officers on General Strategies for Effective Functioning

- Acquire a thorough knowledge of the PWDVA and other relevant criminal and civil laws.
- Acquire knowledge of general procedural laws such as the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC) and the Indian Evidence Act (IEA).
- Acquire knowledge of government schemes and other facilities of which the aggrieved person may avail.
- Create awareness about the PWDVA through the District Administration.
- Promote multi-agency and interdepartmental cooperation to create a Domestic Violence Response System.
- Explain to the aggrieved person, in a clear, accurate and sensitive manner, the offence of domestic violence and rights and remedies available to her under the PWDVA.
- Acquire the ability to guide the aggrieved person in addressing domestic violence.

²⁹ Rule 10(1)(b)

³⁰ Rule 10(1)(c)

³¹ Rule 10(1)(d)

³² Rule 10(1)(e). Enforcement of orders is discussed in detail in Chapter 8, Part 8.3.4.

³³ Rule 10(1)(f)

³⁴ Rule 10(2)

³⁵ Rule 10(3)

- Acquire the skills to conduct enquiries and submit proper investigation reports to Court.
- Prepare the DIR carefully and ensure that supporting documentation is in order.
- Ensure the timely service of notice.
- Ensure the effective enforcement of Court orders.
- Maintain complete and up-to-date records of casework.
- Develop problem-solving and crisis-management skills.

4.4 Status of the Protection Officer

Section 30 of the PWDVA provides that Protection Officers, while performing their duties under this law, are deemed to be “public servants” within the meaning of Section 21 of the IPC.

Further, Section 35 of the PWDVA provides that no suit, prosecution or any other legal action for damages can be brought against a PO for any act done in good faith under this law.

Although the PWDVA accords broad legal protection to POs in complying with their duties under this law, a PO’s unjustified failure or refusal to comply with directions issued by the Magistrate in any protection order granted may attract imprisonment for up to one year and/or a fine of up to Rs. 20,000/-. However, since a PO is a public servant with a fixed remuneration, Section 34 of the PWDVA specifies that prior approval of the State Government (or any officer authorized by it) is required before any prosecution is commenced under Section 33 of the Act.³⁶

³⁶ Section 30.

Chapter 5

How to Interact with the Aggrieved Person

It is now time to look at the duties of the Protection Officer (PO) that arise before an aggrieved person decides to initiate legal proceedings. Chapter 5 will focus on the different ways in which a PO can receive complaints of domestic violence and discuss how best a PO should interact with the aggrieved person. A person in a situation of domestic violence has specific needs and vulnerabilities that must be kept in mind as she is offered assistance. Chapter 5 provides important recommendations on how a PO can respond sensitively and effectively to the aggrieved person. It also describes the Domestic Violence Response System (DVRS): a collaborative, multi-agency approach to aiding the aggrieved person.

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5.1 How does the Protection Officer Receive Complaints of Domestic Violence?

The PWDVA provides multiple options to an aggrieved person for approaching a Protection Officer and accessing legal remedies and other forms of assistance. Although the PO is envisaged as the primary recipient of information on and complaints of domestic violence, she/he may also receive such information and complaints from other sources, as discussed below.

It is likely that, in cases of domestic violence, the aggrieved person shall first approach the elders of the family to take appropriate action. Failing resolution by family members, it is possible that the aggrieved person will approach local organisations or individuals working on women's issues or *panchayats* in rural areas. In case she has sustained serious injuries, the aggrieved person may approach the police to record a complaint or seek aid from medical facilities or shelter homes. There may also be cases where she seeks legal advice from a lawyer or counselling from family counselling centres. All these agencies – local NGOs, medical facilities, shelter homes, lawyers and counselling centres, etc. – can/will then refer the aggrieved person to the PO for further assistance. Finally, in certain cases where an aggrieved person is aware of the availability and role of POs, she may directly approach the PO.

5.1.1 Information Received Directly from the Aggrieved Person

A PO can receive complaints of domestic violence from an aggrieved person through any of the following methods:

- (i) The aggrieved person may directly approach the PO.
- (ii) The aggrieved person may approach the PO with a referral from a Service Provider or any other agency working on women's issues.
- (iii) The aggrieved person may approach the PO with a referral from the police.
- (iv) The aggrieved person may approach the PO with a referral from a medical facility or shelter home.
- (v) The aggrieved person may approach the PO with a referral from a lawyer or counsellor or any other person from whom she has sought assistance.
- (vi) The aggrieved person may approach the PO with a referral from Court. As the PWDVA does not bar an aggrieved person from approaching the Court directly, it is possible that she may be referred to a PO after an application is filed in Court. In such cases, the PO may be required to fill in the Domestic Incident Report (DIR) and render assistance to guard against the commission of further acts of violence while the matter is pending in Court.

5.1.2 Information Received from Third Parties

A PO may also receive information about an incident of domestic violence from any person who has either witnessed or is aware of its occurrence.

Section 4 of the PWDVA authorizes “any person” who has reason to believe that domestic violence is occurring to inform a PO. “Any person” could be a sibling, an out-of-town relative, a child, a concerned

neighbour or simply a passer-by who witnessed domestic violence. It is not necessary that the person be certain that domestic violence has been or is being committed; all that is required is that the person's belief be reasonable.

The objective of this provision is to address situations where the aggrieved person is unable to approach a PO on her own. This may be due to various reasons such as physical incapacity or inability caused by wrongful restraint, lack of awareness of legal rights, apprehensions of escalated violence particularly on children or other dependents, etc. In such cases, Section 4 of the PWDVA allows a third party to give information on the occurrence of violence to the PO for further action. Furthermore, persons acting in good faith in providing such information are given immunity from civil and criminal liability.¹

The PO may receive such information either orally (if, for instance, the informant is illiterate) or in writing.² When the PO receives this information orally, she/he should reduce it to writing. Whether information is originally received orally or in writing, the PO must ensure that it is signed by the informant. For several reasons, including guarding against malicious interference in domestic affairs, the PWDVA does not allow for the recording of information received anonymously. Therefore, the PO must satisfy her/himself about the identity of the informant and keep a record of the identity of the informant, particularly in instances where the informant is not in a position to furnish written information.

Once the information is recorded, the PO must give a copy of the record to the informant free of cost.³ On the receipt of such information, the PO may also initiate preventive action to stop the further escalation of violence.

Information received under Section 4 is to be distinguished from *complaints* of domestic violence. The PWDVA recognises that aggrieved persons have the best knowledge of their own circumstances and need to make their own decisions on the nature of assistance they need. Consequently, information provided to a PO does not by itself trigger judicial proceedings or any other action in law. Instead, information received by POs under Section 4 serves as a record of previous violence if the aggrieved person is subjected to domestic violence again. If, in the future, the aggrieved person files an application under the PWDVA in Court, then the Court may rely on information earlier recorded under Section 4. It also allows the PO to be better prepared if the aggrieved person approaches her/him with a complaint of domestic violence at a later stage.

5.1.3 Action to be taken in Cases of Emergency

An aggrieved person may contact a Protection Office in cases of emergency, such as being dispossessed from the shared household in the middle of the night. Rule 9 of the PWDVR addresses the PO's duties in this situation.

According to Rule 9, a PO may receive reliable information through an email or a telephone call, either from the aggrieved person or a third party that an act of domestic violence has been committed or

¹ Section 4(2)

² Rule 4(1)

³ Rule 4(3)

is likely to be committed. By allowing a PO to receive information through various means, the PWDVR recognise that violence may occur at any time, including in the middle of the night when an aggrieved person is most vulnerable. It also takes into account the fact that an aggrieved person may not be able to leave her house to make a formal complaint and might, therefore, attempt to contact the PO either telephonically or by sending an email. If she does not have access to these services, then a third party, such as a neighbour or a family member, can inform the PO of the violence that is being perpetrated. In such cases, the PO is expected to reach out to the aggrieved person to give her an opportunity to make a complaint.

On receiving such emergency information, the PO must seek immediate assistance from the police. The police will then accompany the PO to the place of occurrence of violence, where the PO will record a DIR and take appropriate action.

The immediate emergency measures that a PO is duty-bound to take include:

- (i) If the aggrieved person has been dispossessed and requires shelter, the PO must inform her of available shelter homes, particularly those notified under the PWDVA, and arrange for her transportation to the shelter home.⁴
- (ii) If the aggrieved person has sustained serious physical injury, the PO must assist her in obtaining immediate medical attention and arrange for her transportation to the medical facility.⁵
- (iii) The PO must inform the aggrieved person of her legal rights and remedies and assist her in recording a criminal complaint immediately, if she so desires. In this instance, the police accompanying the PO to the place of occurrence may be relied upon to restore peace and take measures to prevent further acts of violence.

Rule 9 also provides that the DIR recorded must be presented “without any delay” to the Magistrate for appropriate orders. The use of the term “without any delay” means that such DIRs can be forwarded to the Magistrate at any time, even after Court hours. It is, therefore, advisable for the PO to develop an understanding with the Magistrate on how she/he is to contact the Magistrate if an emergency arises at an after-hours time when the Court is not in session.

5.2 Interacting with the Aggrieved Person⁶

As you will recall, the Introduction to this *Manual* alluded to the civil society campaign for an Indian law on domestic violence, locating this campaign within the broader context of the Indian women’s movement and its work with women facing domestic violence. Within that context, there was broad recognition that women in situations of domestic violence require multiple forms of support (legal, medical, psychological, etc.) and that these must be provided keeping in mind their particular needs and vulnerabilities. This recognition is reflected in the PWDVA’s creation of the post of the Protection Officer.

⁴ Rule 8 (1)(vii)

⁵ Rule 8 (1)(vi)

⁶ LCWRI is deeply indebted to the pioneering and definitive work done in this field by the Tata Institute of Social Sciences, on whose protocols and publications we rely in Part 5.2. Please note: Part 5.2 is not intended as a summary of social work principles; rather, it is our compilation of those aspects of social work principles and TISS protocols that we regard as particularly relevant to the PWDVA. LCWRI is solely responsible for any errors or misinterpretations regarding these principles and protocols.

In Practice

In those states where PO appointments are contractual in nature, the trend has been to recruit to this post persons with qualifications in social work. There appears to be a recognition that their training gives social work professionals excellent skills in forming the crucial link between the aggrieved person seeking assistance and the various agencies that can provide the necessary aid.

Part 5.2 presents important guidelines on how to interact with an aggrieved person. If you are a trained social worker, much of this information will be familiar to you, but we encourage you to review it in order to refresh your skills. If you do not have any social work background, we strongly recommend you carefully read Part 5.2 in its entirety.

The PWDVA is designed around the recognition that the support of a PO can be critical for an aggrieved person. The PO's role is to facilitate the aggrieved person's access to support services of various kinds and to help her navigate the legal system if she chooses to file an application under the Act. Without the PO's support, an aggrieved person might feel unable to tackle her situation: uncertain of how to obtain non-legal assistance and reluctant to pursue legal remedies which, consequently, will reinforce her vulnerability and disempowerment.

As a PO, you must be aware of your own thoughts and feelings (including prejudices) about family violence, if you are to assist women effectively, sensitively and respectfully. POs who are unclear about their own opinions on family violence may deny its existence, blame the women in crisis and minimise the effects of the violence. Reading this *Manual* should help you to identify your biases, clarify your misconceptions and distinguish between myth and fact in order better to understand the phenomenon of domestic violence and the needs of the aggrieved person whom you are duty-bound to assist.

5.2.1 Basic Principles of Interacting with the Aggrieved Person

First and foremost, as a PO, you need to establish a supportive and encouraging relationship with the aggrieved person. Women in violent relationships usually have very low self-esteem. In order to establish a sympathetic and empowering relationship, you will find it helpful to remember the following principles of social casework⁷:

- *Every person must be considered to have dignity and worth.*

Always accept that people have a potential to grow and achieve their dreams. Moreover, since human beings cannot survive in isolation, when a person is unable to realise her potential for a healthy and fulfilling life, it becomes the role of the society she lives in to help her out.

⁷ Although the majority of examples provided in the *Manual* are about married women, please remember that domestic violence under the PWDVA is not limited to matrimonial situations.

For Example

A is facing mental and physical violence from her father and, as a result, is unable to attend college. It is the duty of the agencies that are meant to protect her rights and the society at large to help her emerge from the situation of violence and be able to educate herself and thereby achieve her goals.

- *Accept each aggrieved person who approaches you as a unique individual.*

No matter how many women approach you every day, each one of them is unique: each one experiences violence in a particular way and has needs that are specific to her. Never generalise or stereotype the problems of the women who come to you for assistance.

For Example

B and **C**, who are sisters, are both facing domestic violence from their marital families. Both **B** and **C** are being denied food. However, **B** is pregnant. As a PO, you will need to tailor the assistance you provide to each sister to her respective circumstances and different needs.

- *Do not judge the aggrieved person. Do accept her with all her strengths and weaknesses.*

As a PO, your job is to help the aggrieved person. You are not meant to judge or punish her character or her actions. Just like you, the aggrieved person is a human being with both good and bad qualities. The particular circumstances of her situation will have led her to make certain decisions and take certain actions. Although these circumstances and reasons may not be immediately clear to you, you must acknowledge that they exist and are compelling for the woman herself. It is not your role to find fault with her or to put conditions on assisting her. Rather, it is your role to build an attitude of active concern for the aggrieved person.

As a PO, you must respect the decisions the woman may make, even when those decisions are contrary to what you believe would be the best option. You must bear in mind that each woman experiences domestic violence primarily because she is a woman: that our culture effectively supports the right to control women and that the barriers to her freedom are many. She may not be able to free herself at this time; be delighted and amazed when she does.

For Example

D is facing emotional and physical violence from her husband and decides to leave the home without her child. Although you may disagree with her decision to leave her child behind, it is your duty to help her get adequate protection from violence, irrespective of how you feel about her decision. If she is leaving the child in a situation where he/she may face violence, you may find an acceptable way to express your disagreement; but, even in that case, you must understand that, in the woman's situation, the instinct for self-preservation is stronger than all other feelings.

- *Remember that whatever the aggrieved person may choose to do with her life is her own decision. Always accept that she must participate in solving her own problems.*

It is her life. She is the only one who has the right to decide how to live it. You must inform her of the choices available to her and you may offer guidance in making these choices, but you cannot make her decisions for her. Rather, you must motivate her to make these decisions herself.

Because many women in our culture have been brought up to think that they cannot (or must not) make any decisions on their own, you might find that the aggrieved person asks you to decide for her. Do not do so. Keep in mind that giving advice is not the same as telling a person what to do and that the woman's self-determination is critical. After explaining all her options, ask her: "what would *you* like to do?" Be patient and supportive while she struggles with her choices. Even if it takes her a long time to decide, she is the only person who is entitled to make that decision.

Assessing how supportive or how empowering you need to be depends on the aggrieved person's physical and emotional state. As a general principle, POs need to work from the premise that, wherever possible, it is best to encourage the woman to make decisions for herself and take actions for herself. There are some situations, however, where she will be incapable (physically or emotionally) of such tasks and will need you to be more supportive than usual.

There is a significant fallout if you automatically make another person's decisions for her: if the consequences of your decision are unpleasant or unsafe, the person you are trying to help could hold you responsible.

For Example

E is facing domestic violence and, with your assistance, chooses to go to Court. She is granted a protection order and decides to live separately from her husband. However, a few months later, she chooses to go back to him. You may feel that after the kind of violence she has undergone, it is not wise for her to return to her husband. Nevertheless, you must let **E** make her own choices and support her. And even if she returns to you with a new complaint of domestic violence, it is your duty to assist her without bias.

Consider another situation where **F** has suffered physical violence and is faced with the choice of leaving the shared household or trying to adjust to the violence. When she asks for your advice, you recommend that she remain in that household. However, the violence continues and, one day, she is beaten so badly that she needs hospitalisation. Your decision will now be on your conscience.

- *Remain mindful of the fact that your role as PO makes you vulnerable to becoming over-involved in the life of the aggrieved person.*

Remember that your relationship with the client is not personal; it is professional and, therefore, you must control your emotional involvement. Although the aggrieved person or the perpetrator of the violence may remind you of someone in your own life, that is all it is: an unexpected resemblance. Your role is to provide professional help and you must not allow personal considerations (such as resemblance to family or friends) to cloud your judgement.

For Example

G is facing domestic violence from her brother and her brother reminds you of your own younger brother. You feel that **G** is complaining too much about only emotional violence and that **G**'s brother is actually a 'nice person'. So you tell **G** that she is being unreasonable and advise her to return to her brother's house. Her brother beats her up again. Now, when she comes back to you, how will you justify the stand you took in advising her go home?

- *Remember that information given to you by the aggrieved person must be treated with confidentiality.*

Maintaining confidentiality is essential for you to create a relationship of trust with the aggrieved person and is also of utmost importance because the inappropriate disclosure of information may endanger or victimize the woman further, thus defeating the purpose of the PWDVA. Furthermore, the PO's status not only as a public servant, but also as an officer of the Court, bars her/him from discussing the case with any person, except with other authorities and agencies recognised under the PWDVA, and that too with the express purpose of assisting the aggrieved person. Although the DIR is a public document and you might need to discuss aspects of the case, you must never have such discussions without first obtaining permission to do so from the aggrieved person, unless it is a case of emergency. All other authorities and agencies, too, are required to maintain the confidentiality of your discussions.

The fact that the DIR is a public record does not mean that all persons can have access to it. The only instance where a DIR can be shared or given to another person other than the authorities or agencies recognised by the Act, is if it used as the basis to grant an order or to take any action that adversely affects the rights of such a party.

5.2.2 Creating a Communication Structure

With the above principles in mind, we will now discuss how to create a communication structure that encourages the aggrieved person to trust you and be forthcoming with all the details of her situation. Listening and talking to the aggrieved person is also an essential skill which you will have to inculcate in order to record the DIR accurately and take appropriate precautionary measures.

While talking to a woman who has experienced domestic violence, the essential principles of the interaction should include the following:

- Your interaction is with an adult and can only be undertaken with her voluntary and informed consent.
- The aggrieved person has the right to the least intrusive intervention. A person will accept help when she is ready. The choice not to accept help must be respected.
- Women who have experienced severe violence over a long period of time may often have a distrust of the systems that are meant to protect them. As a PO, you are a part of that system and, therefore, the aggrieved woman may not trust you or your ability to assist her. Do not take this personally. Instead, make an extra effort to reach out to her: to show that you are available and can be depended upon to help her.
- Talking about the violence that an aggrieved person has experienced is complicated by fear, ignorance and embarrassment. The woman may be vulnerable and indecisive and show low self-esteem. Most women are very vulnerable at the time of disclosure or can be in a state of emotional shock that may last several days. During this time, many women are overly compliant to suggestions and may later blame the PO for giving advice. The PO should listen, allow time for the woman to vent her feelings, offer emotional support and avoid telling the woman what to do. *Remember: giving advice does not mean telling the woman what to do.* She must decide her own course of action, with your steady and patient support.
- Women who have experienced violence may often feel ashamed of the abuse, terrified of the abuse and blame themselves for the perpetrator's actions. Before a woman can participate in the process of solving her problems (with your assistance), she needs to realise that she is not at fault for the violence she has suffered. In order for her to realise this, you will have to help remove any feelings of guilt she might harbour, by recognising that violence against the woman is the fault of the perpetrator alone. If a person is unable to control their own emotions and resolve issues in an adult and non-violent manner, then the problem is with that person and not the victim of their violence. In our society, where women are routinely made to feel inferior and told that they 'deserve' the violence that they 'provoke', it is especially important to make sure that the aggrieved person understands that violence is not her fault, that she has options and that she is not alone. You must make it clear to her that she has the right to live a life free of violence.

As a PO, you will need to offer the aggrieved person a great deal of moral support so that she can develop the confidence to resolve her situation. One way to provide affirmation is in the form of statements like: "You don't deserve this, you deserve much better"; "There is no excuse for domestic violence"; "You are not alone"; "I will support your choices".

- Domestic violence can overwhelm the aggrieved person's ability to think clearly. As a PO, it is your role to help the woman look at her situation realistically such that she realises there are concrete steps she can take to improve her situation. Rather than allowing her to feel daunted or defeated by her situation, help her to problem-solve with hope and confidence.

- Your interaction should be aimed at creating the maximum options for the aggrieved person, in the context of her specific situation. You need to provide the woman with information about different legal, medical and administrative systems and the rules and procedures of these systems. You need to help her identify and explore all possible options and possible consequences and assist her in developing strategies and a plan of action. You must refer her to resources you know are reliable and with which you are familiar. Information provided about referrals can be as specific as the best time to call, who to talk to and what information she will need to provide. You have to discuss a plan of action, assist in the preparation of all necessary documents or requests for assistance, and help rethink plans if they fail or if circumstances change.

These broad guidelines influence how you should frame your questions, about which more specific suggestions follow below:

- Always ask straightforward, open-ended questions in a non-threatening and non-judgmental manner. This will help decrease the stigma associated with abuse.
- Women may avoid discussions because questions are painful, embarrassing or provoke anxiety. Structure your conversation to systematically and gradually get more data, thus allowing the aggrieved person to tell her own story. Take notice of vague or evasive answers. Ask for clarification of vague answers and pursue areas in which the woman is evasive.

- Do **not** ask:

✗ ‘Yes’ or ‘No’ questions (unless you want a simple ‘Yes’ or ‘No’ answer).

For example: “Did you have to face any violence?”

✗ Complicated questions

For example: “What do you think are the behavioural implications of violence on women?”

✗ Vague questions.

For example: “What do people generally believe to be the effect of violence?”

✗ Several questions at once.

For example: “What were the results of your interview, did you get the job and have you applied anywhere else?”

✗ Probing, threatening or culturally insensitive questions.

For example: “Do you think that your religion teaches you to be more violent?”

✗ Judgemental questions.

For example: “Aren’t you ashamed of leaving your children behind?”

✗ Questions that imply an answer or a point of view.

For example: “If you want to move on with your life, wouldn’t it be helpful if you moved out of the house?”

- **Do ask:**

- ✓ Questions that make the woman feel at ease and not threatened.

For example: “How do you feel now?”

- ✓ Questions that encourage the aggrieved person to continue talking.

For example: “You said that you find it difficult to talk about all the problems you faced in your home. Can you tell me the specific difficulties you faced with your father?”

- ✓ Questions that elicit more facts, opinions or feelings.

For example: “How do you feel when your mother says that your marriage is fine and you need to go back to your matrimonial home?”

- ✓ Questions that help the person answer honestly.

For example: “What particular kind of emotional violence do you find the most difficult to deal with?”

- ✓ Questions that support the person while encouraging objectivity.

For example: “I can certainly understand that living with such a difficult person makes it hard for you to retain your peace of mind. In what way do you think you could reassure your brother and yet retain your rights?”

- ✓ Questions that are specific and focus on the real situation.

For example: “What happened when you said that?”

- ✓ Questions that help the person see that you do *not* have all the answers.

For example: “Let’s try to think of other ways by which to solve this problem?”

5.2.3 Understanding Why Women Accept Violence

As a PO, you may sometimes feel frustrated, helpless or even angry if the aggrieved women who approach you appear not to be taking concrete steps to remove themselves from situations of violence. People who work with women on issues of domestic violence frequently ask themselves the following:

- “Why do women accept violence? Why don’t they protest? Why don’t they walk out of abusive relationships? Why don’t they take action against those who perpetrate the violence?”
- “The woman came to me, I gave her all the help I could think of and, then, two weeks later, she told me she still does not want to go to Court. All my effort was wasted: what was the use of her coming to me if she wanted to go back and reconcile?”
- “Why doesn’t she understand that it is stupid to go back to a man who beats her?”

- “What is the point of her settling the matter out of Court, when he could easily turn against everything that was agreed upon and she won’t be able to do anything?”
- “How can I help her if she is not even willing to speak up against her own husband?”

It is not within the scope of this *Manual* to discuss at length the socio-psychological dynamics of domestic violence, although the topic has been, and continues to be, the subject of rigorous scholarly research and activism. Instead, in part 5.2.3, we attempt to address some of the most common justifications for violence that you are likely to encounter. We place these justifications within our local socio-cultural context in order to enable you to understand why some of the women you meet in the course of your work make the choices and decisions that they do. Remember: instead of summarily dismissing a woman’s reasons as wrong, you must respect the fact that the reality of her specific situation compels her to behave in certain ways.

At the simplest level of explanation, women in our society are regarded as inferior and are socialised, from the time they are children, into believing that violence perpetrated on them is natural and acceptable: i.e., that they are the appropriate objects of the perpetrator’s anger (an anger which is allowed to be uncontrolled in stark contrast to women’s behaviour which is strictly circumscribed). One reason why the PWDVA elicits strong reactions is that it has brought the issue of domestic violence out from the ‘private’ sphere of the home into the ‘public’ domain of law and policy and, in so doing, asserted that domestic violence is not a cultural prerogative or a problem between two people, but rather it is the product of patriarchal social structures that determine the behaviour of women and men.

(This notion of family privacy is also why you might find that your attempts to elicit more information regarding these matters bring out strong reactions from the women who come to you. They may even suspect your intentions for wanting to know more or do more than they feel is necessary.)

It is not just that violence against women is considered acceptable in our society, but also that the very definitions of what constitutes violence in the first place vary widely, with many people – both women and men – failing to recognise certain actions as violent at all or dismissing them as ‘minor’ in relation to ‘more’ serious, more ‘real’ forms of violence. So, in most places you will find that a certain level and some forms of violence are designated as ‘normal’ and acceptable within domestic relationships. Many women will tell you that some incidents of violence were just ‘an occasional outburst’ or that a show of temper that resulted in ‘just one slap’ need not be counted in the history of violence. Many will even tell you that they have come to you for one critical incident and that the rest of the incidents are routine (“*yeh sab to chalta hi rehta hae*”). You must also guard against such prejudice in yourself: you might find yourself trivialising certain forms of domestic violence by saying: “Husbands and wives do fight, this is normal” (“*pati patni mein tu-tu mae-mae to hota hi hae*”) or “it takes two hands to clap” (“*do bartan ho to awaz to hogi*”).

As mentioned above, both men and women will provide several culturally sanctioned explanations for the perpetrator’s anger:

- One of the most common explanations for violence is alcohol/drunkenness.

Women will often tell you: “When we got married, he was a very nice man, he earned a lot and never once hit me. But now he has fallen into bad company and started drinking. Now he comes home drunk and curses and beats us. He spends all the money on alcohol.” Or they might make excuses for his drinking: “He gets so tired that he needs something to help him relax, so he drinks a little. But the drink overpowers him; it isn’t his fault.”

Alcohol is seen to transform an otherwise nice person into a violent one: it absolves the perpetrator of responsibility because he is seen to have no control over himself when under the influence. But ask yourself this: if, indeed, the man cannot help himself when he is drunk, then why does he not go outside and attack other men or people bigger than himself? Why does he only unleash his violence on women and inside his home?

- Another commonly given excuse for violence is the woman’s inability to bear children or – rather more often – to produce a male child.

When’s a woman’s sole purpose is understood to be bearing children, then her ‘failure’ to do so – especially her ‘failure’ to produce a male heir – is seen as worthy of violent punishment. A woman will tell you: “I am being hit for a reason: I haven’t been able to give my husband a son.” Or: “I know I’m not well, but I had two girls one after the other, so we have to keep trying to have more children. That is why he uses a little force sometimes.” Or she might say: “I couldn’t have a child, so they used to hit me then, but now that I have a boy, I don’t see why they should hit me anymore.” She might even justify her husband’s bigamous relationship: “I couldn’t give him a son, so I told him that he could marry again, but now that I have a son, I want him to come back to me.”

As you know, women can be severely beaten, thrown out of the matrimonial home or sent back to the natal home for this reason. The biology of pregnancy and gender determination is rarely understood; instead, the ready explanation you will hear is that the woman is “barren”.

Women are frequently forced to have numerous children, even in the face of their deteriorating health, in the hopes of a male child. Most women will not consider this a form of sexual violence.

- One of the rarely spoken about but frequently occurring manifestations of domestic violence is sexual violence, often in the form of forced sex.

When women’s bodies are considered the property of men, then sexual violence by their male relatives is justified as the rightful exercise of male authority. Women might refer to this violence obliquely: “*sote mein mara*” (literally: “He hit me as I slept”). One of the primary reasons for condoning this kind of violent behaviour is the belief that men have stronger sexual urges than women. So you might have women say to you: “He knows I am very young and I am scared, but how can I refuse my own husband?” Or: “How can it be rape if he is married to me?” Or: “If he wants it, he can do whatever he wants, even if he hits me; you see men are very different from women.”

It is possible that you may find it difficult to ask about, deal with or even accept this form of violence. However, the fact is that sexual violence is a very widespread problem in India and comes in many different forms. You will have to overcome your own reluctance and shyness, learn how to ask

women if they have suffered this form of violence and be able to clarify their doubts regarding what constitutes sexual violence.

- Another common excuse for violence is the ‘misbehaviour’ of a ‘disobedient’ (or ‘immoral’) woman.

Our patriarchal moral code divides women into two categories: ‘good’ women and ‘bad’ women. Men (fathers/fathers-in-law/husbands/brothers/sons) are seen as the protectors/disciplinarians of ‘good women’ who must perform the role of obedient daughters/daughters-in-law/wives/sisters/mothers. Any deviation from the behaviour that is prescribed by men for ‘good women’ is seen as reason for men to exercise control and punish ‘bad women’. Women themselves internalise these values to such an extent that they never question who defines these values, on what basis and why? Women are told and tell each other that it is not permissible for them to use violence even to protect themselves; any sign of female protest marks her as a ‘bad woman’. In fact, most women see it as their duty to bear violence in silence so as to preserve family ‘honour’.

As a result, you will find women might condone male violence by blaming the woman’s character or wifely attributes. You might hear statements like: “She doesn’t look after the house properly, so she deserves to be hit. She knows he likes hot food when he comes home from work, so why doesn’t she keep it ready?” Or: “She spoke insultingly to her in-laws and needed to be taught a lesson.” Or: “She is so stubborn (*“bahut ziddi hai”*); how can they not hit her?”

- Property disputes often become the reason for escalating violence.

You will hear women say: “My brothers threw me out of the house after my father died because they thought I’d ask for a share”. Or: “My sons beat me up after my husband died because they wanted his house.” Or: “There was reason why my husband’s family used to curse me after I got married; they thought I would alienate him from his family and make him ask for a share in the property.”

- In yet another instance of cultural condoning, the perpetrator is presented as the helpless innocent caught between antagonistic women and spurred on to violence for which he cannot, therefore, be held responsible.

In this context, you might hear the aggrieved person say: “My father didn’t want to raise his hand, but my mother told him he must discipline me.” Or: “My husband is actually a very nice man, but my mother-in-law keeps telling him to put me in my place” (*“usko uksati rehti hae”*).

5.2.4 Fatigue and Burnout among Protection Officers

People who work on the issue of domestic violence do find the job stressful and exhausting and may experience fatigue and burnout. As a PO, you might experience the same feelings as the women with whom you work, such as isolation, anger, sadness and horror. Some of you might experience difficulty sleeping, eating and concentrating. You may feel vulnerable, overwhelmed and powerless when faced with the challenging task of helping women who are experiencing domestic violence.

Whenever you are in such a dilemma, you must remember that you are not alone and can ask for help from your colleagues. You and your colleagues must:

- Develop an atmosphere of trust and support among yourselves. You must listen to the needs expressed by others and develop a comfort level and provide a safe forum for them to share their feelings, concerns, attitudes and beliefs.
- Ask for and attend as many training sessions as possible to help you build your confidence in dealing with the practical, emotional and behavioural challenges of working with domestic violence.
- Collaborate with each other and other PWDVA stakeholders to develop policies and procedures for responding to domestic violence and for dealing with legal and other emergencies. (For more on this, see Part 5.3 below.)

As your knowledge about domestic violence increases, you will be able to come to terms with the intensity of feelings it generates. A clearer understanding of the complexity of the situation will slowly emerge, as well as an increased respect for those living in violent situations.

5.3 Building a Domestic Violence Response System

As mentioned earlier, the PWDVA recognises that women who face domestic violence require multiple forms of support. Moreover, in order to have an efficient system of administration of justice in domestic violence cases, all the stakeholders of the Act (Protection Officers, Service Providers, police, judiciary, medical facilities, etc.) must work in coordination with each other. Consequently, Part 5.3 describes the recommended Domestic Violence Response System (DVRS), a collaborative, multi-agency initiative designed to provide women efficient access to comprehensive options to counter domestic violence. In order to describe this DVRS, Part 5.3 focuses on the individual roles of its component agencies.

Section 11(c) can be interpreted to vest the responsibility of creating the DVRS on the Central and State Governments. The following Sections and Rules delineate the PO's duties and role regarding the DVRS:

- Rule 8 (1)(xiii): Liaise between the aggrieved person, police and service providers.
- Rule 8 (1)(viii): Inform all Service Providers that their services may be required.
- Rule 8 (1)(ix) & (x): Scrutinise applications for appointment of counsellors; prepare and keep updated a list of counsellors
- Rule 8 (1)(xiv) and Rule 11(4): Maintain a proper record of Service Providers, medical facilities and shelter homes.
- Section 9(d) and Rule 8 (1)(v): Facilitate access to legal aid.
- Section 9(e): Maintain a list of all Service Providers providing legal aid.
- Section 9(f): Make available a safe shelter home.
- Section 9(g): Have the aggrieved person medically examined.

The PO must be aware of the following issues regarding the DVRS:

- (i) The PWDVA envisages the PO as the focal point who will coordinate the DVRS.
- (ii) In order to comply with her/his legal duties, the PO must urge the government to formulate protocols for inter-departmental coordination.
- (iii) Ultimately, the DVRS also helps the PO better fulfil her/his duties by allowing her/him to rely on the assistance of DVRS partners who have wide experience of working with women facing domestic violence.

As with DVRS initiatives across the world, local Indian DVRS models should aim to rectify the institutions and practices that prevent women from receiving the full protection of laws and social services. While DVRS partners may vary somewhat according to the scope of a PO's caseload, key partners for effective case resolution should include: police, Service Providers, judges and judicial officers, court staff, prosecutors, legal aid advocates from both community-based agencies and the District Legal Service Authorities, shelter providers, medical facilities, other intervention programmes such as mental health and substance abuse programmes, community development programmes, other appropriate local government agencies, children's services, advocates for children and school system representatives. It should be noted that Magistrates may need to be consulted during the process of planning the local DVRS. Their perspective is important in ensuring the due process of law, protecting defendants' rights and enabling the Court's effective handling of cases of domestic violence.

The media is also an essential part of efforts to promote awareness about domestic violence and to inform the public about resources available for victims. As is well known, the media plays a pivotal role in both influencing and changing social norms and behaviour. In the area of domestic violence, media campaigns can help to reverse social attitudes that tolerate violence against women by questioning patterns of violent behaviour accepted by families and societies. A PO's collaboration with the media needs to focus on creating new messages and new responses to reduce domestic violence.

When assisting the government to develop the DVRS, a PO should first determine whether there is an existing domestic violence coalition that may encompass some of the necessary agencies. Wherever possible, such existing efforts should be built upon. If this is not feasible, the aim should be to start with representatives from essential agencies and build outward as the collaboration develops. Since this work in itself can be quite intensive and detailed, it may require the creation a smaller working group willing and able to focus on the task of creating the DVRS.

In order for the DVRS to function smoothly, its partnerships and protocols must not rely on particular individuals, but should be institutionalised into formal procedures, memoranda of understanding and job descriptions. In addition, the DVRS should be designed to be flexible and evolve with changing circumstances and needs. Once the system has been set up, it is useful to conduct a periodic review of its strengths and weaknesses so as to regularly fine-tune its functioning.

The DVRS works by integrating into a well-organised and accessible structure information and services that are usually spread out across various agencies. When these resources are not integrated,

stakeholders might overlook crucial factors that influence a case, the aggrieved person might find it a challenge to access the full range of legal options and non-legal services available to her and, finally, scarce resources and overburdened systems are not managed efficiently to maximise their potential.

For Example

A Court deciding on a custody matter needs to know of the parties' prior records, including criminal, family and civil court actions. Such information is a part of the goal of strengthening the system in keeping victims and their children safe and holding offenders accountable. A DVRS that facilitates the coordinated sharing of information would be helpful in this case because:

- (i) Knowing prior background – a history of restraining orders, for example – provides everybody with the most information possible to make informed decisions.
- (ii) All stakeholders involved can follow-up on the progress of a case: POs can find out about the status of orders and relief/s granted; Service Providers can estimate the length of the term of provision of service; all concerned authorities can promptly learn of violations, so that they may respond quickly and reduce the risk of harm to the victim or her children.
- (iii) The aggrieved person is also able to keep authorities aware of relevant developing information on the case.

However, accessibility to and sharing of information must be balanced with the imperatives of confidentiality and safety. Not all information should be available to every DVRS partner and a protocol must be established to deal with differing standards of proof and evidentiary issues that may exist.

Finally, consistent with the overall purpose of the PWDVA, all DVRS partners must be educated on the dynamics of domestic violence and the characteristics of effective interventions. These partners must also be educated about each other's roles and responsibilities, in order to work together effectively.

5.3.1 Role of the Police

Although the PWDVA introduces the institutions of the Protection Officers and Service Providers, as per Section 36 of the Act, these are intended to supplement, rather than supplant, existing mechanisms. The police, in particular, continue to play a pivotal role in exercising their powers and fulfilling duties under the existing criminal law regime.

As per the Act, the police are required to render the following forms of assistance:

- (i) When approached by an aggrieved person, Section 5 mandates the police to inform her about her rights under the Act, including the right to make application/s for legal relief/s; and about the availability of POs, SPs and free legal aid. The police is also required to inform the aggrieved person of her right to record a DIR and refer her to the PO.

- (ii) If an aggrieved person approaches the police with a complaint of domestic violence and the facts disclose the commission of a cognisable offence under the IPC, Section 5 of the PWDVA requires that the police officer register an FIR or an NCR and undertake an investigation in accordance with the procedure prescribed in law. This mandatory duty of the police is also provided for in Section 154, CrPC and leaves the police officer with no discretion in the matter.

In fact, Section 5 of the PWDVA provides that an aggrieved person shall have the right to file a complaint under Section 498A, IPC (cruelty by husband or relatives of the husband) simultaneously with any complaint filed under the PWDVA.⁸ Other cognisable offences that might be implicated in cases of domestic violence and for which the police must take action, include grievous hurt (Section 322, IPC), wrongful confinement (Section 340, IPC), assault or criminal force to wrongfully confine a person (Section 357, IPC), assault or criminal force to women with intent to outrage her modesty (Section 354, IPC), rape (Section 375, IPC) and dowry death (Section 304B, IPC). Remember: aggrieved persons are not limited to choosing to proceed either under the PWDVA or under the IPC; rather, they may proceed under both simultaneously.

- (iii) The police should refer the aggrieved woman to a PO or SP for recording DIR if the aggrieved woman so desires. However, if she does not want to initiate any legal proceedings, she should be advised to record a DIR in any case as it creates a record of domestic violence and does not automatically lead to any legal proceedings.
- (iv) Specific instructions to the police pertaining to the preparation of DIRs are contained in Clause 8 of Form I according to which the police officer must:
 - (a) Inform the aggrieved person that she can also initiate criminal proceedings by lodging a FIR when the facts disclose the commission of an offence.
 - (b) Make a daily diary entry with the remark that the aggrieved person wishes to pursue civil remedies if the woman does not want to initiate criminal proceedings and record that the matter has been kept pending for appropriate enquiry before registration of a FIR.
 - (c) Offer immediate medical assistance if the aggrieved person reports any physical injury and thereafter arrange for the woman to be medically examined.
- (v) The police must assist and accompany the PO in emergency situations.⁹
- (vi) The police must assist the PO in the enforcement of orders passed by the Court.¹⁰
- (vii) If an order for monetary relief has been issued, the Magistrate must send a copy to the local police station. This keeps the police in the informational loop and permits police supervisors to schedule staff to assist the aggrieved person and POs in enforcing the order.¹¹

⁸ Because offences under Section 498A, IPC are cognisable, an FIR should be registered by the police in all cases where a woman complains of facing cruelty within her marriage. However, if the ordinary protocol or procedure followed by the police does not allow for immediate registration of an FIR, the aggrieved person must be given an option of pursuing either civil or criminal proceedings. In case, she opts to pursue civil proceedings, she must then be referred to the PO for recording a DIR under the PWDVA.

⁹ Rule 9

¹⁰ Sections 19(5) and (7)

¹¹ Section 20(4)

(viii) If a Court's civil order is violated, the police must follow the ordinary criminal law procedure in conducting the arrest and producing the arrestee before the Magistrate.

The police are one of the most important agencies of the criminal justice system. They are the certainly most visible part of the system: the only agency that operates twenty four hours a day, seven days a week, covering every locality, free of charge. They are often the first (institutional) port of call for victims of violence.

However, it has been observed that unless the situation is life-threatening, women and their family members prefer to resolve issues within the family or the community. Their first, and sometimes only, concern is that the violence should stop or, at least, stay within bearable limits. That is why they are often reluctant to take part in any process requiring the authorities, whether they are the police or the courts or, even, POs. There is also a fear of the police due to known cases of malpractice and brutality. Many women and their families do not trust the police to conduct investigations honestly or behave impartially.

Finally, there is the notion that going to the police will bring disrepute to the family. For example, women might say: "Please don't tell us to go to the police station. It'll bring disgrace to the family" or "If I have to live with the man, how can I drag him and his family to the police station?" or "Nobody in my community will speak to me if I approach the police".

To complicate matters, the police system is rife with prejudices of its own when it comes to the issue of domestic violence. These stereotypical attitudes about women and their place in family/community/society (which were discussed in Part 5.2 above) affect how police officers respond to cases of domestic violence. POs will often hear the following comments from the police: "The PWDVA does not mention any specific role for us"; "Domestic violence is a private, family matter and caused by women who cannot adjust to the proper norms governing their behaviour"; "We cannot act on non-cognisable matters and, besides, we have real police work to attend to"; "Domestic violence cases are a waste of time because women change their minds or don't follow our advice or misuse the law"; "Families shouldn't break, so we should counsel the parties to settle the matter quietly: we can scold the men and warn the women of the consequences of filing complaints".

As a PO, you will often be in the difficult position of dealing with the misconceptions of both aggrieved persons and their families on the one hand, and the police and other DVRS partners on the other.¹² It is your responsibility to clarify these misconceptions and educate all parties concerned in order to realise the Act's goal of providing women a life free of domestic violence. The quality of the DVRS collaborations you establish will play an important role in this regard.

¹² For instance, the medical profession is also frequently biased against recognising the physical and psychological effects of domestic violence as a legitimate health issue. Unfortunately, the judiciary is not exempt from this bias either. In fact, it is precisely this institutionalised bias that prompted the creation of the PWDVA in the first place and that explains the opposition the Act encounters in its implementation on the ground.

There has been some confusion regarding the role of the police, especially in those jurisdictions in which POs have not yet been appointed or where the number of existing POs is not sufficient. Many remote and rural areas continue to have the police as the principal, or even only, resource for domestic violence victims seeking recourse to the law. In general, Courts should not hesitate to empower the police to assist with the orderly administration of the PWDVA whenever doing so is helpful, provided that doing so does not unnecessarily overburden the police.

5.3.2 Role of Service Providers

As per Section 10(2) of the PWDVA, Service Providers registered under the Act shall have the power to:

- (a) Record the Domestic Incident Report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;
- (b) Get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;
- (c) Ensure that the aggrieved person is provided shelter in a shelter home, if she so requires, and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.

As per Section 10(1) of the PWDVA, to be recognized as Service Providers (SPs) under the Act, voluntary associations must follow a two-step registration procedure:

- (i) The voluntary association must already be registered under the Societies Registration Act, 1860 or the Companies Act, 1956 or “any other law”. “Any other law” includes Trusts under the state Public Trusts Acts.
- (ii) The voluntary association must register as a Service Provider under the PWDVA with the state government.

The PWDVA elaborate upon registration procedures for SPs. Any registered voluntary organization eligible under Section 10(1) of the Act that wishes to render aid as an SP shall make an application under Section 10(1).¹³ The candidate organization should complete Form VI and submit it to the State Government. After making inquiries and satisfying itself that the applicant is suitable, the State Government will register the organization as an SP under the PWDVA and issue an appropriate certificate of such registration.¹⁴ An application cannot be rejected without giving the applicant an opportunity to be heard.

¹³ Rule 11(1)

¹⁴ Rule 11(2)

Rule 11(3) specifies the eligibility criteria for registration of Service Providers. The eligibility criteria are based on the kinds of services being rendered by the applicant. Form VI provides further details on the nature of services that must be provided by applicants. The candidate organisation should have been rendering the kind of services it is offering as an SP under the PWDVA for at least three years before the date of application for PWDVA SP registration. Broadly, the kinds of services envisaged under the law are as follows:

- Running a medical facility,¹⁵ psychiatric counselling centre or vocational training institution. The State Government shall ensure that the candidate fulfils the requirements for running such a facility or institution laid down by the respective regulatory authorities regulating the respective professions or institutions.
- Running a shelter home, in which case the government is required to inspect whether it has the following:¹⁶
 - Whether there is adequate space in the shelter home
 - Measured area of the entire premises
 - Number of rooms
 - Area of rooms
 - Details of security arrangements available
 - Whether a record is available for the maintenance of a functional telephone connection for the use of inmates for the last three years
 - Distance of the nearest dispensary/clinic/medical facility
 - Medical professionals available, either on site or on call
 - Whether any arrangement is in place for regular visits by a medical professional
 - Other facilities available to be specified
- In case of a counselling centre, the registering authority must inspect the facility and record details pertaining to the number of counsellors, their qualification and experience and the type of counselling provided. The report should also address the type of facilities provided, such as professional counselling sessions, safe environment to discuss problems and express emotions, information on counselling services, support groups and mental health care resources, etc.

Although organisations that have not registered as SPs under the PWDVA can continue to provide services to women facing domestic violence, registered SPs are exempt from liability for action taken in good faith under the Act.

¹⁵ Please note that a registered Service Provider running a medical facility should not be confused with a medical facility notified under the Act. The role of the notified medical facility is explained under Section 7 of the PWDVA read with Rule 17 of the PWDVR.

¹⁶ Similarly, note that a registered Service Provider running a shelter home is not to be confused with a shelter home notified under the Act. The role of notified shelter homes has been detailed under Section 6 of the PWDVA read with Rule 16.

How is the Court Assisted by Service Providers? What Directions can the Court Give to Service Providers?

- Service Providers are empowered to record the DIR and forward it to the Magistrate in connection with applications under Section 12 of the Act.
- Service Providers can be counsellors.
- Service Providers can be welfare experts under Section 15 of the Act.
- When an aggrieved person directly approaches the Court to file an application for relief/s and the Court feels that she needs support services, the Magistrate can refer her to any of the SPs in the list maintained for this purpose by POs.
- SPs that are unable to provide services may refer domestic violence victims to other organisations, even if the other organisations are not registered under the Act. This saves the Court the trouble of having to direct the PO to look for an appropriate organisation and helps the victim receive aid as soon as possible.
- The Court may direct the SP to ensure the safety and security of a woman and her children.

5.3.3 Role of Shelter Homes

Section 2(t) of the Act defines “shelter homes” to mean shelter homes notified by the state Government for the purposes of this Act. The manner of issuing such notification is to be determined by the respective State Government.

As per Section 6 of the PWDVA, if an aggrieved person or, on her behalf, a Protection Officer or a Service Provider requests the person in charge of a notified shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

Rule 16 of the PWDVR further clarifies that although it is preferable that a request for shelter made by the Protection Officer or Service Provider, on behalf of the aggrieved person, be made in writing (so that a copy can be appended to a DIR, if one is prepared), a written request is not required. Further, shelter cannot be withheld on the ground that a DIR has not been filed. As per Rule 16(3), if the aggrieved person so desires, the shelter home should not disclose the identity of the aggrieved person, except to the Court.

If the notified shelter home does not currently have the capacity or resources to provide shelter, it can refer the aggrieved person to any other shelter home having adequate capacity. Where there is a pending application under Section 12 of the PWDVA, the Court should be informed of such referral.

5.3.4 Role of Medical Facilities

Medical facilities are defined under Section 2(j) of the PWDVA to mean a facility that is notified by the State Government as a medical facility for the purposes of this Act.

As per Section 7 of the PWDVA, if an aggrieved person or, on her behalf, a Protection Officer or Service Provider requests the person in charge of a medical facility to provide any medical aid to her, such person-in-charge of the medical facility shall provide such medical aid to the aggrieved person in the medical facility.

Rule 17 provides further details on the manner in which request for medical assistance ought to be made. Although the request for medical aid should, preferably, be made by the aggrieved person or the Protection Officer or the Service Provider in writing, an oral request must be honoured too. A medical facility cannot refuse medical assistance to an aggrieved person on account of her not having lodged a DIR prior to making a request for medical assistance or examination. As per Rule 17(4) of the PWDVR, a copy of the medical examination report shall be provided to the aggrieved person by the medical facility free of cost.

Rule 17 also empowers notified medical facilities to record DIRs based on complaints made by aggrieved persons. If no DIR has been filed prior to the request for medical aid, the person-in-charge of the medical facility must complete Form I and forward the same to the concerned PO.

As with the police and judiciary, medical professionals too can be biased against complaints of domestic violence. For instance, doctors may be sceptical about the truthfulness of women's accounts of violence. As with other implementing agencies under the PWDVA, medical professionals also need training and sensitisation in how to recognise symptoms of domestic violence and provide appropriate medical assistance.

Moreover, doctors, nurses and emergency room workers may often see and treat women who do not or cannot seek other kinds of assistance. In this case, coordinated programmes such as the DVRS might help to create a network of support for such women and their families.

5.3.5 Role of Legal Services Authorities

Section 5 of the PWDVA mandates the PO to ensure that an aggrieved person is informed of her right to free legal aid, as per the Legal Services Authorities Act, 1987. Section 9 mandates the PO to ensure that the aggrieved person is provided such aid.

Section 12(c) of the Legal Services Authority Act mandates State Legal Service Authorities to provide free and competent legal aid to women. They are also authorised to organise legal awareness programmes to sensitise people about their legal rights; to impart legal literacy through print and electronic media; and to conduct workshops and seminars for imparting legal training to empanelled advocates, POs, NGOs, police, doctors, etc.

5.3.6 Role of Counsellors

The psychological and emotional harm caused by domestic violence can be substantial and continue long after a Court has issued relief. But Court intervention should not be the only remedy available to women facing domestic violence. Counselling should be available too. It may be difficult for a woman facing domestic violence to take an informed and well-thought out decision as to her current circumstances and future course of action all by herself. Counselling aims to help a woman recognise and evaluate her own specific needs, thereby enabling her to take the first steps towards informed decision-making.

The PWDVA does not contain any explicit provisions on *pre-litigation counselling*, except to state that it is the duty of the PO to maintain a list of counsellors available in her/his jurisdiction to whom she/he can refer any aggrieved person who desires counselling services (Section 9 of the PWDVA and Rule 8 of the PWDVR).

However, the Act does contain detailed provisions on *court-mandated counselling*, beginning with Section 14(1) which states that, “The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possesses such qualifications and experience in counselling as may be prescribed”.¹⁷ As per the Act, counselling may be undertaken with the aggrieved person alone, the respondent alone or jointly with both parties.

The purpose of providing such detailed guidelines in the law is to recognise domestic violence as a human rights violation that merits a comprehensive legal/institutional response rather than treating it merely as an ‘internal family matter’ that can be settled through informal mediation that could effect forced reconciliation. Under the PWDVA, counselling is recognised as an arena of technical proficiency, mandated to be conducted by professionals, in conditions that enable and focus on the woman’s human rights and, as per Rule 14(3), only upon the furnishing of certain undertakings by the respondent that ensure there will be no future acts of violence. Finally, settlements must be attempted only if the aggrieved person so desires. As a civil law, the PWDVA does allow space for negotiations between the parties, an option that is not available under criminal law. Given this allowance, the provisions on counselling are intended to ensure that all negotiations are entered into keeping in mind the objective of the law: i.e., a woman’s right to a violence-free home. The counselling process must respect the woman’s agency and ensure that any settlements concluded are done so with the woman’s free and informed consent and aim to create a violence-free home.

When counselling is conducted by lay people, there is a significant risk that the process followed and results achieved do not respect a woman’s agency and fall short of basic human rights standards. If PO’s conduct counselling themselves, an added concern of an explicitly legal nature arises from the duality of their role: namely, that in the pre-litigation stage, the role of the PO is to assist the aggrieved woman; but in the post-litigation stage, the PO is deemed to be an officer of the Court and assists the Court in discharging its functions. Pre-litigation counselling by a PO can create a potential conflict of interest vis-à-vis her/his position as an officer of the Court.

The remainder of Part 5.3.6 addresses the specific and limited duties of the PO with regard to counsellors. As per Section 9 and Rule 8 mentioned earlier, the PO is responsible for maintaining a list of Service Providers, including counsellors, in her/his jurisdiction. In order to maintain such a list, the PO must:

- Invite applications from SPs seeking particulars of the professionals whom they wish to register as counsellors under the Act.
- Inspect all the applications and forward a confirmed and formalised list of available counsellors to all the concerned agencies, especially the Magistrate.
- Ensure that the list is current by regularly updating it every three years and duly forwarding the updated list to all the concerned agencies, especially the Magistrate.

We suggest the following guidelines to POs regarding the appointment of counsellors:

- Counsellors must be qualified professionals.
- Counsellors must have experience with cases of domestic violence and have knowledge of the psychosocial theories associated with the issues of domestic violence and its historical and political significance.
- Counsellors must have an understanding of the PWDVA and of the basic court procedures in which they are participating.
- Counsellors must be aware of how to create settlements and undertakings that will be enduring and admissible in court.
- Both the counsellor and the counselling centre need to be easily accessible and safe for the woman.
- Counsellors must be able to network with other SPs so as to provide the aggrieved person comprehensive assistance.
- Counsellors must have an established system of recording and maintaining documentation on cases.
- Counsellors must either already have or be willing to build a system of monitoring and evaluation of their work.
- Counsellors must have expressly stated ethics and should not be affiliated to any parties, political, religious or otherwise.

Once the Court has mandated counselling, the counsellor works under the general supervision of the Court or PO or both. Rule 14 of the PWDVR describes in detail the procedures to be followed by counsellors.

Finally, we must distinguish between some commonly misused terms. Although the PWDVR do not refer to *mediation*, *joint counselling*, which is akin to mediation, is appropriate in cases where the parties are desirous of a mediated settlement. However, just as an aggrieved person should not be compelled to

undertake single counselling against her will, the Court should not direct joint counselling if the woman objects.

Joint counselling is not the same as *reconciliation*. Prevailing understandings of counselling within legal discourse often focus on reconciliation between the parties, particularly with regard to matrimonial and family disputes. Unfortunately, counselling has come to be identified with *settlement* and reconciliation. The terms are different. Counselling is the process whereby those counselled attempt to come to terms with their experiences and plan accordingly. A settlement is an agreement between parties to resolve a dispute. And, in matrimonial matters, reconciliation usually means that the husband and wife have begun to live peacefully as spouses once again. *Regardless of the term used, the goal is to avoid having the woman return to a violent home.*

There is a practice in some states that all cases under Section 498A, IPC are automatically referred for reconciliation, even before filing an FIR. Often the police refuse to take any action unless a counselling attempt, often supervised by the police themselves, fails. The practice is a poor one because it fails to empower the victim.

Moreover, a PO or counsellor should never attempt reconciliation of a couple as a crisis management technique. The safety of the victim should take precedence over all other steps taken during the crisis period. Close coordination between all protective services agencies (the police, the courts, legal aid and specialist NGOs, including shelter providers and medical facilities), is vital for the woman to remain safe. This goal takes priority over family reunification or the resolution of ‘relationship issues,’ and should be the foundation on which all treatment decisions, like counselling, are made.

Chapter 6

How to Record a Domestic Incident Report

All complaints of domestic violence received by the Protection Officer have to be recorded as a Domestic Incident Report (DIR). The format of the DIR is provided in Form I of the PWDVR. Chapter 6 begins with an explanation of what the DIR is and then provides details on how information is to be recorded under each of the Form's seven major items. In so doing, Chapter 6 also provides information on how the substantive provisions of the PWDVA are to be understood.

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6.1 What is a Domestic Incident Report?

Section 2(e) of the PWDVA defines a Domestic Incident Report (DIR) as a “report made in the prescribed form on the receipt of a complaint of domestic violence from an aggrieved person”. Form I of the PWDVR is the prescribed form referred to in this definition. It provides a simple, clear and convenient format for recording incidents of domestic violence.

A DIR is somewhat similar to an FIR recorded under criminal law, as it is a public record of a complaint. A Protection Officer is obliged to record a DIR on receiving a complaint of domestic violence.¹ The DIR is to be filled and signed by the aggrieved person and countersigned by the PO.

Role of the Protection Officer vis-à-vis the Recording of a DIR

A PO has to assist the aggrieved person in filling in the DIR, particularly in cases where the aggrieved person is either illiterate or incapacitated in any manner. In such cases, the PO, after filling in the DIR, must explain its content to the aggrieved person before obtaining her thumb impression or her signature, as the case may be. The PO must also give the original copy of the DIR to the aggrieved person, free of cost, on all occasions.

In cases where the aggrieved person is able to fill in the DIR by herself, it is advisable for the PO to counsel her on the content of the DIR and the manner in which information is to be recorded, prior to her filling in the DIR.

A DIR is meant to be a faithful record of the complaint presented and is not a report of an investigation. The PO need not conduct any enquiries at the time of recording the DIR. However, the PO must ensure that the DIR is completed with care and precision and accompanied by all relevant supporting documents.²

The recording of a DIR does not trigger any judicial or investigative processes, as it is merely a public record of a complaint of domestic violence. Judicial processes are commenced only if the aggrieved person so desires. In order to initiate a judicial process, an application under Section 12 has to be filed in Court.³ The DIR is to be attached to any such application filed.

Even if the aggrieved person chooses not to file an application, the PO has to forward copies of all DIRs recorded to the Magistrate within whose jurisdiction the alleged act of domestic violence has occurred.⁴

A Magistrate has to consider any DIRs received from a PO before passing any Orders under the PWDVA. The Magistrate may, therefore, need to consider not only the DIR that is filed along with the application, but also those DIRs that may have been forwarded by the PO on earlier occasion/s. As a public record of an incident of domestic violence, the DIR constitutes valuable evidence of past incidents of domestic violence.

¹ Rule 5(1)

² For the list of documents to be attached to the DIR, see Part 6.6

³ For details on the filing of applications, see Chapter 7.

⁴ Rule 5(1)

If she so chooses, an aggrieved person may directly approach the Court with an application under Section 12, without a DIR. In such cases, the Magistrate may direct the PO to record a DIR and file it in Court if the application does not provide adequate details or if a DIR has not been recorded and forwarded to the Magistrate on any previous occasion/s. In certain cases, where the Magistrate may not feel the need for a DIR, he/she may proceed with the case without one.

Registered Service Providers (SPs)⁵ and notified medical facilities⁶ are also allowed to receive complaints of domestic violence and record DIRs. In such cases, both SPs and medical facilities will have to forward a copy of the DIR to the PO.

A DIR should be recorded whenever an aggrieved person approaches a PO with a complaint of domestic violence, even in those cases where the aggrieved person does not wish to file an application under the PWDVA.

An aggrieved person may, if she chooses, record a separate DIR for each distinct incident of domestic violence.

6.2 Details of the Complainant/Aggrieved Person [Form I : Item 1]

FORM I

1. Details of the complainant/aggrieved person
 - (1) Name of the complainant/aggrieved person
 - (2) Age
 - (3) Address of the shared household
 - (4) Present Address
 - (5) Phone number, if any

An *aggrieved person* can file a complaint under the PWDVA. Section 2(e) of the PWDVA defines “aggrieved person” as: “Any *woman* who is, or has been, in a *domestic relationship* with the *respondent* and any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent[.]” (Emphasis added)

A woman who complains of an act of domestic violence must meet two requirements:

- (i) That she is or has been in a *domestic relationship* with the respondent;
- and
- (ii) That the respondent has subjected her to act/s of domestic violence.

⁵ Section 10(2)(a)

⁶ Rule 17(3)

The second requirement is discussed in Part 6.5 below. The first requirement is discussed here. As defined in Section 2(f), a *domestic relationship* is the relationship between two persons who live or have lived together in a *shared household*.

The broad definition provided in Section 2(f) covers all forms of relationships within the household such as:

- (i) Consanguine or blood relationships (such as grandfather-granddaughter, father-daughter, brother-sister relationships, etc.), where the parties are living together in the same house, i.e., the shared household.
- (ii) Marital relationships or relationships in the nature of marriage. The term “marriage” refers to legally valid marriages. The term “relationships in the nature of marriage” includes:
 - (a) Relationships of cohabitation or live-in relationships.
 - (b) Relationships between a man and a woman that have elements of a marital relationship but do not meet the requirements of legal validity, such as void⁷ or voidable⁸ marriages, customary marriages⁹ and common law marriages.¹⁰
- (iii) Adoptive relationships
- (iv) Family members living together as a joint family. The term “joint family” is typically understood to mean the Hindu Undivided Family (HUF). However, in the PWDVA, the term is not restricted to the HUF and, instead, is used more broadly to cover any family members living in the shared household. This category includes relationships between uncles and nieces, cousins, etc., as long as they live together in the same house, i.e., in the shared household.

By including relationships in the nature of marriage in its definition of a domestic relationship, the PWDVA does *not* recognise or legitimise bigamous marriage, as this law operates in addition to other laws, including those laws that penalise bigamous marriage. The intent of the PWDVA’s inclusive definition is to remedy domestic violence faced in all forms of domestic relationships.

Women aggrieved by bigamous marriage may pursue remedies available under other criminal or civil laws.

Divorced women can also file complaints for acts of domestic violence. It must be understood that divorce does not always entail an end to domestic violence. In some cases, divorce can even intensify violence directed towards the ex-wife. Although the legal bond may be broken, often an emotional one remains. Further, in a large number of cases, women are effectively compelled to give up custody,

⁷ “Void” or null marriages are those that have no legal effect, i.e., it is as if the marriage had not existed at all. Family laws of each community enlist grounds on which a marriage may be considered void. An example would be if one of the parties was insane or incapable of giving consent at the time of marriage.

⁸ “Voidable” marriages are valid until annulled. Such marriages can be either affirmed or rejected at the option of one of the parties. A voidable marriage is valid as long as one of the parties does not apply for its annulment.

⁹ Customary marriages are those which are performed in accordance with customary or traditional or tribal practices/norms. Such marriages are not strictly legal in nature. An example of such a marriage is a *nata* relationship, a practice common in Himachal Pradesh.

¹⁰ Individuals who have lived together for a substantial period of time and who represent to the world that they are married can be said to be in a common law marriage.

maintenance and other rights in order to escape a violent home. However, while a divorced woman can complain under the PWDVA, the nature of reliefs to which she is entitled to will depend upon the terms of settlement entered into at the time of her obtaining her divorce.

The *shared household* has been defined in Section 2(s) to mean the residence where the aggrieved person lives or has lived with the respondent in a domestic relationship. The use of the term “has lived” in the shared household in the definition of “domestic relationship” brings within its ambit those women who have been illegally dispossessed from the shared household. However, it excludes from its ambit women who visit houses of relatives, as short or temporary *visits* cannot be equated with *living* on the premises.

Aggrieved persons who have not lived in a shared household or who lived in a shared household but did not do so in a domestic relationship are not eligible for relief under the PWDVA.

Shared households may include households:

- (i) That are owned or tenanted either jointly by the aggrieved person and the respondent, or by either of them.
- (ii) Where the aggrieved person or the respondent or both have any right, title, interest or equity, either singly or jointly.
- (iii) Which may belong to the joint family of which the respondent is a member, irrespective of whether either the aggrieved person or the respondent has any right, title or interest in the household.
- (iv) Which are allocated to the respondent as an employee, such as company accommodation or government accommodation, provided that the aggrieved person and respondent reside in those premises in a domestic relationship.

Court Interpretations of the Definition of “Shared Household”

In a recent judgment of the High Court of Madras in *Vandana v Mrs Jayanthi Krishnamachari and others* [(2007) 6 MLJ 205 (Mad)], a broad interpretation was given to the definition of “shared household”. In this case, the respondent husband contested the right of his aggrieved wife to reside in the shared household on the grounds that the parties had not “lived together” in the shared household even for a single day after their marriage. The Court, upholding the right of the aggrieved wife to reside, held that she had a *de jure* (substantive right) right to live in the shared household because of her status as a wife in a domestic relationship.

In *Batra v Batra* [1 (2007) DMC 1 SC], the Supreme Court of India held that an aggrieved wife has the right to reside in the shared household, which meant a house belonging to or taken on rent by the husband, or a house which belongs to the joint family of which the husband is a member. However, in this case, the couple lived together in the matrimonial home belonging to the husband’s mother. The husband subsequently moved to separate rented premises. Hence the Court held that the aggrieved wife did not have a right to reside in the matrimonial home as the husband was residing on separate premises.

Court Interpretations of the Definition of “Shared Household” (con’t.)

Following the Supreme Court’s judgment in the above case, the High Court of Madras in *P Babu v Rani* [CrI. R.C. Nos. 48 and 148 of 2008 and M.P. Nos. 1 of 2008] took note of the fact that after the dispute arose between the parties, the respondent husband alienated the shared household in favour of his mother to the detriment of the aggrieved wife. Because the respondent husband had acted deliberately to deny the aggrieved wife her rights under the PWDVA, the Court upheld the right of the aggrieved wife to the shared household despite it being legally owned by the mother-in-law. The effect of this judgment is that in cases where the respondent husband has taken separate premises, there is need to confirm that this was done in good faith and not to frustrate the rights of the aggrieved wife.

For detailed information and analysis of case law, see LCWRI’s *Handbook on Law of Domestic Violence*

6.3 Details of the Respondent [Form I : Item 2]

FORM I				
2. Detail of Respondents:				
S. No.	Name	Relationship with the Aggrieved person	Address	Telephone No., If any

The definition of *respondent* provided in Section 2(q) of the PWDVA includes:

- (i) Any adult male who is or has been a domestic relationship with the aggrieved person. For example: fathers, husbands, brothers, uncles (both maternal and paternal), male partners and men living in a relationship in the nature of a marriage with the aggrieved person.
- (ii) Any relative of the husband or the male partner. This covers all relatives of the husband/male partner, *including female relatives*. For example: the husband/male partner’s father, mother, sister, etc.

Female relatives of a male respondent can be respondents, just as they can be prosecuted as members of the husband’s family under Section 498A, IPC. However, complaints against any females who are not related to the husband or the male partner cannot be filed under the PWDVA. For instance, a daughter cannot record a complaint solely against her mother. Similarly, a mother-in-law cannot record a complaint against her daughter-in-law (whereas a daughter-in-law can record a complaint against her mother-in-law). However, in such cases, aggrieved persons can record a complaint against the father or the son for abetting acts of violence perpetrated either by the mother or the daughter-in-law by failing to prevent the commission of such acts.

At the time of filling in this item, it is advisable to record the address of the respondent’s residence as well as his office address and contact details.

6.4 Details of Children
[Form I : Item 3]

FORM I			
3. Details of children, if any, of the aggrieved person:			
(a) Number of Children:			
(b) Details of children:			
Name	Age	Sex	With whom at Present residing

The details of the children of the aggrieved person have to be filled in under this item. If the aggrieved person has children, then it is essential that each child be mentioned, beginning with the eldest, along with other details as required in the Form. This information is especially needed in cases where the aggrieved person is desirous of obtaining either maintenance or temporary custody orders.

In Section 2(b), the PWDVA defines “child” to mean any person below the age of eighteen and includes in its definition adopted, step and foster children of the aggrieved person.

If the aggrieved person does not have any children, then “N.A.” (Not Applicable) is to be entered in Item 3 of Form I.

6.5 Incidents of Domestic Violence
[Form I : Item 4]

In order to ensure that information in this item is recorded accurately, a Protection Officer must have an understanding of the definition of domestic violence provided in Section 3 of the PWDVA.¹¹

¹¹ The PWDVA derives its definition of domestic violence from the United Nations Model Legislation on domestic violence. This Model Legislation was passed by the United Nations Commission on Human Rights 1996. The Model Legislation provides comprehensive guidelines for states in drafting domestic violence laws. The PWDVA consciously complies with the Model Legislation’s standards. According to the Model Legislation, “All acts of gender-based physical, psychological and sexual abuse by a family member against women in the family, ranging from simple assaults to aggravated physical battery, kidnapping, threats, intimidation, coercion, stalking, humiliating verbal abuse, forcible or unlawful entry, arson, destruction of property, sexual violence, marital rape, dowry or bride-price related violence, female genital mutilation, violence related to exploitation through prostitution, violence against household workers and attempts to commit such acts shall be termed ‘domestic violence’”.

Section 3 begins with a general description of the acts that constitute violence and then itemises and explains different forms of abuse, which may be physical, sexual, verbal and emotional or economic in nature. Please note: this listing is for *illustrative* purposes and is not an *exhaustive* one. Item 4 of Form I allows for the convenient recording of domestic violence by listing examples of each form of abuse in Column 4.

No Form can include an exhaustive list of the manifold ways in which violence is perpetrated. Hence, Column 5 of Item 4 allows for the recording of “Remarks” should an aggrieved person wish to provide further information on the specific form and nature of abuse faced. Further, if the aggrieved person is unable to provide accurate details on the nature of abuse faced by filling in details required under Item 4, she can append additional sheets to the DIR to provide details on the exact nature of and circumstances in which she faced domestic violence.

6.5.1 General Definition of Domestic Violence

The manifestations and consequences of domestic violence vary widely. Domestic violence may result in physical injury, even death, and may cause devastating mental injury and psychological impairment. In view of such grave consequences, the PWDVA defines “domestic violence” expansively to include all acts of commission as well as omission that either harm or injure or endanger the health, safety, life, limb or well-being of the aggrieved person.

The concepts of “harm,”¹² “injury”¹³ and “endangerment,”¹⁴ although derived from tort law, should be accorded their ordinary meaning, bearing in mind that the broad purpose of the PWDVA is to safeguard women from actual or threatened domestic violence.

It is not necessary that the aggrieved person suffer actual harm or injury; any act that either endangers or *threatens to* endanger the health, safety or well-being of the victim also constitutes domestic violence. The PWDVA’s definition of domestic violence also includes threat of abuse and behaviour that tends to harm or injure. A threat of injury, even when the injury does not occur, invariably results in mental and emotional distress and itself constitutes mental and emotional abuse.

Thus, Section 3 of the PWDVA is comprised of four independent components:

- (i) Sub-section (a), which sweepingly addresses behaviour that “harms or injures or endangers the health, safety, life, limb or well-being” of the aggrieved person.
- (ii) Sub-section (b), which addresses behaviour undertaken to unlawfully obtain dowry or any other property.
- (iii) Sub-section (c) which specifies that the threat to undertake behaviour in either subsection (a) or (b) is itself domestic violence.

¹² “Harm” means injury, loss or damage.

¹³ “Injury” is a wrong or an injustice that demeans another’s dignity. It is a legally redressable violation of another person’s rights.

¹⁴ “Endangerment” is the act of putting something or someone in danger. Endangerment may arise either as an affirmative or deliberate act (i.e., actively putting someone or something in danger) or as a passive act (i.e., by neglecting or refusing to do something).

(iv) Sub-section (d), which is the broadest provision, encompasses any other behaviour that injures or causes harm to the aggrieved person.

The concept of human dignity underlies each of the component parts of the definition. Any conduct that violates a woman’s dignity thereby causing injury will constitute “domestic violence”.

After enlisting the forms of conduct that result in domestic violence, Explanation II of Section 3 specifies that, “for the purposes of determining whether any act, omission, commission or conduct of the respondent constitutes domestic violence, the overall facts and circumstances of the case shall be taken into consideration.” Hence the emphasis is on the nature of injuries/harm sustained by the aggrieved person due to the acts of domestic violence.

Since the PWDVA is a civil law, when the Courts determine whether or not an act results in injury/harm that amounts to domestic violence under the Act, they assess the evidence on a standard of “balance of probabilities,” which is a lower standard than the “proof beyond reasonable doubt” standard required in criminal law.¹⁵

The Table below provides examples of all forms of abuse or violence listed under Section 3 of the PWDVA.

Illustrations of different forms of violence				
Physical Violence	Sexual Violence	Verbal Abuse & Emotional	Economic Violence	Dowry related harassment
<input type="checkbox"/> Punching <input type="checkbox"/> Bashing/ Banging her head against walls or other objects <input type="checkbox"/> Choking/ shaking <input type="checkbox"/> Slapping <input type="checkbox"/> Pinching <input type="checkbox"/> Kicking <input type="checkbox"/> Hitting with anything	<input type="checkbox"/> Forced sexual intercourse. <input type="checkbox"/> Forced to watch pornography or other obscene material <input type="checkbox"/> Forcibly using you to entertain others	<input type="checkbox"/> Accusation/ aspersion on your character or conduct, etc. <input type="checkbox"/> Insult for not bringing dowry, etc. <input type="checkbox"/> Insult for not having a male child. <input type="checkbox"/> Insult for not having any child.	<input type="checkbox"/> Not providing money for maintaining you or your children. <input type="checkbox"/> Not providing food, clothes, medicine, etc., for you or your children. <input type="checkbox"/> Forcing you out of the house you live in.	<input type="checkbox"/> demands for dowry made, please specify <input type="checkbox"/> Any other details with regard to dowry, please specify.

¹⁵ The scale of “balance of probabilities” is used in civil law. In using this scale, the decision of the Court is based on which of the two competing claims is most likely to have happened. On the other hand, decisions in criminal law are based on “proof beyond reasonable doubt”, wherein no reasonable person can have any doubt on what actually occurred.

Illustrations of different forms of violence (con't.)

Physical Violence	Sexual Violence	Verbal Abuse & Emotional	Economic Violence	Dowry related harassment
<ul style="list-style-type: none"> <input type="checkbox"/> Biting <input type="checkbox"/> Burning with a cigarette/ iron/ oven/ setting on fire <input type="checkbox"/> Throwing things in general or at her <input type="checkbox"/> Strangling <input type="checkbox"/> Pushing in general or against walls and other objects/ pushing under water etc. <input type="checkbox"/> Pulling hair <input type="checkbox"/> Spitting or peeing on the victim <input type="checkbox"/> Tying her up/ tying her hands behind her back, etc. <input type="checkbox"/> Being held down <input type="checkbox"/> Locking up in a cupboard or closet 	<ul style="list-style-type: none"> <input type="checkbox"/> Any other act of sexual nature, abusing, humiliaging, degrading or otherwise violative of your dignity (please specify tetails in the space provided below): 	<ul style="list-style-type: none"> <input type="checkbox"/> Demeaning, humiliating or undermining remarks/ statement. <input type="checkbox"/> Ridicule. <input type="checkbox"/> Name calling. <input type="checkbox"/> Forcing you to not attend school, college or any other educational institution. <input type="checkbox"/> Preventing you from taking up a job. <input type="checkbox"/> Forcing you to get married against your will. <input type="checkbox"/> Preventing you from leaving the house. <input type="checkbox"/> Preventing you from meeting any particular person. 	<ul style="list-style-type: none"> <input type="checkbox"/> Preventing you from accessing or using any part of the house. <input type="checkbox"/> Preventing or obstructing you from carrying on your employment. <input type="checkbox"/> Not allowing you to take up an employment. <input type="checkbox"/> Non-payment of rent in case of a rented accommodation <input type="checkbox"/> Not allowing you to use clothes or articles of general household use. <input type="checkbox"/> Selling or pawing your <i>stridhan</i> or any other valuables without informing you and without your consent. <input type="checkbox"/> Forcibly taking away your salary, income or wages etc. 	

Illustrations of different forms of violence (con't.)				
Physical Violence	Sexual Violence	Verbal Abuse & Emotional	Economic Violence	Dowry related harassment
<input type="checkbox"/> Threatening/ Attacking with a knife, gun, belt, or any other kind of weapon/ forcing her to hurt herself		<input type="checkbox"/> Preventing you from marrying a person of your choice. <input type="checkbox"/> Forcing you to marry a person of his/their own choice. <input type="checkbox"/> Any other verbal or emotional abuse. (please specify in the space provide below)	<input type="checkbox"/> Disposing your <i>stridhan</i> <input type="checkbox"/> Non-payment of other bills such as electricity, etc. <input type="checkbox"/> Any other economic violence (please specify in the space provided below)	

6.5.2 Physical Abuse

FORM I				
4. Incidents of domestic violence				
S. No.	Date, place and Time of violence	Person who Caused Domestic Violence	Types of violence	Remarks
			Physical violence	
			Causing hurt of any kind, Please specify	

Explanation I(i) of Section 3 defines “physical abuse” or violence as any conduct that:

- (i) Causes bodily pain or harm, or
- (ii) Endangers life, limb or health, or
- (iii) Impairs the aggrieved person’s health or development.

This provision also includes assault, criminal intimidation and the use of criminal force as examples of conduct amounting to physical abuse. The examples provided are meant to be illustrative rather than exhaustive.

Physical violence is the most obvious type of domestic violence. Some examples of physical abuse are:

- Beating
- Slapping
- Hitting
- Biting
- Strangulation
- Punching
- Kicking
- Pushing
- Shoving
- Forcibly evicting a person from their residence
- Use of tools or weapons to inflict physical harm
- Other acts which may result in fear, injury or even death.

Evident symptoms of physical violence may include visible scars of injuries sustained or injuries that are untended and/or have healed poorly due to the lack of attention. Common type of injuries include:

- Contusions, abrasions and minor lacerations, as well as fractures and sprains
- Injuries to the head, neck and chest
- Injuries during pregnancy
- Multiple sites of injuries
- Repeated or chronic injuries
- Chronic pain, may also include psychogenic pain (psychologically induced pain, normally non-specific in nature), or pain due to diffuse trauma without physical evidence
- Sexually transmitted diseases
- Damage to sexual organs and anus (this is often a sign/consequence of sexual violence and lack of control over the sexual relationship)

Fifty percent of women who were physically abused, reported violence during their pregnancy.

[Source : *Domestic Violence in India: A Summary Report of a Multi-Site Household Survey*. Washington, D.C.: International Center for Research on Women. 2003.]

6.5.3 Sexual Abuse

FORM I				
4. Incidents of violence				
(i) Sexual violence				
Please tick mark (✓) in the column applicable				
	<input type="checkbox"/> Forced sexual intercourse.			
	<input type="checkbox"/> Forced to watch pornography or other obscene material			
	<input type="checkbox"/> Forcibly using you to entertain others			
	<input type="checkbox"/> Any other act of sexual nature, abusing, humiliating, degrading or otherwise violative of your dignity (please specify details in the space provided below):			

Around the world, 1 in 3 women have been beaten, coerced into sex, or otherwise abused in their lifetime. Most often, the abuser is a member of her own family.

[Source : Heise, Lori; Mary Ellsberg; Megan Gottemoeller. *Ending Violence Against Women*. Population Reports, Series L, No. 11. Baltimore: Johns Hopkins University School of Public Health, Population Information Program. 1999.]

Explanation I(ii) of Section 3 states that, “sexual abuse includes *any conduct of a sexual nature* that abuses, humiliates, degrades, or otherwise *violates the dignity of a woman*.” (Emphasis added)

This broad definition is not merely limited to rape or acts of penetration, but also includes all acts that are sexual in nature which cause an affront to the aggrieved person's dignity. *This inclusive definition is a legislative first in India.* It takes into account the fact that sexual violence ranges from the perpetrator of violence treating the victim as a sexual object to actual rape (regardless of marital status). It may manifest in violent behaviour, like forcing sex, physical attack to sexual organs, coercion to participate in unwanted sexual activities (such as having sex in front of children) or behaviour that is degrading to the person's sense of dignity.

Sexual abuse means all non-consenting sexual encounters or encounters within the family in which someone is either pressured, coerced (expressly or through implication) or forced into sexual activity. If one of the persons is under 16 years of age and a child, foster child, step-child, grandchild, nephew or niece of the other person, it is assumed that they cannot give valid consent and, thus, sexual activity involving them constitutes violence under any circumstances.

Sexual violence includes behaviour such as forced fondling, fellatio or cunnilingus, anal or vaginal penetration or sexual violence on children in the family and female genital mutilation. It can also include exploitation through forcing someone to have photographs or films taken of a sexual nature or being shown such films or photographs, or by forcing someone into prostitution.

Particularly relevant to the discussion of domestic violence is the category of "battering rapes" as a form of marital rape, where the sexual assault occurs in combination with physical beatings and psychological abuse. Research indicates that men who both batter and rape are more likely to severely injure or kill their wives. However, even today, such sexual assault by a husband or an intimate partner is not considered a crime in most countries, and women in many societies do not consider forced sex as rape if they are married to or cohabiting with the perpetrator. The assumption is that once a woman enters into a contract of marriage, the husband has the right to unlimited sexual access to his wife. This thinking is also reflected in the Section 375 of the IPC, which does not recognise marital rape as an offence.

Lack of control over the choices made within the sexual relationship may also be counted as violence as it may lead to the woman having little or no voice in the matter of contraception and reproduction and may lead to her contracting sexually transmitted diseases. Studies have shown that abused women are more likely to have a history of sexually transmitted diseases and vaginal and cervical infections.

However, there are other forms of "sex-specific" violence where the sexual assault is not accompanied by physical assault, but rather is seen as a main form of coercion by which the partner is victimised. The amount of physical violence used is just enough to coerce the victim into having sex and appears to be motivated primarily by a desire to overpower and control the victim. In many of these cases, the brutality or coercion is based on the perpetrator believing that he has the right to have sex with his spouse or partner on his own terms. It is important to remember that when a woman 'consents' to have sex because she fears violent retribution upon her refusal, then her 'consent' is actually not consent at all, but the result of coercion. In these cases, the perpetrator has committed an act of abuse.

A different type of marital rape to watch out for, which is perpetrated by individuals with deviant sexual arousal patterns, typically involves obsessive forced sex. Here victims are required to have an

extraordinary number of sexual encounters or to have sex as a form of sadistic, brutal or perverse behaviour. Once again, without a woman’s freely-given consent, the act becomes abusive in nature.

6.5.4 Verbal and Emotional Abuse

In a study, 40.3 percent of women surveyed reported physical abuse by their partners and 43.5 percent reported psychological abuse, i.e. violence that is not physical in nature.¹⁶

However, psychological violence is insidious and is harder to capture in quantitative studies.

FORM I				
1. Incident of domestic violence				
(ii) Verbal and Emotional Abuse				
Please tick mark (✓) in the column applicable				
		<input type="checkbox"/> Accusation/ aspersions on your character or conduct, etc.		
		<input type="checkbox"/> Insult for not bringing dowry, etc.		
		<input type="checkbox"/> Insult for not having a male child.		
		<input type="checkbox"/> Insult for not having any child.		
		<input type="checkbox"/> Demeaning, humiliating or undermining remarks/ statement.		
		<input type="checkbox"/> Ridicule.		
		<input type="checkbox"/> Name calling		
		<input type="checkbox"/> Forcing you to not attend school, college or any other educational institution.		

¹⁶ Source : Domestic Violence in India: A Summary Report of a Multi-Site Household Survey. Washington, D.C.: International Center for Research on Women. 2003.

FORM I (con't.)

1. Incident of domestic violence

(ii) Verbal and Emotional Abuse

Please tick mark (✓) in the column applicable

		<input type="checkbox"/> Preventing you from taking up a job.		
		<input type="checkbox"/> Forcing you to get married against your will.		
		<input type="checkbox"/> Preventing you from leaving the house.		
		<input type="checkbox"/> Preventing you from meeting any particular person.		
		<input type="checkbox"/> Preventing you from marrying a person of your choice.		
		<input type="checkbox"/> Forcing you to marry a person of his/their own choice.		
		<input type="checkbox"/> Any other verbal or emotional abuse. (please specify in the space provide below)		

Explanation I(iii) of Section 3 of the PWDVA defines verbal and emotional abuse to include:

- (i) Insults, ridicule, humiliation, name calling or ridicule specially with regard to not having a child or a male child.
- (ii) Repeated threats to cause physical harm to any person in whom the aggrieved person is interested.

Form I also enlists different forms of conduct that constitute verbal and emotional abuse. In both cases, the examples cited are illustrative rather than exhaustive.

Although included as a single category, “verbal” abuse and “emotional” abuse are distinctly different concepts, which may not occur simultaneously. Emotional abuse, for example, may occur without any accompanying verbal abuse (for instance: ostracism), yet both may be harmful and deserving of legal protection.

This form of violence has many different dimensions: it may include anything from isolation of the victim, to threatening violence, stalking, destroying property, kidnapping and using other forms of intimidation. Whether manifested as name calling, ridiculing, threatening, humiliation, manipulation through lies and mind-games or using other forms of verbal abuse, verbal and emotional violence is a systematic and purposeful form of degradation of the victim.

Name calling is not trivial; it erodes the victim’s self-esteem and often leads to greater isolation.

Verbal and emotional abuse can be seen in verbal statements or acts that result in the destruction of the victim’s self-esteem. The abusive partner exercises control or power over the victim who, over time, feels deserving of the abuse, worthless and insecure, becomes overly dependent on the abuser and is afraid of being abandoned by him.

A common form of this violence of which to take note appears in relationships where violence has occurred in the past. In these cases, emotional violence takes the form of repeated threats, which can cause strong fear and uncertainty. This “psychological battering” is particularly disabling because the victim is unable to foresee if or when violence might occur and in what form. Her anticipatory anxiety resulting from threats can be as excruciating as the violence itself. Often, therefore, victims will say that ongoing emotional violence – emotional torture and living in constant terror – is more unbearable than physical brutality. Such mental stress also leads to a high incidence of suicide attempts and suicide.

Emotional abuse may also take the form of isolating the victim in an effort to control her environment. Such isolating actions include: cutting the victim off from family, friends and other relationships, belittling the victim’s family and friends, restricting freedom of movement and preventing the victim from discussing violence problems with anyone. A victim who is isolated is more likely to believe what the perpetrator says about herself and the world. Isolation deprives the victim of support and perspective, making it difficult for her even to recognise the violence for what it is, and, thus, reinforces the perpetrator’s emotional control over her.

The perpetrator may also intimidate the victim by making repeated threats against her children, family and friends. He could threaten to kill her or her loved ones, kidnap her children, make her lose her job, expose things about which she may be ashamed, etc. He could instil fear through looks, gestures and actions; for example: smashing objects, destroying property, placing himself between the victim and an escape route, etc.

In addition, the perpetrator may threaten to commit suicide, holding the victim responsible. Often such threats increase when the victim is leaving the relationship.

Threats to Take Away Children

Threats to take away the children are *not* idle ones. Courts often give custody to perpetrators of the violence. Many victims return to stay with the perpetrators rather than risk losing their children.

Destruction of Property

Aware of the fact that the victim may be fearful of leaving all of the family's possessions at home where the perpetrator has access to them, perpetrators often destroy items belonging to the victim, such as family heirlooms or gifts from someone the victim cares about. The perpetrator may also break down doors, tear out phones, put holes in walls, destroy the children's toys and other family belongings.

Injury to Pets

Knowing that pets are a source of comfort to the victim and her children, the perpetrator might kill or threaten to kill family pets. Fear of what the perpetrator might do often makes the victim hesitant to leave, since, in most cases, pets must be left behind and can become another tool the perpetrator uses to intimidate and coerce the victim.

6.5.5 Economic Abuse

FORM I

4. Incident of domestic violence:

(iii) Economic violence

Please tick mark (✓) in the column applicable

			<input type="checkbox"/> Not providing money for maintaining you or your children.	
--	--	--	--	--

FORM I (con't.)

4. Incident of domestic violence:

(iii) Economic violence

Please tick mark (✓) in the column applicable

			<input type="checkbox"/> Not providing food, clothes, medicine, etc., for you or your children.
			<input type="checkbox"/> Forcing you out of the house you live in.
			<input type="checkbox"/> Preventing you from accessing or using any part of the house.
			<input type="checkbox"/> Preventing or obstructing you from carrying on your employment.
			<input type="checkbox"/> Not allowing you to take up an employment.
			<input type="checkbox"/> Non-payment of rent in case of a rented accommodation
			<input type="checkbox"/> Not allowing you to use clothes or articles of general household use.

FORM I (con't.)

4. Incident of domestic violence:

(iii) Economic violence

Please tick mark (✓) in the column applicable

			<input type="checkbox"/> Selling or pawing your <i>stridhan</i> or any other valuables without informing you and without your consent.
			<input type="checkbox"/> Forcibly taking away your salary, income or wages etc.
			<input type="checkbox"/> Disposing your <i>stridhan</i>
			<input type="checkbox"/> Non-payment of other bills such as electricity, etc.
			<input type="checkbox"/> Any other economic violence (please specify in the space provided below)

Explanation 1(iv) of Section 3 of the PWDVA and Form I of the PWDVR set out a (non)exhaustive list of types of economic abuse that constitute domestic violence. At the crux of this list is the denial of basic entitlements and necessities.

There are several ways in which a perpetrator exerts control over the victim: in Part 6.5.4 above, we discussed the different ways in which a perpetrator tries to control the victim’s environment by physically and emotionally isolating her from friends and family. Here we discuss how a perpetrator can control a victim by withholding access to economic resources and, thus, constraining the woman’s ability to control her life.

Economic violence can take many forms. It may involve an individual in the family controlling all the money, making the victim beg for every little thing and account for any money spent. Or the perpetrator could deny the victim access to the money she herself earns outside the house, her own bank account or her *stridhan*, making the victim routinely ask for money for every necessity like vegetables or medicine. The perpetrator might forbid the woman from working outside the home, thus removing any source of independent income. Or he might force her out of the house, not allow her to use clothes or articles of household use or demand dowry (about which more in 6.5.6 below).

This is a very effective way control a woman because she is denied all the basic resources she needs to survive. However, the actual process used by the perpetrator may be much more subtle: the perpetrator might even seem gracious and gallant. For instance, he might claim that working outside the home or handling finances is not a woman’s ‘natural role’ and that it is, in fact, his ‘duty’ to ‘take care’ of the woman.

6.5.6 Dowry-Related Harassment

FORM I				
4. Incident of domestic violence:				
(iv) Dowry related harassment				
Please tick mark (✓) in the column applicable				
				<input type="checkbox"/> demands for dowry made, please specify <input type="checkbox"/> Any other details with regard to dowry, please specify. <input type="checkbox"/> Whether details of dowry items, stridhan, etc. attached with the form <input type="checkbox"/> Yes <input type="checkbox"/> No

Section 3(b) defines domestic violence in the context of dowry-related harassment and other unlawful demands for property or valuable security: any conduct by the respondent that “harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry, or other property or valuable security” amounts to domestic violence.

In this definition, the term “related to” means members of the aggrieved person’s natal family and her guardians. Thus, in this context, a respondent who harasses an aggrieved person in order to coerce the aggrieved person’s family member into meeting an unlawful dowry demand has committed domestic violence.

Principles laid down by the Courts under Sections 498A IPC, Section 304B IPC and the Dowry Prohibition Act are relevant in understanding the meaning of Section 3(b).¹⁷

6.5.7 Other Forms of Abuse

FORM I				
4. Incident of domestic violence:				
(v) Any other information regarding the acts of domestic violence against you or your children				

In recognition of the impossibility of creating a format that can list each of the innumerable ways in which domestic violence is manifested, Form I provides space for recording specific forms of violence that cannot be categorised under any of the entries discussed in Parts 6.5.2 - 6.5.6 above.

The provision of this space also corresponds to Sub-section (d) and Explanation II contained in Section 3 of the PWDVA. Section 3(d) deems any conduct that, “otherwise injures or causes harm, whether physical or mental, to the aggrieved person” to constitute domestic violence. Explanation II specifies that, “for the purpose of determining whether any act, omission or commission or conduct of the respondent constitutes domestic violence, the overall facts and circumstances of the case shall be taken into consideration”. Domestic violence occurs in an almost infinite variety of ways and this space in Form I is designed to record additional or specific complaints that may not be captured while filling in details under the other entries.

If an aggrieved person is unable to provide information in the format provided in Form I, she can provide descriptions and details of the domestic violence faced on additional sheets that can be attached to the DIR.

¹⁷ For information on these related provisions, see Chapter 3 and Annexure III.

6.6 List of Documents to be Attached

FORM I		
5. List of documents attached		
Name of document	Date	Any other detail
Medico-legal certificate		
Doctor's certificate or any other prescription		
List of <i>stridhan</i>		
Any other document		

As mentioned earlier, the DIR is a public record of a complaint. In order to ensure that the DIR is complete, a Protection Officer must ask the aggrieved person for relevant documentation to be put on record. For this limited purpose, the PO may conduct enquiries to ensure that all relevant documents are brought on record. These documents constitute crucial evidence if the aggrieved person subsequently opts to file an application for reliefs.

Please note: the documents mentioned under this Item, while relevant, are not a pre-requisite for recording a DIR. Hence, an aggrieved person can record a DIR even if she unable to provide any relevant documents.

Under this Item, the date and details of the documents attached to the DIR are to be recorded. The documents mentioned in the Form are self-explanatory. The aggrieved person may also include other documentation and record its details under the heading “any other documents”.

Documents that can be attached to a DIR can be divided into three broad categories:

- (i) Documents that are needed to prove domestic violence:
 - (a) Medico-Legal Certificate
 - (b) All documents/certificates issued by any treating medical doctor pertaining to the relevant act/s of domestic violence or which record injuries sustained as a result of domestic violence.
 - (c) All documents issued by a mental health professional pertaining to the aggrieved person's psychological status.
 - (d) Any First Information Report (FIR) or Non-cognisable [Offence] Report (NCR) alleging domestic violence previously registered by the aggrieved person.
 - (e) Copies of complaints received by any other authorities that the aggrieved person may have approached for assistance. For example: complaint letters to the respondent's

employer, petitions submitted to *panchayats* or other adjudicatory bodies alleging domestic violence, petitions filed before the State Commission for Women or other statutory bodies alleging domestic violence.

- (f) Correspondence between the aggrieved person and other family members in which she records incidents of domestic violence. It is important that such correspondence be dated. If the correspondence is through email, then the date automatically appears on the mail. However, if the correspondence is through post it is advisable to ask for the envelope that bears the postal stamp documenting the date of the correspondence.
- (ii) List of *stridhan* articles. *Stridhan* refers to any property that is given to the woman during the time of her marriage (either before the marriage – i.e., during engagement festivities, etc. – or during it or after – for festivals, etc.) or has been left to her by her parents, siblings, in-laws, friends (of either party) and relatives (of either party).
- (iii) Documents that are needed to support claims for relief under the PWDVA:
 - (a) To prove a domestic relationship, particularly matrimonial relationships:
 - Ration card
 - Passport
 - Photograph with *mangal sutra*
 - Invitation cards of the wedding
 - Bills of the marriage hall
 - Photographs or video recordings of the marriage
 - Certificate from the temple or priest who performed the marriage
 - (b) To provide a basis for claiming remedies under the law and for proving the aggrieved person's standard of living:
 - All documents relating to joint bank accounts, salary statements, rent receipts, bills and other pertinent financial matters such as pay slips of the respondent, income tax returns, bank papers, share or bond certificates, receipts for significant purchases.
 - All documents of tuition fees and other expenses of children.

6.7 Orders

FORM I			
6. Order that you need under the Protection of Women from Domestic Violence Act, 2005.			
S.No.	Orders	Yes / No	Any other
(1)	Protection order under section 18		
(2)	Residence order under section 19		
(3)	Maintenance order under section 20		
(4)	Custody order under section 21		
(5)	Compensation order under section 22		
(6)	Any other order (specify)		

Under this Item, the nature of relief required from Court is recorded. If an aggrieved person indicates that she requires Court-ordered relief, then an application under Section 12 in Form II must be filed.

The orders that can be obtained from Court are provided in Sections 18-22 of the PWDVA. Each of these Sections is further divided into sub-sections that allow the Court to grant specific orders to meet the aggrieved person's requirements.¹⁸ For example, if an aggrieved person is apprehensive of further violence being inflicted by the respondent, she may seek an order under Section 19(b) directing the respondent to remove himself from the shared household.

The third column in this Item can be used to provide details on the specific order that the aggrieved person is seeking. This may also include supplementary details to ensure the enforcement of the order. For instance, the aggrieved person may seek police assistance to ensure that a respondent is removed from the shared household in an order under Section 19(b).

In order to fill in the DIR accurately, the aggrieved person must have knowledge of the legal remedies available under the PWDVA. Under Section 5 of the Act, the PO is duty-bound to provide information on such legal remedies.

While this Item is being completed, the PO must ensure that the orders sought are in consonance with the provisions of the PWDVA. The PO may also suggest appropriate remedies that meet with the aggrieved person's specific requirements. It is advisable to be specific on the nature of remedies sought. For instance, if the respondent is harassing the aggrieved person with repeated phone calls, an order restraining the respondent from contacting the aggrieved person should be specifically sought as part of the protection order. This aspect must be borne in mind particularly with regard to protection orders, as the breach of a protection order is an offence under Section 31 of the Act.

¹⁸ For further details on orders that can be sought under the PWDVA, see Chapter 7.

6.8 Assistance Required by the Aggrieved Person

FORM I			
7. Assistance that you need			
S.No.	Assistance available	Yes / No	Nature of assistance
(1)	(2)	(3)	(4)
(1)	Counsellor		
(2)	Police assistance		
(3)	Assistance for initiating criminal proceeding		
(4)	Shelter Home		
(5)	Medical Facilities		
(6)	Legal aid		

Recognising that an aggrieved person may require various kinds of assistance that are not limited to the provision of legal aid, the DIR allows for the recording of the nature of assistance sought. Once this is recorded, the PO must facilitate the aggrieved person's access to appropriate components of the Domestic Violence Response System.¹⁹

As mentioned in Chapter 5, notified shelter homes and medical facilities are obligated to provide shelter or medical services to an aggrieved person on a request made by the PO. In case the aggrieved person seeks shelter or medical services, a Protection Officer must, in accordance with Rules 16 and 17, make such a request in writing and attach a copy of the DIR to the written request.

Even if a DIR is not recorded, a medical facility or a shelter home cannot deny services to the aggrieved person on a request made by the PO.²⁰

If a request is made to a medical facility without an accompanying DIR, the person-in-charge of the medical facility may fill in the DIR and forward a copy of the same to the PO of the jurisdiction.²¹

Domestic Incident Report: Key Points

- While registering the DIR, as far as possible, the aggrieved person should furnish all the details of domestic violence.
- The DIR can be recorded by a Protection Officer, a registered Service Provider or a medical facility.

¹⁹ For further details on the Domestic Violence Response System, see Chapter 5.

²⁰ Proviso to Rules 16(2) and 17(2)

²¹ Rule 17(2)

Domestic Incident Report: Key Points (con't.)

- A woman may file a separate DIR for each act of domestic violence visited upon her.
- A DIR can be recorded where the incident of domestic violence occurred or where the aggrieved person resides/works.
- Recording the DIR does not automatically trigger judicial processes; these must be requested by the aggrieved person.
- Authenticated copies of prior DIRs may have evidentiary value in subsequent cases.
- A DIR might be useful to the aggrieved person in accessing other forms of support services.

6.9 Other Important Guidelines to Completing the Domestic Incident Report

If the matter reaches Court, the Court shall rely on the DIR as it is meant to be an authentic public record of the aggrieved person's complaint. It is, therefore, essential to ensure that a DIR is recorded with care and precision and, preferably, supported with all relevant documents.

Protection Officers must not act on information received anonymously as it is not authentic information. All information received by the PO must be reduced to writing and signed by the informant. In cases of emergency, a PO may, on the receipt of information from a reliable source, visit the place of occurrence of violence, along with a police officer, to record a DIR before initiating any legal action.²²

It may happen that while filling the DIR, the aggrieved woman may not disclose all the information. Therefore, the PO should first counsel the aggrieved person on how to fill in the DIR with all the essential details. The PO can also verify the information by asking straightforward questions, as discussed in Chapter 5 (Part 5.2.2).

It is also possible that when an aggrieved person first approaches the PO, she may be too disturbed or traumatised to complete the DIR accurately. In such cases, the PO should use this first meeting to inform the aggrieved person of her rights and remedies under the law and facilitate her access to support services. The PO can then call her back at a later time when she is in a better frame of mind to record the DIR.

A PO must distinguish between information that is *incomplete* and that which is *contradicting*. While incomplete information can be completed at a later stage, new episodes cannot be invented without basis, as this gives rise to contradictions.

However, when adding further information to a previously incomplete DIR, it is advisable to do so on a new DIR. The PO can explain the two DIRs by pointing to the aggrieved person's traumatised state of mind at her first visit, which affected the information she was able to provide on her original DIR.

In those cases where the aggrieved person approaches the Court directly, whereupon the Court directs the PO to record and submit a DIR, the PO must refer to the application filed by the aggrieved person to ensure that the information recorded in the DIR is consistent.

²² Rule 9

The PO must also take utmost care that no new submission is made in an application filed in Court that is not already mentioned in the DIR, unless there is documentation to prove the same.

Separate DIRs can also be recorded if the aggrieved person alleges new facts or episodes of violence. This can be done even if the application has already been filed in Court.

Best Practice : The Domestic Incident Report Index

The PWDVA furthers the desirable goal of developing and maintaining comprehensive, state-wide records by requiring DIRs recorded by POs to be forwarded to the local police and Courts.

The practice adopted by the police in Andhra Pradesh, in association with the state Department of Women and Child, takes this idea further. There, police authorities have established a *Domestic Incident Report Index* which includes all DIRs recorded throughout the state and tracks their status in a standard format.

On registration of the DIR, a “Domestic Incident Report Number” is assigned to each complaint by the responsible PO. After the DIR is forwarded to Court and, upon the filing of Form II, the Magistrate assigns a “Domestic Violence Case Number”. DIRs, DIR Numbers, and Domestic Violence Case Numbers, as well all other pertinent information, are maintained in the *Index*. To more closely monitor the status of both individual cases and the overall picture, authorities envision a “Domestic Incident Report Abstract” from which a system-wide “Quarterly Abstract” can be prepared and made available to all implementing agencies.

6.10 The Role of the Police in Recording the DIR

FORM I (8)

8. Instruction for the Police Officer assisting in registration of a Domestic Incident Report:

Wherever the information provided in this Form discloses an offence under the Indian Penal Code or any other law, the Police Officer shall-

- (a) inform the aggrieved person that she can also initiate criminal proceedings by lodging a First Information Report under the Code of Criminal Procedure, 1973 (2 of 1974).
- (b) if the aggrieved person does not want to initiate criminal proceedings, then make daily diary entry as per the information contained in the domestic incident report with a remark that the aggrieved person due to the intimate nature of the relationship with the accused wants to pursue the civil remedies for protection against domestic violence and has requested that on the basis of the information received by her, the matter has been kept pending for appropriate enquiry before registration of an FIR.
- (c) if any physical injury or pain being reported by the aggrieved person, offer immediate medical assistance and get the aggrieved person medically examined.

The last Item of the DIR enlists the duties of the police. Although the PWDVA recognizes POs and SPs as the appropriate authorities for recording the DIR, the police are also likely to receive complaints of domestic violence.

Pursuant to Section 5 of the PWDVA, a police officer receiving a complaint of domestic violence is under a statutory duty to inform the aggrieved person of her rights under the PWDVA and of the availability of the services of POs, SPs and free legal services.

If the complaint discloses a cognisable offence, particularly an offence under Section 498A of the IPC, the police must inform the aggrieved person of her right to register an FIR and should conduct investigations as warranted. In those cases where the aggrieved person does not want to initiate criminal proceedings and chooses to pursue civil remedies instead, the police is required to record the complaint as a “daily diary entry” in the manner provided in the DIR.

In all instances, the police should refer the aggrieved person to a PO or SP for recording the DIR and taking further action.

6.11 What is to be done after the DIR is Recorded

After recording the DIR and ensuring that the documentation is complete, the Protection Officer must:

- (i) Provide the original DIR to the aggrieved person.
- (ii) Forward a copy of the DIR to the officer-in-charge of the police station of the jurisdiction within which the domestic violence has occurred.
- (iii) Forward a copy of the DIR to the registered Service Provider in the jurisdiction.
- (iv) Forward a copy of the DIR to the Magistrate in whose jurisdiction the domestic violence has occurred.

In cases where the DIR reveals a cognisable offence, but the PO forwards it to the Magistrate without an application for reliefs, the Magistrate may initiate *suo moto* action.

- (v) It is advisable for the PO to retain a copy of the DIR recorded for her/his own records.

Chapter 7

How to File an Application in Court

Under Section 12 of the PWDVA, an aggrieved person can present an application for relief/s to the Court. The same Section also allows a Protection Officer or any other person to file an application for relief/s on behalf of the aggrieved person. The law provides that it is the duty of the PO to make the application to the Magistrate for orders under the PWDVA, if the aggrieved person so requires. The format for preparing an application is provided in Form II of the PWDVR. The format for preparing an affidavit seeking Interim Orders is provided in Form III of the PWDVR. Chapter 7 provides information on the manner in which an aggrieved person may approach the Court and on how to complete Forms II and III. In so doing, this Chapter also provides information on the substantive law on orders and relief/s under the PWDVA.

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7.1 Who Can File an Application?

Under Section 12 of the PWDVA, an aggrieved person can present an application for relief/s under the PWDVA to a Magistrate. An aggrieved person¹ is a woman who:

- (i) Is or has been in a domestic relationship with the respondent;
- and
- (ii) Alleges that the respondent has perpetrated domestic violence on her.

In general, the PWDVA permits only women to bring claims.² A PO or any other person may also present an application on behalf of the aggrieved person or a child³ who has been subject to domestic violence.

Protection of Children

Adults are not the only victims of domestic violence. Children may also be affected, whether at the hands of an abusive father or male relative or simply by experiencing the emotional trauma of witnessing the mother being subjected to domestic violence within the home.

A mother can bring an application on behalf of herself and a child in a domestic relationship on the ground that violence towards the child is also resulting in emotional and mental abuse to her. If the mother is unwilling, for any reason, to file an application for relief/s on behalf of the child, a Protection Officer may take *suo moto* action and file on behalf of the child.

¹ Section 2(a). Also see Section 2(f). For further details on the definitions of “aggrieved person,” “domestic relationship,” “shared household” and “respondent”, see Chapter 6, Parts 6.2 and 6.3.

² “Woman” is not defined under the PWDVA, but should be understood to mean any female, including those under the age of 18. A female under the age of 18 should be permitted to bring an application under Section 12 of the Act through an appointed guardian or a Protection Officer. Section 18(c) of the Act, which covers Protection Orders, mentions children in its reference to aggrieved persons.

³ Section 2(b) of the PWDVA defines “child” in a gender-neutral manner to include all male or female persons under the age of 18 and also includes any adopted child, stepchild or foster child.

Can Abused Domestic Workers File an Application under the PWDVA?

No. Domestic workers who are abused by their employers are not covered under the PWDVA.

The definition of “aggrieved person” is restricted to women who are or have been in a domestic relationship with the respondent. “Domestic relationship” is limited under Section 2(f) to relations of marriage, consanguinity, adoption, joint families or relationships in the nature of marriage. Domestic workers, who do not fall within the ambit of any of these relationships, are not protected by the Act.

However, domestic workers who have been subjected to violence may still use provisions constituting offences in the Indian Penal Code like hurt, grievous hurt, assault, criminal intimidation, and/or sexual harassment, among others.

7.2 How Can an Aggrieved Person Approach the Court?

The PWDVA provides multiple options to the aggrieved person to approach the Court, as discussed below.

- *Option 1*

- (i) The aggrieved person approaches the Court directly, by filing an application either by herself or by engaging a lawyer.⁴
- (ii) As per Section 26, another possibility is that the aggrieved person files an application, in any Court, for relief/s under the PWDVA in a pending legal proceeding that affects the rights of the aggrieved person and the respondent. This may be in ongoing cases of divorce, maintenance or custody in a civil or a family court or in criminal cases under Section 498A or other provisions of the IPC, etc. This provision has been included to avoid multiplicity of proceedings and to facilitate an aggrieved person’s access to Court.

In both the above instances, the aggrieved person may file the application after getting a DIR recorded by a PO or SP. A copy of the DIR would be submitted along with the application. An aggrieved person may also file an application without an accompanying DIR. In such cases, the Court may direct the PO to record and submit a DIR, particularly if the application filed by the aggrieved person is inadequate in any manner.

- *Option 2*

The Protection Officer may file an application on behalf of the aggrieved person. The aggrieved person may approach the PO through any of the following means:

- (i) An aggrieved person may directly approach the PO with a complaint of domestic violence and with the intention of filing an application under the PWDVA.

⁴ In *Milan Kumar Singh v State of UP* [(2007) Cri LJ 4742], the Allahabad High Court held that an aggrieved person may directly approach the Magistrate without having to approach a Protection Officer first.

- (ii) An aggrieved person may approach the police with a complaint of domestic violence. If, after receiving information from the police on her legal rights, the aggrieved person is desirous of filing an application for relief/s under the PWDVA, she will be referred to the PO for assistance in filing the application. The police may initiate criminal proceedings simultaneously, if the case warrants.
- (iii) An aggrieved person may first approach a Service Provider. A SP may attempt counselling both parties to bring about a resolution or compromise. If no settlement is arrived at, the aggrieved person may be referred to the PO for filing an application.

Please note: As per the law, registered SPs may record a DIR. All SPs, whether registered or not, may also file an application on behalf of the aggrieved person.
- (iv) An aggrieved person may approach either a shelter home or medical facility for services. These facilities may refer the aggrieved person to the PO for filing an application.

7.3 Role of the Protection Officer in Filing an Application in Court

The PO has a duty to assist an aggrieved person in preparing and filing an application for relief/s under the PWDVA, if the aggrieved person requires such assistance.⁵ This duty extends to assistance in obtaining all types of orders from the Court whether final or interim.⁶ Once an application is filed, the PO may request the Court to arrange legal aid for the aggrieved person or otherwise facilitate an aggrieved person's access to legal aid.⁷

7.4 General Aspects of Applications Filed in Court

7.4.1 Format for Filing Applications

Form II of the PWDVR provides the format for the application for relief/s under the PWDVA.⁸ Generally, lawyers are required to draft applications to be submitted in Courts. However, Form II provides a simplified and straightforward version of such applications that can be completed directly by the aggrieved person, POs and others without legal qualifications. Form II elicits details of the alleged violence, the relief/s sought and other information necessary for a Court to assess the merits of the application.

An aggrieved person may seek the assistance of a PO in preparing the application and submitting it to the concerned Magistrate.⁹ If the aggrieved person is illiterate, the PO is required to read the application aloud and explain its contents to the aggrieved person.

Although Form II is the preferable format, it is not the only acceptable format and information submitted in some other format may be acceptable to Courts as long as it includes details on the alleged violence and a prayer for relief/s. However, it is advisable that POs use Form II for filing applications in Court.

⁵ Section 9(1)(c) and Rule 8(1)(iii)

⁶ Rule 8(1)(iii)

⁷ Section 9(1)(d) and Rule 8(1)(v)

⁸ Rule 6(1)

⁹ Rule 6(2)

If the questions posed and the space provided in Form II do not allow for a sufficient recording of the particulars, separate sheets may be used. These sheets should be appended to the application submitted.

7.4.2 When Can an Application Be Filed?

Domestic violence often constitutes a cycle of acts manifested in various forms over the course of time. It can be subtle or overt. On occasion it may be difficult to isolate emotional harm from other kinds of violence faced by the aggrieved person. Though physical abuse may cease, its long-term emotional and psychological effect may remain.

Domestic violence can be regarded as “continuing violence”. This is equivalent to the concept of “continuing offence”: i.e., an offence that is not committed once and for all but, rather, continues over time. For example:

- The aggrieved person left her shared household due to emotional and physical abuse at the hands of her husband. She has been staying separately since 2004. The last incident of physical abuse occurred just before she left home. She can file an application for a residence order under the PWDVA, as she continues to be deprived of the shared household and was forced to leave her home as a result of domestic violence.
- An order for maintenance under Section 125 CrPC was passed in 2002 in favour of the aggrieved person against her husband. That order has still not been complied with. The fact that, to date, the husband has failed to maintain the aggrieved person and her children constitutes domestic violence and gives the woman the right to file for relief/s under the PWDVA, even though no fresh incident of domestic violence has been perpetrated by the respondent-husband after the coming into force of the Act.
- The aggrieved person is divorced from her husband and is living separately. Her former husband continues to threaten and stalk her. She can file for a protection order under the PWDVA because she “has been” in a domestic relationship with the ex-husband.

Thus, the law allows an aggrieved person to file an application for acts of domestic violence that took place before the enforcement of the PWDVA in 2006.¹⁰

For example, if a woman was dispossessed from the shared household in 2000 (i.e., before the PWDVA was brought into force), she can still claim a residence order under Section 17. Similarly, a woman denied maintenance for several years could make a claim of economic abuse under the PWDVA. A claim for compensation under Section 22 for pre-PWDVA domestic violence is also possible.

¹⁰ In order to understand this, we must distinguish between *criminal* and *civil* laws and *retrospective* and *retroactive* laws. A criminal law that is retrospective in effect violates fundamental rights. For example: let us suppose that, in 2009, the state enacts a criminal law that penalises persons who construct houses that have more than five storeys. Those people who constructed houses with five or more storeys before 2009 did so before their act was deemed to be an offence. If the new law, with its penal provisions, is applied to these people who constructed their multi-storeyed houses before 2009, it could be struck down as violating fundamental rights. This issue does not arise with regard to the PWDVA as it is a civil law that grants relief/s (rather than a criminal law that penalises actions). The only penal provision in the PWDVA is Section 31, which penalises the breach of court orders. A court order can be breached only after it is granted. A court can grant an order only after the law was brought into effect. Hence, the issue of retrospective effect does not arise vis-à-vis the PWDVA.

The Court may, however, consider issues such as acquiescence and waiver, delays, etc. whenever appropriate at the time of granting relief/s.

The PWDVA does not prescribe any time limit or limitation period within which an aggrieved person must bring her claim. An aggrieved person can, therefore, file an application for acts of domestic violence conducted in the past or even in the distant past. It is for the Court to decide upon the nature of relief/s if any, to be granted.

As per Section 26, if an aggrieved person is involved in litigation that affects her rights as well as the rights of the respondent, then an application for relief/s under the PWDVA can be filed in such pending proceedings. It is advisable for a PO to ascertain whether or not the aggrieved person is involved in any litigation and file the PWDVA application in the Court where that prior litigation is ongoing. This is to avoid a multiplicity of forums and proceedings. However, nothing bars an aggrieved person from filing a separate application under Section 12 of the PWDVA even if there are pending proceedings involving the parties. However, there is an absolute obligation on the aggrieved person to disclose in the application all pending and previous proceedings under any law between the parties in which she has claimed similar relief. Failure to do so will disentitle an aggrieved person from obtaining reliefs under the PWDVA.

Finally, due to the emotional upheavals associated with domestic violence, POs should anticipate that occasionally the aggrieved person will change her mind: first request assistance in filing an application and then decide not to file an application. Women in abusive relationships sometimes go through phases where the perpetrator offers professions of love, appeals for mercy and promises to change, resulting in the woman agreeing to give the man another chance, but in reality simply prolonging the abuse. The PWDVA does not debar an aggrieved person from making repeated applications, especially if there is a fresh incident of violence. A PO is advised to be patient in cases where aggrieved persons make repeated requests for assistance to file applications. It must be remembered that if the aggrieved person wishes to file an application in Court, it is the duty of the PO to assist her and facilitate her access to Court-mandated relief/s. The PO may simultaneously refer the aggrieved person to other available support services such as a counselling centre with a view to empowering her to make an informed decision about her life.

7.4.3 Where Can an Application Be Filed?

Section 27 provides that an application under the PWDVA can be filed before either a Judicial Magistrate of the first class or a Metropolitan Magistrate in urban areas within whose local limits any of the following situations arise:

- (i) The aggrieved person resides either permanently or temporarily or carries on business or is employed.

If the aggrieved person has been dispossessed from the shared household, this provision allows her to file an application in the place where her natal home (in cases where the shared household was also the matrimonial home) or shelter home or any other residence is situated.

- (ii) The respondent resides or carries on business or is employed.

This can allude to the shared household or any other place where the respondent is residing or is employed.

(iii) The cause of action has arisen.

The “cause of action” alludes to the acts of domestic violence that are alleged to have taken place.

By providing such a wide array of choices, the PWDVA allows an aggrieved person to file an application in a place which is entirely different from the place where the act of domestic violence is alleged to have occurred.

FORM II
[See rule 6(1)]

**APPLICATION TO THE MAGISTRATE UNDER SECTION 12
OF THE PROTECTION OF WOMEN FROM DOMESTIC
VIOLENCE ACT, 2005 (43 of 2005)**

To

The Court of Magistrate

.....
.....
.....
.....

] Application under section.....
of the Protection of Women
from Domestic Violence
Act, 2005 (43 of 2005)

SHOWETH:

1. That the application under section..... of Protection of Women from Domestic Violence Act, 2005 is being filed along with a copy of Domestic Incident Report by the:-

(a) Aggrieved person

(b) Protection Officer

(c) Any other person on behalf of the aggrieved person

(tick whichever is applicable)

The form includes three callout boxes with arrows pointing to specific fields: 1. A box labeled 'Fill in the name and address of the court' points to the dotted lines for the court's name and address. 2. A box labeled 'Fill Section 12 in the blank space' points to the blank space between the closing bracket and the 'SHOWETH' section. 3. A box labeled 'Fill in the name and address of the court' also points to the dotted lines for the court's name and address.

7.5 Orders that May Be Sought from the Court

Item 2 of Form II broadly lists the orders available under the PWDVA; Item 3 details the specifics of each of these orders. Item 3(vii) also provides space to include “any other order that she may need but that is not mentioned in the Form.

FORM II, Item 2

It is prayed that the Hon’ble court may take cognizance of the complaint/Domestic Incident Report and pass all/any of the orders, as deemed necessary in the circumstances of the case,

- (a) Pass protection orders under section 18 and/or
- (b) Pass residence orders under section 19 and/or
- (c) Direct the respondent to pay monetary relief under section 20 and/or
- (d) Pass orders under section 21 of the Act and/or
- (e) Direct the respondent to grant compensation or damages under section 22 and/or
- (f) Pass such interim orders as the court deems just and proper;
- (g) Pass any orders as deems fit in the circumstances of the case.

7.5.1 Protection Orders

A protection order is defined under Section 18 of the PWDVA. It is in the nature of a “stop violence” order aimed at:

- (i) Putting an end to additional acts of violence by the respondent against the aggrieved person;
and
- (ii) Preventing acts that adversely impact on the aggrieved person’s rights as recognized under the law.

A court may grant any of the orders mentioned in Section 18 to:

- (a) Prevent the commission of further acts of domestic violence, including orders to prevent the respondent from aiding and abetting the commission of acts of domestic violence.
- (b) Prevent the respondent from entering the aggrieved person’s place of employment or education and causing harassment.
- (c) Prevent the respondent from communicating with the aggrieved person in any manner.
- (d) Prevent the respondents from taking any financial action to the aggrieved person’s detriment.

- (e) Prevent any violence being caused to a person related to or dependent on the aggrieved person.

Item 3(i) of Form II lists specific orders that an aggrieved person may seek from the Court.

FORM II, Item 3(i)

Order required:

(i) Protection Order under section 18

- Prohibiting acts of domestic violence by granting an injunction against the Respondents from repeating any of the acts mentioned in terms of column 4(a)/(b)/(c)/(d)/(e)/(f)/(g) of the application
- Prohibiting Respondent(s) from entering the school/college/workplace
- Prohibiting from stopping you from going to your place of employment
- Prohibiting Respondent(s) from entering the school/college/any other place of your children
- Prohibiting from stopping you from going to your school
- Prohibiting any form of communication by the Respondent with you
- Prohibiting alienation of assets by the Respondent
- Prohibiting operation of joint bank lockers/accounts by the Respondent and allowing the aggrieved person to operate the same
- Directing the Respondent to stay away from the dependants/relatives/any other person of the aggrieved person to prohibit violence against them
- Any other order, please specify

Domestic violence manifests in different ways and it is not possible to list all possible types of protection orders in Form II. Instead, the PWDVA vests wide powers with the Magistrate to grant orders designed to prohibit specific acts of violence from being committed.¹¹ Hence, if the listing provided in Form II, Item 3(i) does not include the exact nature of the order that the aggrieved person requires, then the space provided for “any other order” should be used to supply details. The attempt should be to seek orders that correspond to the particular acts of violence from which the aggrieved person requires protection.

For instance, a Magistrate has the power to grant the following kinds of protection orders, in addition to those enlisted in Item 3(i)

¹¹ Section 18(g) empowers the Magistrate to grant a protection order to prohibit the respondent from “committing any other act as specified in the protection order”.

- Prohibit the respondent(s) from talking to the aggrieved person about marriage or forcing her to meet a particular person for marriage, as for example, when the aggrieved person's parents are pressuring her to get married against her will.
- Direct the respondent(s) to restore possession of the aggrieved person's *stridhan*, jewellery or clothes.¹²
- Direct the respondent(s) to surrender and/or refrain from acquiring firearms, other weapons or any dangerous substances.
- Prohibit the respondent(s) from consuming alcohol or illegal drugs, particularly if alcohol or drug use contributed to the domestic violence.

Finally, it must be remembered that a protection order can be sought not only to address and remedy acts of violence that have occurred, but also to address threats of domestic violence.

7.5.2 Residence Orders

7.5.2.1 Background: The Right to Reside

Section 17 of the PWDVA recognizes a woman's right to reside in a shared household. Prior to the enactment of the PWDVA, the right to reside vested in those who held the right, title over or interest in the property. For instance, if the father owned the shared household or if the lease of a shared household was in his name, then he had the right to reside in the shared household. He could then allow other dependents to reside in the shared household with him. In most instances, it is the male head of the family who holds the title or ownership over or interest in the property. Therefore, in effect, women had no right to reside in their homes, as they generally do not hold the title over property or have adequate or equal property rights.

As a result, the forced dispossession of women from the shared household was fairly common, particularly as a consequence of domestic violence. In fact, a tenant or an illegal occupant had better safeguards for residence than did women, as the former could be dispossessed only after obtaining an eviction order from the court. By recognizing a woman's right to reside in the shared household, the PWDVA guards against her illegal dispossession. Section 17(2) specifies that women in domestic relationships cannot be dispossessed from any part of the shared household, except in accordance with procedure established under law.¹³

In order better to understand Section 17(2), it is important to distinguish the *right to reside* recognised in Section 17(1) from *property rights*. All that the PWDVA does is to provide a *procedural safeguard*

¹² Section 19(8). In the proposed law submitted by LCWRI to the Government of India, Section 19 was actually a sub-section of Section 18. Due to an inadvertent error, two separate provisions instead of just one made their way into the final Act. This has led to much confusion in the implementation of the Act.

¹³ The PWDVA puts into legislation a right that has previously been recognised in case law on maintenance rights of wives. In *B.P. Achala Anand* [(2005) 3 SCC 313], the Supreme Court stated, "A Hindu woman is entitled to be maintained by her husband. She is entitled to remain under his roof and protection. She is also entitled to a separate residence if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence or for just cause she is compelled to live apart from him. The right to residence is part and parcel of the wife's right to maintenance." See also *Ruma Charaborty v Sudha Rani Banerjee* [(2005) 8 SCC 140].

against dispossession to women; it does not create any *substantive rights* over the property. What this means is that a woman cannot be dispossessed from the household that she shares with the perpetrator of violence as a result of violence. If she is to be dispossessed, then the procedure set out in law has to be followed,¹⁴ which will vary according to the nature of ownership or title over the property.¹⁵

Saying that no substantive rights are created means that the right to reside under the PWDVA does not affect the existing ownership structure established under existing property laws. A woman facing domestic violence can exercise her right to reside in the shared household, but this does not mean that she is entitled to seek a share of ownership in the property in her application under the PWDVA. Issues of ownership are determined on the basis of applicable property laws in a separate civil court.¹⁶

Not only does the PWDVA provide a right of residence, it also creates mechanisms by which that right can be meaningfully exercised by women. Residence orders and protection orders, for example, are both available to assure the aggrieved person of a home without fear of additional violence or destitution.

7.5.2.2 Residence Orders: Specific Details

A Residence order may be sought in cases where the aggrieved person apprehends dispossession from the shared household or in cases where she is already dispossessed and seeks to be restored to the shared household.

A Residence order is granted on the basis of Section 17(1) of the PWDVA, which recognizes a woman's right to reside in the shared household irrespective of whether she has a right, title or ownership in the shared household. This means that there is no need for an aggrieved person to provide evidence of her right or interest in the shared household. All that an aggrieved person must provide is evidence of the domestic relationship and that the premises over which the Residence order is sought is the shared household.¹⁷

The kinds of Residence orders that an aggrieved person may seek are provided in Section 19(1) of the PWDVA and further detailed in Form II, Item (3)(ii) of the PWDVR. Sub-sections (2)-(8) of Section 19 provide for other orders that can be granted by Magistrates to ensure that residence and protection orders are enforced.

Residence orders enlisted under Section 19 are aimed towards ensuring an aggrieved person's peaceful possession of the premises. In this regard, the aggrieved person may seek orders to:

- Restrain the respondent from committing any acts that interfere with the aggrieved person's peaceful possession of the shared household.¹⁸

¹⁴ For instance, if the shared household constitutes tenanted premises, the landlord may protect his interests by initiating proceedings for eviction following the procedure established under rent laws. The woman will have the right to defend the proceedings in view of her right to reside, even if the premises are not tenanted in her name.

¹⁵ Property laws and procedure may vary from state to state as this is a state subject.

¹⁶ If the aggrieved person is involved in litigation on property matters that affects the rights of both parties, (i.e. the aggrieved person and the respondent), then, as per Section 26, she can file an application for relief/s under the PWDVA in those pending proceedings.

¹⁷ For further details on the documentation required, see Chapter 6, Part 6.6

¹⁸ Section 19(1)(a). If a woman resides in the matrimonial home, she has a better chance of succeeding in her demand for shelter and a right to stay in the same house.

- Prevent the respondent from dispossessing the aggrieved person from the shared household or any portion thereof.¹⁹
- Prohibit the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides.²⁰
- Prohibit the respondent from committing any acts to defeat a woman’s right to reside, such as alienating or selling off the shared household, renouncing his own share in the shared household, etc. ²¹
- Direct the respondent to leave the shared household.²² The Proviso to Section 19(1) states that this order cannot be passed against any person who is a woman. ²³ Hence this order cannot be sought against any female respondent. However, female respondents may be prevented from entering any portion of the shared household in which the aggrieved person resides.²⁴
- Though this order is not specifically enlisted, an aggrieved person may seek an order for her restoration to the shared household, in case she has already been dispossessed. The Magistrate’s power to grant this order is derived from the right to reside recognised in Section 17(1).
- In case the aggrieved person is apprehensive of further acts of violence being committed on her return to the shared household, she may seek a direction ordering the respondent to provide her with suitable alternate accommodation.²⁵ If the aggrieved person has identified a suitable accommodation, then the respondent can be directed to pay the rent of such alternate accommodation. According to Section 19 (1)(f), the accommodation granted under such an order has to be at the “same level...as enjoyed by her in the shared household...”

FORM II, Item 3(ii)

(ii) Residence Order under section 19

- An order restraining Respondent(s) from
- Dispossessing or throwing me out from the shared household
- Entering that portion of the shared household in which I reside
- Alienating/disposing/encumbering the shared household
- Renouncing his rights in the shared household

¹⁹ Ibid.

²⁰ Section 19 (1)(c)

²¹ Section 19 (1)(d)-(e)

²² Section 19 (1)(b)

²³ The proviso to Section 19(1) says, “provided that no order under clause [19(1)] (b) shall be passed against any person who is a woman.”

²⁴ See footnote 15 above

²⁵ Section 19(1)(f)

FORM II, Item 3(ii) (con't.)

- An order entitling me continued access to my personal effects
- An order directing Respondent(s) to
- Remove himself from the shared household
- Secure same level of alternate accommodation or pay rent for the same
- Any other order, please specify

If the orders enlisted in Form II, Item (3)(ii) do not reflect the exact kind of order that the aggrieved person requires, then the specific nature of the order sought should be provided under the heading “any other order”. It is advisable to be as specific as possible in this request. For example, the aggrieved person may seek to restrain the respondent from throwing garbage on the portion of the shared household in which the aggrieved person resides.

Can a divorced woman ask for a residence order in the shared household of her ex-husband?

A divorced woman victimised by domestic violence is generally not entitled to reside in the shared household of her ex-husband.

In *B.P. Achala Anand v. Appi Reddy & Anr.* [(2005) 3 SCC 313] and *Ruma Chakraborty v. Sudha Rani Banerjee & Anr.* [(2005) 8 SCC 140], the Supreme Court held that because divorce is a termination of the matrimonial relationship, the right to residence depends upon the terms and conditions within the decree of divorce. Accordingly, a divorced woman can enforce the right to reside only if she has not expressly waived or compromised that right in her decree of divorce in appropriate proceedings under divorce laws. Absent a provision in the divorce decree allowing it, a divorced woman is not entitled to return to the former shared household. However, if she has not expressly forfeited or given up her right to post-divorce alimony, she can claim a right to reside in appropriate proceedings.

7.5.3 Additional Orders that Can Be Sought to Ensure the Enforcement of Protection and Residence Orders

The remaining provisions of Section 19, i.e. sub-sections (2)-(8), are useful directives that can be sought to ensure that residence and protection orders are enforced. The Magistrate is empowered to grant any of these orders *in addition* to any order granted under Sections 18 and 19(1). The aggrieved person may seek these orders at the time of completing Form II under the heading “any other order” in Items 3(i) and (ii).

- Section 19(2): The Magistrate may impose additional conditions or give specific directions to protect or provide for the safety of the aggrieved person. For example: an order to the police to guard the shared household and prevent the respondent from entering, in addition to an order granted under Section 19(1)(b).

- Section 19(3) and (4): The Magistrate may direct the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence. The execution of a bond is equivalent to providing “security for keeping peace and for good behaviour” prescribed in Chapter VIII of the CrPC. The breach of the conditions mentioned in the bond is a punishable offence.
- Section 19(5) and (7): The Magistrate may direct the police to give protection to the aggrieved person or to assist her in the implementation of the protection or residence order granted.
- Section 19(6): The Magistrate may, in addition to a residence order, impose obligations on the respondent to pay rent or meet other financial obligations.
- Section 19(8): The Magistrate may compel the respondent to return to the aggrieved person her *stridhan* or any other property to which she may be entitled.

7.5.4 Regaining Possession of Stridhan

Stridhan refers to gifts given to a woman at the time of her marriage; for example: clothes, ornaments, jewellery, household items, cash, etc.²⁶ The woman is the absolute owner of *stridhan* and can deal with it in any manner she likes. She may sell it, gift it, spend it or dispose of it in any manner she likes without any reference, consultation or permission of her husband. Only in situations of extreme distress may the husband use this property, and even here he is morally bound to restore the property or its value to the woman as soon as possible.²⁷

In situations of domestic violence, it is likely that women will leave their *stridhan* in the matrimonial home, in the custody of either the husband or his relatives. In such cases, an aggrieved person can seek a direction from the Court for the retrieval of her *stridhan*. This direction may be sought while seeking a protection or residence order in Form II.

In order to demonstrate that the items to be retrieved are part of *stridhan*, the following documentation, if available, can be relied upon:

- (i) A copy of the list of gifts and items received during marriage. In a Muslim marriage, such a list is often made during the *nikah* ceremony.
- (ii) Bills of *stridhan* items, photographs of the aggrieved person wearing the jewellery or of her using the items, etc.

If the aggrieved person does not have a list of her *stridhan*, she should try to recollect and prepare a list the items received as *stridhan*. If the items are kept in a locker, then bank details must be provided such as the name of the bank, locker number, etc.

²⁶ In *Pratibha Rani v. Suraj Kumar* [(1985) 2 SCC 370], the Supreme Court identified *stridhan* as: “‘*Stridhan*’ or *Saudayika* means the gift of affectionate kindred and includes both *Yautaka* or gifts received at the time of marriage, as well as *Ayautaka*. Manu enumerates six kinds of *stridhan*: (i) Gifts made before the fire at the time of marriage; (ii) Gifts made at the bridal procession; (iii) Gifts made in token of love by her father-in-law and mother-in-law and those made at the time of making obeisance at the feet of elders; (iv) Gifts made by father; (v) Gifts made by mother; (vi) Gifts made by brother”

²⁷ *Pratibha Rani v. Suraj Kumar*, *Ibid*.

If the respondent agrees to return *stridhan*, then items so returned must be recorded and maintained in a list. Details of the person paying for the conveyance used to return *stridhan* and the method of conveyance used should also be recorded.

If, for any reason, the respondent refuses to return *stridhan* items, a complaint under Section 406 of the IPC may be recorded and police assistance may be sought to retrieve the items. For this purpose, an NCR may be recorded stating the date that the aggrieved person left her matrimonial home and the items taken from and left behind at that time.

7.5.5 Monetary Orders

Section 20 of the PWDVA provides for monetary orders. The aim of this provision is to ensure that women facing domestic violence have adequate financial support and are not rendered vulnerable due to their financial dependence on male members of the family.

The relief/s available under this provision can broadly be divided into two:

- (i) Payment for losses and expenses incurred as a consequence of domestic violence; provided for in Form II, Item (3)(iii).
- (ii) Payment for maintenance to meet daily needs and expenses of the aggrieved person and her children; provided for in Form II, Item (3)(iv).

FORM II, Item 3(iii)-(iv)

(iii) Monetary reliefs under section 20

- Loss of earnings, Amount claimed
- Medical expenses, Amount claimed
- Loss due to destruction/damage or removal of property from the control of the aggrieved person,
Amount claimed
- Any other loss or physical or mental injury as specified in clause 10(d)
Amount claimed
- Total amount claimed
- Any other order, please specify

(iv) Monetary reliefs under section 20

- Directing the Respondent to pay the following expenses as monetary relief:
- Food, clothes, medications and other basic necessities, Amount per month

FORM II, Item 3(iii)-(iv) (con't.)

<input type="checkbox"/>	School fees and related expenses	Amount	<input type="text"/>	per month
<input type="checkbox"/>	Household expenses	Amount	<input type="text"/>	per month
<input type="checkbox"/>	Any other expenses	Amount	<input type="text"/>	per month
		Total	<input type="text"/>	per month
<input type="checkbox"/>	Any other order, please specify <input type="text"/>			

7.5.5.1 Payment for Losses and Expenses Incurred as a Consequence of Domestic Violence

Under this category, the aggrieved person may seek orders directing the respondent to pay for:

- (i) Loss of earnings due to domestic violence. This is particularly relevant for daily wage workers or those working on daily rates.
- (ii) Medical expenses incurred to treat injuries sustained as a result of domestic violence, which includes treatment for both physical and mental injuries. For example: fees paid to physicians and mental health professionals.
- (iii) Loss of property.
- (iv) Any other loss sustained as a result of domestic violence.

The orders for payment under this category are based on actual expenditure incurred. Therefore, in order to strengthen these claims for relief, it is advisable to include work certificates, medical certificates, bills, etc. to the application.

Further, orders under this category are available to all aggrieved persons and are not limited to those in matrimonial relationships.

7.5.5.2 Maintenance

Section 20(1)(d) of the PWDVA provides that the Court may order the respondent to pay maintenance to the aggrieved person and to her children. This can be paid as a lump sum amount or in instalments.

The right to maintenance of wives and other dependents is also recognized under various Personal Laws. Section 125 of the CrPC obligates a person to maintain his wife, including a divorced wife who is not remarried; children, whether legitimate or illegitimate; and parents who are unable to maintain themselves.²⁸ Section 20(1)(d) of the PWDVA specifies that the amount of maintenance granted can be in addition to the

²⁸ Section 125 CrPC requires a person to pay monthly maintenance if:

- His wife is unable to maintain herself. For the purposes of this section, “wife” includes a divorced wife who has not remarried.
- He has a legitimate or illegitimate minor child.
- He has a legitimate or illegitimate disabled major child, not being a married daughter.
- His father or mother is unable to maintain himself or herself; and if the person has sufficient means but neglects or refuses to maintain his father or mother.

amount received on an order under any of these other laws. Hence, the ambit of Section 20(1)(d) is broader than the provisions contained in any of these other laws. This means, for instance, that sisters and unmarried daughters may claim maintenance from their brothers or fathers respectively. Aggrieved persons who are in relationships that are in the nature of marriage can also claim maintenance under this provision.

Maintenance may include provision for food, clothing, residence, education of children, medical attendance or treatment.²⁹ The principles followed under Section 125 CrPC in determining maintenance amounts may be used for determining the amount of maintenance under Section 20(1)(d).

7.5.5.3 Quantum of Monetary Relief

Section 20(2) of the PWDVA states that monetary relief under both categories – i.e. payment for loss and payment for maintenance – has to be “adequate, fair, reasonable and *consistent with the standard of living* to which the aggrieved person is accustomed” [emphasis added].³⁰ It is, therefore, important to submit a claim that is based on a realistic assessment of the respondent’s income and standard of living.

The following documents may be useful to demonstrate the respondent’s standard of living:

- Pay slip of the respondent
- Income tax and other tax returns
- Bank statements and papers
- Title deeds of property owned by the respondent
- Shares/bond certificates
- Receipts of any other asset purchases or documents related to capital acquisition.

These documents may be useful to demonstrate the standard of living and lifestyle of the respondent and the aggrieved person. In case an aggrieved person is not able to produce any papers as evidence, she can seek an order under Rule 10(1)(b) for directions to the Protection Officer to conduct an inquiry into financial assets. Please note: a PO cannot conduct such enquiries without an express order from the Court.

It is advisable for the aggrieved person to seek a lump sum amount instead of monthly instalments to prevent hardship if the perpetrator defaults.

²⁹ *State of Haryana v Smt Santra* [(2000) 5 SCC 182]

³⁰ In *Jasbir Kaur Sehgal v Dist. Judge Dehradun* [(1997) 7 SCC 7], the Supreme Court opined, “no set formula can be laid down for fixing the amount of maintenance. It has in the very nature of things to depend on the facts and circumstances of each case. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case.”

7.5.6 Custody Orders

Section 21 provides for the grant of temporary custody³¹ of children to the aggrieved woman (or to the person who has applied on their behalf) at the time of granting protection orders.³² The underlying rationale is twofold: to protect the children and to ensure that they are not used as pawns to coerce the woman to stay in a violent domestic relationship. It is important to emphasize that custody orders under the PWDVA are only temporary in nature and that issues of permanent custody have to be decided in accordance with provisions of the Personal Law applicable to the aggrieved person or the Guardianship and Wards Act.

FORM II, Item 3(v)

(v) Custody Order under Section 21

Direct the Respondent to hand over the custody of the child or children to the –

Aggrieved Person Any other person on her behalf, details of such person

In making custody decisions, the Court will be guided by considerations of what is in the best interest of the child. In assessing best interest, the Court will consider the following:

- Who would have better care and consideration for the welfare of the child;
- Where is the child more likely to be happy;
- By whom the mental and physical development and comfort of the child can be better looked after;
- Who has the desire, determination, concept and capacity to provide for better education and round-the-clock nursing of the child; and
- Who would be available by the side of the child when the child needs love and affection, care, counselling and protection.

Material considerations, though important, are secondary to issues of stability, security, compassion, guidance and any other factors “essential for the full development of the child’s own character, personality and talents”.³³ Hence, it is not necessary for the aggrieved person to demonstrate that she has the financial capacity to look after the child. However, she may be called upon to demonstrate that awarding her custody shall be in her child’s best interest.

³¹ The term *custody* should not be confused with the term *guardianship*. “Custody” pertains to the child’s physical placement. “Guardianship” pertains to all aspects of access, custody and care of the child and/or its property.

³² The use of the term “at the time of granting protection orders” in Section 21 means that an order for temporary custody cannot be claimed by itself. However, separating a woman from her children may be regarded as a form of emotional abuse and blackmail. Hence, at the time of claiming an order for temporary custody, it is advisable to also claim a protection order to stop violence from being committed.

³³ *Dhanwanti Joshi v. Madhav Unde* [1998 (1) SCC 112]: “Welfare is an all encompassing word. It includes material welfare both in the sense of adequacy of resources to provide a pleasant home and a comfortable standard of living and in the sense of adequacy of care to ensure that good health and due personal pride are maintained. However *while material considerations have their place, they are secondary matters*. More important are the stability and the security, the loving and understanding care and guidance, the warm and compassionate relationships that are essential for the full development of the child’s own character, personality and talents.” [Emphasis added]

At the time of granting temporary custody orders, the Court may specify conditions under which the respondent may visit the children.

7.5.7 Compensation Orders

Section 22 of the PWDVA provides for compensation orders for injuries sustained as a result of acts of domestic violence. Injuries may include mental torture and emotional distress. A compensation order is over and above all other orders granted under the PWDVA. The distinction between an order for monetary relief and a compensation order is that the former is intended to meet actual expenditure incurred whereas the latter is meant to compensate for injuries caused to the aggrieved person above and beyond the actual loss or expenditure.

FORM II (3) (vi)

(vi) Compensation order under section 22

A compensation order may be applied for in addition to any other claim/s for damages under civil law. Amounts granted by the Courts in other proceedings must be disclosed in the application under the PWDVA. Such amounts shall then be deducted from the compensation order granted by the Court.

In her application, the aggrieved person needs only to indicate that she requires a compensation order. The amount of compensation is determined by the Court after assessing the facts and circumstances of the case and the extent of injuries sustained.

Finally, if the orders enlisted in Form II do not meet with the aggrieved person's requirements, then the space provided in Form II, Item (3)(vii) can be used to seek specific orders.

7.6 Other Details to Be Completed in Form II

Item 4 of Form II pertain to details on other litigation proceedings and their outcomes.

FORM II, Item 4

4. Details of previous litigation, if any

- (a) Under the Indian Penal Code, sections Pending in the Court of
- Disposed of, details of relief
- (b) Under Cr.P.C., section Pending in the court of
- Disposed of, details of relief
- (c) Under the Hindu Marriage Act, 1956, sections Pending in the court of

FORM II, Item 4 (con't.)

Disposed of, details of relief

(d) Under the Hindu Adoptions and Maintenance Act, 1956, sections
 Pending in the court of

Disposed of, details of relief

(e) Application for maintenance, under section..... under Act
 Interim maintenance Rs. p.m.
 Maintenance granted Rs. p.m.

(f) Whether Respondent was sent to Judicial Custody.
 For less than a week For less than a month
 For more than a month
 Specify period

(g) Any other order

The need to provide these details is based on Section 36 of the PWDVA which provides that the PWDVA can be used in addition to any other law. Even if an aggrieved person has pending litigation under other laws, she can initiate separate proceedings under the PWDVA for relief/s. However, at the time of her PWDVA application, she must mention the other proceedings in which she may be involved. Failure to disclose details of previous and pending proceedings may lead to the dismissal of the application on the ground that the aggrieved person has not approached the court with “clean hands”.

Item 4 of Form II provides space for recording details of pending and disposed of proceedings in which the aggrieved person is or had been involved. The written pleadings submitted in such proceedings can be consulted to complete details required under this Item.³⁴ If the matter has been disposed of, it is important to mention details of the order that was granted. It is also advisable that the aggrieved person append to her PWDVA application a copy of the orders granted in the other proceedings, if she has such a copy available.

Item 4(f) is significant. Details of the respondent’s prior history of incarceration may be useful in proving proclivity towards and past episodes of violence.

Form II ends with prayers to the Court to issue appropriate orders and provides a verification of the details completed in the Form.

In cases where the Protection Officer assists the aggrieved person in completing Form II, her signature (or thumb impression, if she is illiterate) is required in two places, as shown in the box below. The

³⁴ All written pleadings submitted in Court indicate the relevant provision under which the petition is filed in the heading.

aggrieved person's signature/thumb impression indicates that she agrees with the contents of the Form. Before obtaining the aggrieved person's signature, it is advisable that the PO read out the contents of Form II to her and make sure that she agrees with it.

The term "deponent" used in the portion on verification denotes the aggrieved person or the person making the statements. The verification must be counter-signed by the Protection Officer.

Prayer:

It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to grant the relief (s) claimed therein and pass such order or orders other order as this Hon'ble Court may deem fit and proper under the given facts and circumstances of the case for protecting the aggrieved person from domestic violence and in the interest of justice.

Place: Complainant/Aggrieved person through
Dated: Counsel

Aggrieved person to sign

VERIFICATION

Verified at.....place) on this day of.....that the contents of paras 1 to 12 of the above application are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

Deponent

Countersignature of Protection Officer with date.

7.7 How to Obtain Interim Orders

The PWDVA provides civil reliefs that are primarily injunctive (preventive) in nature. Interim and *ex parte* orders, being immediate and emergency injunctions, are very important in preventing domestic violence and irreparable harm³⁵ being caused to the aggrieved person. Interim orders should be granted in those cases where, if they are not granted, the purpose of filing the application will be defeated. The provision for such orders is contained in Section 23 of the PWDVA.

An interim order may be sought at the time of filing the application or at any time during the course of the proceedings. Interim orders are granted pursuant to affidavits submitted in support of the application. Although it is not a matter of right, interim orders can be granted solely on the basis of affidavits, as long

³⁵ "Irreparable harm" or damage is any injury that cannot be monetarily compensated.

as the affidavits provide sufficient details. It is important to note that written interim orders can be passed on the basis of affidavits and oral arguments.

An *ex parte* order is one that is granted without prior notice to the respondent or in the absence of the respondent. *Ex parte* orders may be granted when the aggrieved person's application *prima facie*³⁶ shows that the respondent is committing or there is a likelihood of his committing domestic violence. These orders may also be granted when the respondent fails or refuses to appear in Court despite written notice being served.³⁷ *Ex parte* orders can be either interim or final in nature.

The format of an affidavit required for seeking interim orders is provided in Form III reproduced below.³⁸ Form III should contain adequate and accurate details of the domestic violence apprehended.

The affidavit in Form III serves two purposes. First, it supports the application filed in Form II, as the word "affidavit" means a statement on oath or a declaration of certain facts to whose truthfulness the aggrieved person is willing to swear. Second, it allows space for the aggrieved person to seek interim orders that are needed immediately to prevent apprehended domestic violence or address domestic violence already faced.

Most of the information sought in Form III is a repetition of statements made in Form II. However, the following aspects that must be borne in mind while completing Form III:

- (i) Form III must be submitted in the same Court as the application.
- (ii) The details provided in Form III should be in consonance with statements made in Forms I and II.
- (iii) Under Item 2 of Form III, the aggrieved person, if she is the mother of the children, can put her own name as the natural guardian of minor children.³⁹
- (iv) Item 9 of Form III is very significant in seeking Interim Orders. In this space actual and apprehended fears of domestic violence should be accurately recorded, along with details of the specific nature of violence apprehended, such as verbal and non-verbal threats, threatening behaviour, prior conduct that leads to the apprehension of further acts of violence being committed.

³⁶ A *prima facie* case is one in which there is a bona fide contention between the parties or a serious question to be tried and this contention/question is evident on the "face of it": i.e., evident from the facts related in the affidavit or in any other written submission.

³⁷ For details on the service of notice, see Chapter 8

³⁸ Rule 6(4) and Rule 7

³⁹ The Hindu Minority and Guardianship Act states that the "natural guardianship" of a minor vests with the father and, after him, the mother. Prior to the *Giitha Hariharan* case [(1999) 2 SCC], this provision was interpreted to mean that the mother would be the natural guardian only after the lifetime of the father. This interpretation was rejected by the Supreme Court which held that the phrase "after him" as used in the statute, did not necessarily mean after the death of the father, but would include circumstances where the father was indisposed or incapable of being the natural guardian. A father who allegedly perpetrates violence on his children cannot be deemed capable of being a natural guardian.

FORM III

(See rule 6(4) and 7]

**AFFIDAVIT UNDER SECTION 23 (2) OF THE PROTECTION OF WOMEN
FROM DOMESTIC VIOLENCE ACT, 2005**

IN THE COURT OF....., MM,

P/S:.....

IN THE MATTER OF:

Ms. & Others

...COMPLAINANT

VERSUS

Ms. & Others

...RESPONDENT

AFFIDAVIT

I,, W/o Mr., R/O..... D/o Mr.
R/o....., presently residing atdo hereby solemnly affirm and declare on
oath as under:

1. That I am the Applicant in the accompanying Application for
filed for myself and for my daughter/son.
2. That I am the natural guardian of.....
3. That being conversant with the facts and circumstances of the case I am competent to
swear this affidavit.
4. That the Deponent had been living with the Respondent/s at
since.....to.....
5. That the details provided in the present application for the grant of relief under section
(s).....have been entered into by me/at my instructions.
6. That the contents of the application have been read over, explained to me in English/Hindi/
any other local language (Please specify.....)
7. That the contents to the said application may be read as part of this affidavit and are
not repeated herein for the sake of brevity.
8. That the applicant apprehends repetition of the acts of domestic violence by the
Respondent(s) against which relief is sought in the accompanying application.
9. That the Respondent has threatened the Applicant that

.....
.....
.....
.....

10. That the reliefs claimed in the accompanying application are urgent in as much as the applicant would face great financial hardship and would be forced to live under threat of repetition/escalation of acts of domestic violence complained of in the accompanying application by the Respondent(s) if the said reliefs are not granted on an ex-parte ad-interim basis.
11. That the facts mentioned herein are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

DEPONENT

VERIFICATION

Verified at.....on this.....day of..... 20..... That the contents of the above affidavit are correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.

DEPONENT

Chapter 8

Duties of the Protection Officer During and Post-Litigation

Once an application under the PWDVA is filed in Court, the Protection Officer has to perform his/her duties under the Court's supervision. Chapter 8 provides details on the PO's duties that arise during the course of litigation and after the Court grants an order under the PWDVA.

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8.1 Service of Notice

Once an application under the PWDVA is filed in Court, a notice is issued to or “served upon” the respondent to appear in Court and respond to the allegations made in the application. The respondent’s attendance in Court provides him/her the opportunity of a fair hearing prior to the grant of any orders against him.¹

Section 13(1) vests the responsibility of serving notice, by the means prescribed in Rule 12, on the Protection Officer. Once notice is served upon the respondent, the PO has to make a declaration in Court of service of notice. The declaration made by the PO is deemed to be proof that notice has been served upon the respondent.²

8.1.1 Time Limit for Serving Notice

Section 12(4) obligates the Court to fix the first date of hearing: ordinarily within three days of the Court’s receipt of an application under Section 12. After fixing the date of hearing, the Court shall give notice of the hearing to the PO.³ According to Section 13(1), notice has to be served not later than two days from the date on which it received by the PO.

However, under certain circumstances, the Court can extend the date of hearing to such further reasonable time as it deems fit. For instance, the Court may extend the notice period if the respondent does not live in the same city or if the respondent’s whereabouts are unknown. However, in keeping with the intent of the PWDVA of providing much needed immediate relief in cases of domestic violence, the time period cannot be extended to a degree that defeats the rights of the aggrieved person.

8.1.2 Format to Be Used for Serving Notice

The Court may use Form VII provided in the PWDVR to issue notice. Form VII provides details of the parties to the proceedings, the provision under which the application is filed and the date and time of the hearing.

As with all Forms under the PWDVR, it is not mandatory that Form VII be used in all cases. Hence, the Court may use any other format to issue notice.

¹ An interim *ex parte* Order can be granted under the PWDVA under the following conditions:

(i) If the application and the affidavit make out a *prima facie* case of domestic violence
and

(ii) The respondent either wilfully refuses to accept notice or refuses to attend Court after notice has been served.

A final order on an *ex parte* basis can also be granted if the respondent fails to appear in Court after notice is served. An *ex parte* order can be altered, modified or revoked if the respondent makes an application under Section 25(2). For further details on alteration, modification, revocation and appeals, see Part 8.4.

² Section 13(2)

³ Section 13(1)

FORM VII

(See rule 11(1)]

**NOTICE FOR APPEARANCE UNDER SECTION 13(1) OF THE PROTECTION
OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005**

IN THE COURT OF.....

P/S:.....

IN THE MATTER OF:

Ms.

...COMPLAINANT

VERSUS

Ms.

RESPONDENT

To,

Mr.....

S/o.....

R/o.....

.....

.....

WHEREAS the Petitioner has filed an application(s) under section.....of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005);

You are hereby directed to appear before this Court on the.....day of.....20..... at..... O' clock in the.....noon personally or through a duly authorised counsel of this Court to show cause why the relief(s) claimed by the Applicant against you should not be granted, failing which the court shall proceed *ex parte* against you.

Given under my hand and the seal of the Court of.....on the.....day of.....20.....

Seal of the Court

Signature

At the time of receiving the notice from the Court, it is advisable that the PO check the following details:

- (i) The complete name and address of both parties and any other details that facilitate the identification of the parties.⁴
- (ii) It is useful to obtain addresses of the respondent's residence as well as his place of employment as notice can be served in either of these two places.⁵

⁴ Rule 12(1)

⁵ Rule 12(2)(a)

- (i) A copy of the application and the DIR should be attached to the notice. A reading of both these documents shall provide details on the nature of violence alleged and the relief/s sought.

8.1.3 Serving Notice and Proof Thereof

As mentioned earlier, the duty of ensuring that notice has been served within the prescribed time period vests on the PO. However, *the PO need not serve the notice personally*. Section 13(1) specifies that the PO “shall get [the notice] served” on the respondent. This indicates that *a PO may direct any other qualified person to effectuate service on his/her behalf*. This interpretation is borne out by Rule 12(2)(a) which provides that the PO may direct “any other person” to serve notice on his/her behalf.

Simply put, Section 13(1) and Rule 12(2)(a) read together allow a PO to delegate the duty of service of notice. For example, a PO may delegate this duty to any office staff available to him/her. If office staff is unavailable, then the PO can solicit assistance from the police or the Court’s Process Server.

In Practice

- In Karnataka, a messenger has been assigned to every Protection Officer. The PO delegates the task of serving notice to the messenger and is, therefore, in a position to verify service without having to physically deliver the notice himself/herself.
- In Andhra Pradesh and Chandigarh, POs delegate the function of serving notices to the Home Guards and ICDS attendants.
- In Tamil Nadu and Kerala, some POs delegate the service of notice to Service Providers.

[Source: *Staying Alive: 2nd Monitoring & Evaluation Report 2008 on the Protection of Women from Domestic Violence Act (2005)*; Lawyers Collective (Women’s Rights Initiative)]

However, even if a PO does not serve notice personally, she/he must supervise the service of notice and satisfy her/himself that notice has been served. Once the PO is satisfied that notice has been served, she/he will have to make a declaration in Court to that effect.⁶ The PO’s declaration of service of notice shall be proof that such notice was served upon the respondent or any other person as directed by the Magistrate.⁷

⁶ Section 13(2)

⁷ Ibid.

Alternatively, the Court, under its wide powers,⁸ may use general procedure under the CPC⁹ and the CrPC¹⁰ for serving notice: i.e., through either the Process Server attached to the Court¹¹ or the police.¹² For this, the Court may directly issue appropriate orders to the Process Server or the police. The PO may also request the Court to issue such orders.

Police assistance is essential in those cases where the PO apprehends violence from the respondent and/or his family at the time of serving notice. In such cases, the PO may seek a Court order directing the police to serve notice upon the respondent. Even in cases where violence is not apprehended, the PO can seek a Court order directing the police or Process Server to provide assistance at the time of serving notice.

In those cases where the Court directs any other authority to serve notice, the responsibility of ensuring the service of notice shifts to such authority who will then report to the Court once service is completed. For instance, if the police are directed to serve notice in accordance with the CrPC, proof of service shall come from the police.

Rule 12(3) provides that the PO or any other person authorised to serve notices (i.e., any other authority directed by the Court), may take the following actions to demonstrate that notice has been effected:

- Make a statement on the date fixed for the appearance of the respondent

or

- Submit a report to the Court that service has been effected.

⁸ As per Section 28(2) of the PWDVA read with Rule 12 of the PWDVR.

⁹ Order V of the CPC. See Annexure III.

¹⁰ Chapter VI of the CrPC (Sections 62-67) provides different modes of effecting service in diverse situations. See Annexure III.

¹¹ Order V Rule 9 of the CPC provides that the “summons” or notices shall be delivered by the Court to the “proper officer” or any of his subordinates to be served by him in the manner approved by the Court. “Proper Officer” means an officer of the court: usually the bailiff. The “proper officer” may require any other authorised person to effectuate service. Means of service include registered post acknowledgement due, speed post, any courier approved by the High Court or any other approved means of transmission of documents, including fax or emails addressed to the defendant.

In addition, under Order V Rule 9 of the CPC, a summons may be served directly by the applicant/aggrieved person as *dasti* notice. *Dasti* service means that the applicant or the aggrieved person takes the responsibility of serving notice upon themselves. This form of serving is also referred to as “private notice”. In *Amar Kumar Mahadevan v. Karthiyayini* [High Court of Madras, Criminal Original Petition No. 32475 of 2007 and M.P. Nos. 1 and 2 of 2007 (Decided on 28.11.2007)], the Court held that an order to the aggrieved person directing the issue of private notice to be served on the respondent is not in conflict with the statutory provisions, and is in the exercise of the power of the Court to lay down its own procedure under Section 28(2) of the PWDVA.

In arriving at its decision, the Court said that “this Act being a beneficent piece of legislation enacted for providing minimum relief to an aggrieved person affected by domestic violence, even if there is any minor procedural deviation, such minor procedural deviation being technical in nature, need not be taken serious note of and on that ground, the proceedings pending under the Act cannot be quashed.”

¹² Summons or notices are served under the CrPC upon a determination by the Court that a *prima facie* case has been made out. Section 62 states that summons shall be served by a police officer, by an officer of the court (i.e., the process server) or by a public servant.

In Practice

Following a reported incident where a Protection Officer was subjected to violence by the respondent and his family at the time of serving notice, the Delhi High Court, acting on a request made by the Department of Social Welfare, Government of Delhi, issued the following order to be followed by all Courts while dealing with cases under the PWDVA:

No. _____/DHC/Gaz/G-X/2008
From
The Registrar(Vigilance),
Delhi High Court,
New Delhi.
To
The District Judge I-cum-Sessions Judge,
Delhi.
New Delhi, dated the _____ 2008

Sub : Service of Notices under "The Protection of Women from Domestic Violence Act 2005"

Madam,

I am directed to say that Hon'ble the Chief Justice of this Court has been pleased to issue the following practice directions to the Metropolitan Magistrates with regard to issue and service of notices under "The Protection of Women from Domestic Violence Act, 2005" :-

1. The notices issued to the respondent or any other person under Section 12 or any other provision of "The Protection of Women from Domestic Violence Act, 2005" shall be handed over to the Protection Officer for service;
2. Every such notice shall contain a clear direction that in the event of the Protection Officer seeking help of the Process Serving Agency of the Police or the Nazarat of District Court, the concerned Officer in-charge shall depute a process server for effecting of service of notice/notices on the respondent or any other person on behalf of the Protection Officer;
3. Every notice shall be prepared in triplicate one copy of which shall be retained by the Protection Officer and remaining two copies shall be forwarded to the Process Serving Agency of the Police or District Nazarat for service, if the Protection Officer opts for service through them;
4. The process server so deputed to effect service of notice/notices shall return the notice/notices with a clear service report under his signatures to the Protection Officer, who after verification and satisfying himself about the correctness of report shall authenticate and submit the report to the Magistrate concerned;
5. Every notice shall contain a clear direction that in case the Protection Officer opts to personally serve the notice on the respondent but seeks protection of the Police, the officer in-charge of the Police Station in whose jurisdiction the service is to be effected shall provide the Protection Officer with adequate security.

I am therefore, to request you to please bring the above practice directions to the notice of all concerned Judicial Officers under your control and control of other District Judges for compliance, under intimation to this court.

Yours faithfully,
(R.K. Gauba)
Registrar (Vigilance)

Endst.No. 33643/DHC/Gaz/G-X/2008
Copy for information to :-
1. The Assistant Director(Women Welfare), Department of Women & Child Development, 1, Canning Lane, Kasturba Gandhi Marg, New Delhi.
2. Ms. Indira Jaising(Project Director), Lawyers Collective Women's Rights Initiative, 63/2, Ground Floor, Masjid Road, Jangpura Extn., N.D.-110014.

Dated: 19 November, 2008

[Signature]

8.1.4 How to Serve Notice

Rule 12 provides the procedure to be adopted in serving notices. This self-contained code for serving notices integrates elements from the CPC and the CrPC¹³ to ensure that notices are expeditiously served.¹⁴ Moreover, High Courts in every state issue Rules on procedure to be adopted by the Courts in addition to the CPC and the CrPC. Protection Officers are advised to familiarise themselves with the procedures for service of notice provided in the Rules issued by the High Courts of their state.

8.1.4.1 Where Can Notice be Served?

Notice is to be served upon the respondent at the address stated by the aggrieved person or the complainant to be the respondent's:

- Place of residence or where he ordinarily resides

or

- Place of employment

8.1.4.2 How to Serve Notice in Cases Where the Respondent is Not Available

There may be a number of reasons, either wilful or inadvertent, for the respondent's non-availability. These reasons may broadly be categorized into two:

- (i) Instances where the respondent, though present in the Protection Officer's jurisdiction, is not available, either wilfully or inadvertently, to accept notice.
- (ii) Instances where the respondent is not present in the Protection Officer's jurisdiction.

Category (i)

In this first category, where the respondent is either inadvertently unavailable or wilfully refuses to accept service of notice, a PO may:

- Deliver a copy of the notice to the person in charge of the place.¹⁵ The term "person in charge of the place" includes a duly authorised agent of the respondent,¹⁶ an adult male family member if the notice is being served at his/her residence,¹⁷ and the respondent's employer if the notice is being served at the place of employment.

¹³ See footnotes 8 and 9 above

¹⁴ Rule 12(2)(d) states that the Court may direct any other steps necessary with a view to expediting the proceedings to adhere to the time limit provided in the Act.

¹⁵ Rule 12(2)(b)

¹⁶ Order V Rules 12-14 of the CPC

¹⁷ Order V Rule 15; Section 64 of the CrPC

- Paste a copy of the notice at a conspicuous place on the premises.¹⁸ This option is available to the PO if the above option is not possible, for instance in those cases where the person in charge refuses to accept the notice. The notice may be affixed to the outer door of the residence or premises where the respondent is employed.

In Practice

Some Protection Officers in Himachal Pradesh serve notices through public announcements in local dailies in cases where the respondents are avoiding notice.

[Source: *Staying Alive: 2nd Monitoring & Evaluation Report 2008 on the Protection of Women from Domestic Violence Act (2005)*; Lawyers Collective (Women's Rights Initiative)]

In both of the above instances, after delivering or pasting a copy of the notice, the PO must return the original copy to the Court along with her/his statement or report that notice has been effected and mention the means by which notice was effected. Once this is done, service is deemed to be adequate and complete.¹⁹

Category (ii)

If the respondent resides outside the Protection Officer's jurisdiction and has no agent in India to receive notice, the following courses of action may be adopted:

- Notice may be addressed to the respondent at the place where he is residing by post, courier, fax, email or any other means provided for in the Rules of the concerned High Court.²⁰
- The Protection Officer may request the Court to serve the notice through the Magistrate of the jurisdiction within which the respondent resides or is.²¹
- If the respondent resides or works in a foreign country, then notices may be served through Indian Embassy of the High Commission of that particular country.²²

¹⁸ As per Rule 12(2)(b) of the PWDVR, Section 65 of the CrPC and Order V Rule 20 of the CPC. Under Order V Rule 20(1A) of the CPC, the Court may also order service by an advertisement in a daily newspaper circulating in the locality in which the respondent is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

¹⁹ Order V Rule 17 of the CPC

²⁰ Order V Rule 21 of the CPC

²¹ Section 67 of the CrPC provides that, "When a Court desires that summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served."

²² As per Order V Rule 26A of the CPC. The endorsement of the officer authorised by the Indian Embassy shall be deemed to be evidence of service.

In Practice

- In West Bengal, Protection Officers take police assistance in serving notices outside their jurisdiction by using radiograms in police stations.
- In Delhi, Kerala, Manipur and Orissa, Protection Officers network with their counterparts in other jurisdictions who can serve notice on their behalf.

[Source: *Staying Alive: 2nd Monitoring & Evaluation Report 2008 on the Protection of Women from Domestic Violence Act (2005)*; Lawyers Collective (Women’s Rights Initiative)]

8.1.4.3 Consequences of the Failure to Accept Notice

Rule 12(d) of the PWDVR sets forth the consequences of failure to accept notice. This provision specifies that failure to accept notice or the refusal to accept notice shall entail the same consequences as provided under Order V of the CPC and Chapter VI of the CrPC. Hence, if the provisions of the CrPC are followed, then the respondent’s non-appearance will lead to the issuance ofailable warrants in the first instance and non-ailable warrants in the second. An *ex-parte* order may also be passed against the respondent under Section 23 of the PWDVA, if the circumstances so warrant.

8.2 Preparing a Safety Plan

One of the most important duties of the Protection Officer, mentioned in Rule 8(1)(iv) of the PWDVR, is to prepare a Safety Plan for the aggrieved person upon an application being moved under Section 12 of the PWDVA. A Safety Plan is a document prepared for the aggrieved person that identifies the ways in which the aggrieved person can protect herself during a violent incident and reduce the risk of serious harm. Although the law authorises the PO to prepare a Safety Plan when an application under Section 12 is submitted, it is advisable for POs to prepare a Safety Plan at the time of recording a DIR.²³ However, it must be borne in mind that a Safety Plan is not a pre-condition for obtaining orders under the PWDVA.

In Practice

Anecdotal data from Maharashtra indicates that whenever an aggrieved person approaches a Protection Officer, the PO prepares a Safety Plan in addition to recording a DIR and assisting the aggrieved person in preparing an application under Section 12. This is especially so in cases where there is an apprehension of grave forms of domestic violence. The Safety Plan, so prepared, is then attached to the application filed in Court, also enabling the Magistrate better to gauge the situation and pass appropriate orders.

[Source: Informal interactions between POs and the Lawyers Collective (Women’s Rights Initiative); December 2008]

²³ Rule 8(2)(a) of the PWDVR mandates that it is the duty of the PO to protect the aggrieved person from domestic violence. The Safety Plan provides a useful check list for POs to follow so as to anticipate and prevent future acts of domestic violence. It also empowers the aggrieved person in securing her own safety and taking preventive measures.

A PO's role in preparing a Safety Plan is to assist the aggrieved person in assessing the risk the respondent poses to her and develop a practical plan to keep safe. To do this, the PO must conduct a risk-assessment with the aggrieved person and exercise extreme care for the woman's safety.

POs must always bear in mind that it takes courage for a woman to initiate legal proceedings against members of her own family and intimate partners. In most cases, it is only when a person is unable to withstand the circumstances that she will make a legal complaint. Tolerance levels vary from person to person, as do pressures of individual situations. An aggrieved person is usually in the best position to assess the potential danger of her situation and should be encouraged to rely on her own instincts. It is likely that the aggrieved person has already engaged in significant safety planning on her own in the past.

Pointers in risk-assessment include:

- If the parties are in a matrimonial relationship and have been recently separated or the aggrieved woman is attempting a separation.
- The aggrieved woman strongly believes that she is in imminent danger.
- History and pattern of violence: factors like frequency, severity and timing of violent incidents in the past can often be strong indicators of present and future threats.
- Threats by the perpetrator.
- Previous incidents of stalking, harassment, intimidation and similar behaviour.
- History of assaulting behaviour or taking the law into own hands by the perpetrator.
- Alcohol or substance abuse.
- Particular vulnerability of the woman, for example: pregnancy, complete financial dependency, no support system etc.

Some general guidelines to be borne in mind while devising a Safety Plan:

- The PO must assist the aggrieved person in identifying and assessing the potential risks in a cogent and systematic manner.
- The PO must assist the aggrieved person in evaluating options that are available to her. As a first step, as per Section 5 of the PWDVA, the PO must provide the aggrieved person with information on her rights and services of Service Providers.²⁴ Evaluating options includes anticipating the consequences of each action and determining which option best increases the woman's safety and autonomy.
- A Safety Plan should provide multiple options and be prepared in association with a number of different situations in which the aggrieved person may find herself, such as during a violent incident, when she is preparing to leave, after leaving, at her place of employment, etc. Each of

²⁴ For further details on the manner in which such information is to be provided, see Chapter 4.

these situations would be associated with different risks. A PO should assist the aggrieved person in assessing risks in each of these contexts and generate options to meet the specific situation. Hence, if a particular plan does not work out, then the aggrieved person should be able to change her plan and use other options.

Illustrations of Options for Safety in Particular Situations

During a violent incident: Determine how best to exit the home or find lower risk places to which the aggrieved person can go if an argument occurs. Places with no exits (such as bathrooms or wall closets) or places that provide access to weapons (such as kitchens), are unlikely to be safe places.

Preparing to leave: Develop a list of people whom the aggrieved person may contact in an emergency or places to which she might go if she leaves. She should be asked to memorise emergency numbers and keep aside some money to make phone calls at all times.

After leaving: If the aggrieved person's economic dependence makes her more vulnerable to violence, then the Safety Plan should include options for her to become economically independent.

At her place of employment: Inform co-workers about the aggrieved person's situation so that they can assist in screening calls and inform her if the respondent attempts to find or contact her. Other options may be to travel to work with another person, change routes used to travel to work, etc.

- A Safety Plan must be comprehensive, concrete and should not be limited to strategies to respond to physical violence. The aggrieved person must and should be able to follow the plan if she finds herself in imminent danger.
- The aggrieved person should be advised to leave the site of violence if necessary. In such cases, the police should be intimated of the possibility of such a situation arising. If the aggrieved person, by leaving the site of violence, is leaving her home, then the following issues require consideration:
 - Whether there is a safe place where she can stay, whether independently or with family or friends; whether she has money; whether there is any possibility of the respondent searching for her at the place where she will stay. She should be advised against disclosing the address of where she is staying.
 - Developing a plan for the aggrieved person's removal from the place of violence if she is unable to do so herself.
 - Establish a code word or a sign so that co-workers, family, friends or neighbours are alerted of her condition and are able to initiate emergency steps.
 - Gather important documents and keep them in a safe place as there is a chance that the respondent might retaliate by destroying her personal property and documents. It is useful to leave a copy of important documents as well as extra clothes, money or keys, etc.

Examples of Important Documents

- Identification Cards
- Passports/Visas
- Marriage and Birth Certificates
- Deeds or Leases
- Degrees and Certificates
- Cheque books
- Credit cards
- Bank/Share statements
- Utility bills: phone electricity, gas, etc.
- Vehicle registration documents
- Proofs of *stridhan*: lists of articles/ receipts

Examples of Documents that are Required to Prove Domestic Violence

- Photographs with injuries
- Medical or medico-legal certificates
- Letters written by the aggrieved person or by the perpetrator
- Police complaints or Non-Cognisable Reports (NCR)
- Proof of the police's Daily Diary Entries (DDE)

Form V can be used in preparing a Safety Plan. This Form details forms of violence, the consequences of such violence and apprehensions of the aggrieved persons in Columns A-C. Column D entitled, “Measures required for safety,” is for recording options that can be resorted to by the aggrieved person.

A Protection Officer is meant to fill in details in Columns C and D. In cases where the aggrieved person approaches the Court directly, she can either fill in these columns by herself or have a PO complete them for her with her consent after the application is filed in Court.

FORM V

(See rule 8(1)(iv)]

SAFETY PLAN

1. When a Protection Officer, Police Officer or any other service provider is assisting the woman in providing details in this form, then details in columns C and D are to be filled in by the Protection Officer, Police Officer or any other service provider, as the case may be, in consultation with the complainant and with her consent.
2. The aggrieved person in case of approaching the court directly may herself provide details in columns C and D.
3. If any aggrieved person leaves columns C and D blank and approaches the court directly, then details in the said columns are to be provided by the Protection Officer to the court, in consultation with the complainant and with her consent.

	A	B	C	D	E
SI. No.	Violence by the Respondent	Consequences of violence mentioned in column A suffered by the Aggrieved Person	Apprehensions of the Aggrieved Person regarding violence mentioned in Column A	Measures required for safety	Orders sought from the court

A PO may keep a copy of Form V with herself/himself, particularly in cases where the aggrieved person feels that having possession of such a document may put her in danger. In such cases, the PO should allow her access to this document as much as possible.

The aggrieved person should sign at the bottom of Form V. If she is illiterate, then the contents of the document must be explained to her and her thumb print be affixed at the end of the document. The PO must also sign the document in the space provided.

Ideally, Safety Plans should be reviewed periodically to ensure that they still meet the woman’s needs and are consistent with any changed circumstances. Reviewing the Safety Plans also helps keep its contents and strategies fresh in the woman’s mind.

8.3 Role in Assisting the Court in the Discharge of its Functions

Section 9(1)(a) states that it is the duty of the Protection Officer to assist the Magistrate in the discharge of her/his functions under the PWDVA. Section 9(2) further states that the PO shall be under the control and supervision of the Magistrate and perform the duties that may be imposed on her/him by the Magistrate. Rule 10(1) provides details on the duties that a Magistrate may impose on a PO. Magistrates must provide these directions in writing to the PO.

The duties of the PO, under the written directions of the Magistrate, are as follows:

- (i) Conduct a Home Visit of the shared household premises and make preliminary enquiries.
- (ii) Make appropriate enquiries and file a report on the financial status of the respondent.
- (iii) Restore to the aggrieved person the possession of her personal effects, including gifts, jewellery and the shared household.
- (iv) Assist the aggrieved person to regain custody of her children and secure rights to visit them under the PO's supervision.
- (v) Assist the court in the enforcement of orders granted under the PWDVA in a manner directed by the Magistrate.
- (vi) Take the assistance of the police, if required, in confiscating any weapon involved in the alleged domestic violence.

Rule 10(2) also provides that the Protection Officer shall perform any other duties assigned to her/him by the Magistrate or the State Government in giving effect to the provisions of the law. The PO is also duty-bound to follow any other directions issued by the Magistrate relating to general practice for better handling of cases.²⁵

While most of the provisions in Rule 10(1) are self-explanatory, some are discussed in detail in the following paragraphs.

8.3.1 Conducting a Home Visit

Rule 10(1)(a) allows a Magistrate to issue a direction to the Protection Officer to conduct a Home Visit of the shared household premises and make preliminary enquiries prior to granting an *ex parte* interim order to the aggrieved person.

The use of the term “preliminary enquiry if the court requires clarification” in Rule 10(1)(a) indicates that home visits are limited to an inquiry where the Court requires elucidation on the facts stated by the aggrieved person. Hence, a Court may direct the Protection Officer to conduct a home visit when the affidavit submitted in Form III by the aggrieved person requires elucidation in order to establish a *prima facie* case. In such cases, the Court may require an independent evaluation to make an informed decision.²⁶

However, as the Home Visit is a valuable method of assisting the Court in the discharge of its functions, a Home Visit may be ordered at any other stage of the proceedings as well.

At the time of conducting a Home Visit, the PO Protection Officer performs her/his duties as an officer of the court.²⁷ Hence, she/he should not be biased towards any of the parties to the dispute and

²⁵ Rule 10(3)

²⁶ A Court may, of course, pass such an order without ordering a home visit

²⁷ Although the term “home visit” has been borrowed from the discipline of social work, it is important to remember that, in conducting home visits under this provision, a Protection Officer does *not* function as a social worker. In social work, home visits are important tools for gathering information about women, their family and the crisis that they are facing, through observation and listening. In addition, in social work, the purpose of a home visit is to provide information to the woman and to initiate a process of intervention. However, in the legal context of the PWDVA, the duty of the PO is solely limited to the gathering of information.

should limit her/his investigation to ascertaining the facts alleged or disputed and which are capable of physical and objective verification.²⁸

Instances when a Court May Direct the PO to Conduct a Home Visit

- To enquire into the standard of living of the parties to verify the income of the respondent.
- To ascertain where the aggrieved person is currently residing, particularly in cases where a Residence Order is claimed.
- To ascertain patterns of living arrangements and the nature of the shared household (joint family, etc.), in cases where the aggrieved person claims a Residence Order. The Protection Officer may be required to create a site-plan in appropriate cases.
- To facilitate an enquiry to determine the “best interest of the child” where temporary custody has been prayed for under the Act.
- To verify the fact of dispossession of the aggrieved person from the shared household.

8.3.1.1 Specific Instructions to be Obtained from the Court for Conducting A Home Visit

Upon being directed by the Court to conduct a Home Visit, a Protection Officer must seek specific directions from the Court regarding the following issues:

- The exact purpose of the Home Visit and the deadline for filing any resultant report.
- The exact details about which the PO is required to enquire. For instance: to ascertain if the aggrieved person is being denied access to necessities of life such as food, clothes etc; to prepare a site plan of the shared household if the aggrieved person has sought a residence order, etc.
- That the PO may speak to any person, including the respondent, in order to understand and obtain clarity as to the facts alleged in the application.
- If the PO apprehends threats of violence or coercion at the time of the Home Visit, she/he may request the Court to order the police to accompany her/him on the visit.
- If required, a PO may also request that a welfare expert or an individual associated with a Service Provider be directed to assist her/him in conducting the Home Visit.

²⁸ In this regard, the duties of the PO are akin to those of a Local Commissioner appointed under Order 26 Rule 9 of the CPC, applicable in civil proceedings for injunctions. This provision provides that, “In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or actual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.” (Emphasis added.)

8.3.1.2 General Guidelines to Be Kept in Mind while Conducting a Home Visit

Although a Home Visit must be conducted keeping in mind the legal context of the PWDVA, an observant and sensitive PO will find that a Home Visit allows her/him some understanding of various other issues, such as:

- The socio-economic condition of the family
- Decision-making patterns in the family
- Needs and expectations of the family
- Resistance and openness of the family
- Relationship of the family with neighbours
- Whether the neighbours or the housing society, etc. have any knowledge of previous acts of violence or have heard about or witnessed acts of domestic violence being perpetrated on the aggrieved person.
- Whether the aggrieved person is safeguarding her possessions or precious documents.
- Whether the respondent has any kind of substance addiction, such as alcoholism.
- The condition of the house – i.e., its state of organization or disorganization – that may indicate if there has been violence there.

In certain circumstances, a Home Visit may entail interactions with the family and access into the shared household. In such cases the following guidelines should be borne in mind:

Home Visits should be scheduled

Visits should be scheduled during a time with minimal disruptions. It is advisable for a PO to schedule an appointment with the family prior to conducting the Home Visit. The appointment should be within office hours and should be at the convenience of both the PO and the family.

When scheduling a visit, a PO should be clear about the purpose of the visit and state approximately how long it will last. If the family is expected to have specific documents at hand or needs to make any other preparations for the visit, it should be discussed at the time of scheduling the visit.

Home Visits should be organised

When a Protection Officer arrives at the shared household, it is possible that the aggrieved person or the respondent may want to be the centre of attention. It is advisable to spend time interacting with the aggrieved person or respondent, but also encourage the other family members to interact. This provides an opportunity to observe the aggrieved person or respondent's behaviour in a family dynamic.

In order to minimise the likelihood of the discussions with the family straying from the intended goal of the visit, a PO may find it useful to prepare a check list to ensure that these discussions provide the information required by the court. Being organised can allow time to be used wisely and the goals of the visit to be met.

Home Visits should respect privacy

When conducting a Home Visit, a Protection Officer must remember that this is a family's home. Most of the time, activities may be conducted in areas of the home that the family considers 'public spaces,' such as a living room or family room. However, the legal requirements of the Court might require the PO to observe 'private spaces' as well. In this situation, a polite and respectful albeit firm approach is advised.

Home Visits should be supervisory

Both small and serious injuries may have occurred to the aggrieved person. So that mishaps do not occur in the Protection Officer's presence, it is advised that, while talking with the family, the PO may suggest that the aggrieved person or respondent and/or other family members participate in an activity that keeps woman or respondent safely within sight.

8.3.1.3 Challenges to a Successful Home Visit

A Protection Officer must anticipate and meet challenges that might arise while conducting Home Visits. Some such challenges and the means to overcome them are listed below:

- The postal address provided by the aggrieved person may either be wrong or incomplete. This may be because aggrieved persons are frequently not allowed to interact with the outside world and their state of mind may be confused due to violence. In such cases, where it is difficult to locate the shared household, the local shops, *paanwala*, small tea stalls, etc. may be approached for locating the address. Also, if there is anything specific about the aggrieved person, the respondent or his family members (such as the profession of the person, his/her pet name, etc.), such information can be an instrumental in locating the house. However, this information cannot violate the parties' right to confidentiality.
- The PO may face the risk of getting implicated in legal complications, for example: threats to initiate criminal cases on trespass. Therefore, she/he needs to be careful and non-threatening in her/his communication style and manner of presentation.
- A PO must seek police assistance if she/he has any concerns about safety.
- In rural areas, where distances are large, POs should plan their visits carefully and consider clubbing together visits in the same geographical area.
- During Home Visits, people may hospitably offer food, refreshments or other foodstuffs, such as food grains, vegetables, and fruits, to the PO. However, without hurting anyone's feelings, the PO must express her/his inability to accept such offerings by explaining that accepting these would be unethical as it may be regarded a creating bias.
- Sometimes respondents might become hostile, aggressive and reluctant to provide information. In such situations it is important that the PO remain calm, listen to the family members and persist in her/his line of questioning. However, if the PO has apprehensions about personal safety, she/he should terminate the visit and report the reason for doing so accurately and honestly to the Court.

8.3.1.4 Home Visit Report of the Protection Officer

After the completion of a Home Visit, the Protection Officer must prepare a report providing details of facts that have been verified by her/him. This report should be submitted within the deadline mandated by the Court or, in cases where no such deadline has been mandated, as soon as it is possible.

The PO's Home Visit report is distinct from the Domestic Incident Report. A DIR is a recording of the aggrieved person's complaint and there is no legal requirement for conducting a Home Visit prior to recording the DIR. In contrast, a Home Visit can only be conducted upon receiving written directions from the Court.

In general, the Home Visit report submitted by the PO must be shared with all parties to the proceedings. However, the Court has the discretion to withhold the report when extraordinary circumstances so require, as for example, when the report reveals child sexual abuse and disclosure is not be in the best interest of the child.

Any party which is adversely affected by a Home Visit report may be allowed to dispute the report. In some instances, the Court may permit an examination of the PO on her/his Home Visit report.²⁹ In general, however, the Court will be reticent about permitting the PO to be examined about facts that are objectively verifiable,³⁰ as such facts can be disputed by using affidavits submitted by experts. However, examinations will be allowed if the Home Visit report contains opinions of the PO on the impact of violence or any other matter that is not objectively verifiable.³¹

8.3.2 Submitting a Financial Status Report

Rule 10(1)(b) of the PWDVR authorizes the Court to direct the Protection Officer to conduct an enquiry into the emoluments, bank accounts, assets and other documents of the respondent/s and to submit a report of the same. Such an investigation is crucial for the verification of assets of the parties and their financial status. This is particularly significant in cases where the relief prayed for is maintenance or an order restraining the respondent from disposing of his assets or the shared household. The Court can order this form of investigation at any stage of the proceedings.

All of the issues that arise vis-à-vis Home Visit reports are equally applicable to financial investigations undertaken pursuant to Rule 10(1)(b).

²⁹ The Court may, for example, permit examination if credible allegations of bias on the part of the Protection Officer arise.

³⁰ As an alternative, the court may permit examination of persons interviewed by the Protection Officer (for example: relatives, neighbours, friends and employers) to corroborate (or dispute) the Home Visit report.

³¹ Order 26, Rule 10(2) of the CPC refers to the personal examination of the Commissioner on the report submitted in court. According to R. 10(3), "The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation."

8.3.3 Restoring Possession of the Aggrieved Person's Personal Effects and Assisting with Custody Issues

Under Section 19(8) of the PWDVA, the Court may direct the Protection Officer to restore possession of personal effects belonging to the aggrieved person.³² When doing so, the Court shall provide the PO with a list of items belonging to the woman. It is advisable that the PO present the Court order along with the list of items at the local police station before entering the aggrieved person's shared household. This will guard against any allegations of trespass or theft made by the respondent/s. It is also advisable that the PO keep the local police informed of the restoration of personal effects once this has been accomplished. In case the PO apprehends violence or law and order problems at the time of retrieving the aggrieved person's personal effects, she/he should request police assistance or request that the Magistrate direct the police to provide assistance.

Under Rule 10(1)(d), the Magistrate may direct the PO to assist the aggrieved person in regaining custody of her children. As with the restoration of personal effects, in such cases, it is advisable that the PO inform the police of the order issued by the Magistrate before attempting to remove children from the respondent's custody.

8.3.4 Assisting the Court in the Enforcement of Orders

Rule 10(1)(e) allows the Magistrate to direct the Protection Officer to assist in the enforcement of the following orders:

- Protection Orders
- Residence Orders
- Orders for monetary relief³³
- Custody Orders
- Interim Orders

At the time of providing such directions, the Court should provide a copy of the order to the PO, as well as instructions on the form of assistance required.

In general, the enforcement of orders is provided for in the particular Sections of the PWDVA pursuant to which an order is passed. To the extent that the individual Sections do not provide a specific enforcement mechanism, Section 28(1) and Rule 6(5) provide that the enforcement procedure under Section 125 CrPC can be used.³⁴

A copy of the order is to be provided free of cost to the person in whose favour it is passed,³⁵ and it may be enforced by any Magistrate in any place where the party against whom the order is to be

³² Under Section 19(8), the Court may also direct the respondent himself to return to the aggrieved person her *stridhan* or any other property to which she is entitled.

³³ See also Section 9(1)(h)

³⁴ See Chapter 3 for a discussion on the procedure to be followed under the Act.

³⁵ Section 24

enforced is. For example, an order passed in favour of an aggrieved person can be enforced by the Magistrate in whose jurisdiction the respondent resides or is gainfully employed. In such cases, either of the Magistrates (i.e., the Magistrate passing the order and the Magistrate in whose jurisdiction the respondent is in) can issue written directions to the PO within their jurisdiction to render assistance.

Additional orders that can be granted by the Magistrate to ensure enforcement are as follows:

Protection Orders

The breach of a protection order is deemed to be a criminal offence under Section 31 of the PWDVA. The Magistrate may also direct the police to provide protection to the aggrieved person or to assist her or the person making the application on her behalf in implementing the Court's order. If the PO is the person making the application on behalf of the aggrieved person, then she/he is entitled to receive police assistance at the time of implementing and enforcing a protection order.³⁶

In addition, the Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.³⁷

Residence Orders

Section 19(3) of the PWDVA provides that the Magistrate may direct the respondent to execute a bond, with or without sureties, for preventing domestic violence. Further, the Act makes it clear that such a direction by the court, "shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly".³⁸

Monetary Orders

Section 9(1)(h) of the PWDVA requires Protection Officers to ensure that the order for monetary relief under Section 20 of the Act is complied with and executed in accordance with the procedure prescribed under the CrPC.

The procedure for execution is provided in Section 128 of the CrPC, which addresses the execution of Maintenance Orders granted under Section 125 of the CrPC. The same procedure may be followed for orders for monetary reliefs granted under the PWDVA. Moreover, Section 20(6) of the Act authorises the Court to attach the salary of a respondent who disobeys an order for monetary relief under Section 20(1).

Orders may also be enforced in accordance with Section 431 CrPC, which is the manner in which fines and penalties are recovered under criminal law.

According to Section 20(4) of the Act, the Magistrate must forward a copy of any order for monetary relief to all parties to the application and to the in-charge of the police station where the respondent resides.

³⁶ Section 19(5)

³⁷ Section 19(7)

³⁸ Section 19(4)

If the respondent fails to make a payment as ordered, the Magistrate may direct that the respondent's employer or debtor pay the aggrieved person directly or deposit specified sums with the Court to be conveyed to the aggrieved person.³⁹ The PO may ask for such a direction to ensure that the order for monetary relief is made expeditiously available to the aggrieved person.

8.4 Breach of Orders

Section 31(1) provides that the breach of a Protection Order or any interim order is an offence under the PWDVA that is punishable with imprisonment which may extend to one year or with a maximum fine of Rs. 20,000/- or both. A warrants procedure is to be adopted in conducting trials for the breach of protection orders.⁴⁰

The procedure to be adopted in dealing with complaints of breach is provided in Rule 15 of the PWDVR. Rule 15 provides that an aggrieved person may report the breach of a protection order or an interim protection order to the Protection Officer⁴¹ in writing and that the report should be signed by the aggrieved person.⁴² The PO must forward a copy of the complaint, along with a copy of the protection order of which a breach is alleged, to the concerned Magistrate for appropriate orders.⁴³

The aggrieved person may also choose to make a complaint of breach of protection order or interim protection order directly to the Magistrate or to the police.

If, at any time after a protection order has been breached, the aggrieved person seeks assistance, the PO shall immediately aid her by seeking help from the local police station and assisting her to lodge a report to the local police authorities in appropriate cases.⁴⁴ On receiving a complaint of breach, the local police station having territorial jurisdiction shall deal with the complaint in the same manner as it would a cognisable offence as provided under Sections 31 and 32 of the PWDVA.⁴⁵

³⁹ Section 20(6)

⁴⁰ For details on procedures to be adopted in trials under Section 31, please consult LCWRI's *Handbook on Law of Domestic Violence*.

⁴¹ Rule 15(1)

⁴² Rule 15(2)

⁴³ Rule 15(3)

⁴⁴ Rule 15(5)

⁴⁵ Rule 15(8). Section 32 provides that offences under Section 31(1) are cognisable and non-bailable.

Annexure I

The Protection of Women from Domestic Violence Act, 2005

INTRODUCTION

The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged that domestic violence is undoubtedly a human rights issue. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women in its General Recommendation has recommended that State parties should act to protect women against violence of any kind, especially that occurring within the family. The phenomenon of domestic violence in India is widely prevalent but has remained invisible in the public domain. The civil law does not address this phenomenon in its entirety. Presently, where a woman is subject to cruelty by her husband or his relatives, it is an offence under section 498A of the Indian Penal Code. In order to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society the Protection of Women from Domestic Violence Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

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

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

3. It is therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, *inter alia*, seeks to provide for the following:-
- (i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships which family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, 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 or the husband or the male partner, it does not enable any female relative of the husband or he male partner to file a complaint against the wife or the female partner.
 - (ii) It defines the expression "domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.
 - (iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household. Whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.
 - (iv) It empowers the magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.
 - (v) It provides for appointment of Protection officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.

5. The Bill seeks to achieve the above objects. The note on clauses explain the various provisions contained in the Bill.

ACT 43 OF 2005

The Protection of Women from Domestic Violence Bill, 2005 having been passed by the Lok Sabha on 24th August, 2005 and by the Rajya Sabha on 29 the August, 2005 received the assent of the President of India on 13th September, 2005 and come on the Statute Book as THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 (43 of 2005).

The Protection of Women from Domestic Violence Act, 2005

(43 OF 2005)

[13th September, 2005]

An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

Be it enacted Parliament in the Fifty-Sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Protection of Women from Domestic Violence Act, 2005.

(2) It extends to the whole of India except the State of Jammu and Kashmir

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint

2. Definitions.—In this Act, unless the context otherwise requires.—

- (a) "aggrieved person" means any women who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;
- (b) "child" means any person below the age of eighteen years and includes any adopted, step or foster child;
- (c) "compensation order" means an order granted in terms of section 22;
- (d) "custody order" means an order granted in terms of section 21;
- (e) "domestic incident report" means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;
- (f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

¹ Came into force on 16-10-2006, vide S.O. 1776(E), dated 17th October, 2006, published in the Gazette of India, Extra., Pt. II, Sec. 3(ii), dated 17th October, 2006.

- (g) "domestic violence" has the same meaning as assigned to it in section 3;
- (h) "dowry" shall have the same meaning as assigned to it in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961);
- (i) "Magistrate" means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place;
- (j) "medical facility" means such facility as may be notified by the State Government to be a medical facility for the purposes of this Act;
- (k) "monetary relief" means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence;
- (l) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;
- (m) "prescribed" means prescribed by rules made under this Act;
- (n) "Protection Officer" means an officer appointed by the State Government under sub-section (1) of section 8;
- (o) "protection order" means an order made in terms of section 18;
- (p) "residence order" means an order granted in terms of sub-section (1) of section 19;
- (q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.
- (r) "service provider" means an entity registered under sub-section (1) of section 10;
- (s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.
- (t) "shelter home" means any shelter home as may be notified by the State Government to be a shelter home for the purposes of this Act.

CHAPTER II

DOMESTIC VIOLENCE

3. Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

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

Explanation I.—For the purposes of this section—

- (i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
- (ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- (iii) "verbal and emotional abuse" includes—
 - (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
 - (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- (iv) "economic abuse" includes-
 - (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, *stridhan*, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
 - (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her *stridhan* or any other property jointly or separately held by the aggrieved person; and

- (c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

CHAPTER III
**POWERS AND DUTIES OF PROTECTION OFFICERS
SERVICE PROVIDERS, ETC**

4. Information to Protection Officer and exclusion of liability of informant.—(1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

5. Duties of Police officers, service providers and Magistrate.—A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person—

- (a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order a residence order, a compensation order or more than one such order under this Act;
- (b) of the availability of service of service providers;
- (c) of the availability of services of the Protection Officers;
- (d) of her right to fee legal services under the legal Services Authorities Act, 1987 (39 of 1987);
- (e) of her right of file a complaint under Section 498A, of the Indian Penal Code (45 of 1860) wherever relevant:

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

6. Duties of shelter homes.—If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

7. Duties of medical facilities.—If an aggrieved person or, on her behalf a Protection officer or a service provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person in the medical facility.

8. Appointment of Protection officers.—(1) The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.

- (2) The Protection Officers shall as far possible be women and shall possess such qualifications and experience as may be prescribed.
- (3) The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

9. Duties and functions of Protection Officers.—(1) It shall be the duty of the Protection officer—

- (a) to assist the Magistrate in the discharge of his functions under this Act;
- (b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits or whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;
- (c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;
- (d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;
- (e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;
- (f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;
- (g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report of the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;
- (h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);
- (i) to perform such other duties as may be prescribed.

(2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act,

10. Service providers.—(1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered

under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.

- (2) A service provider registered under sub-section (1) shall have the power to—
 - (a) record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;
 - (b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the Police station within the local limits of which the domestic violence took place;
 - (c) ensure that the aggrieved person is provided shelter in shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.

(3) No suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act, for anything which is in good faith done or intended to be done in the exercise of powers of discharge of functions under this Act towards the prevention of the commission of domestic violence.

11. Duties of Government.—The Central Government and every State Government, shall take all measures to ensure that—

- (a) the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;
- (b) the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;
- (c) effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;
- (d) protocols for the various Ministries concerned with the delivery of services to women under this Act including the courts are prepared and put in place.

CHAPTER IV

PROCEDURE FOR OBTAINING ORDERS OF RELIEFS

12. Application to Magistrate.—(1) An aggrieved person or a Protection officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act;

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection officer or the service provider.

(2) The relief sought under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the act of domestic violence committed by the respondent;

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

13. Service of notice.—(1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection officer, who shall get it served by such means may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

14. Counselling.—(1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counseling as may be prescribed.

(2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within period not exceeding two months.

15. Assistance of welfare expert.—In any proceeding under this Act, the Magistrate may secure that services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

16. Proceeding to be held in camera.—If the Magistrate considers that the circumstances of the case so warrant, and if either partly to the proceedings so desires, he may conduct the proceedings under this Act in *camera*.

17. Right to reside in a shared household.—(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the share household or any part of it by the respondent save in accordance with the procedure established by law.

18. Protection orders.— The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being *prima facie* satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact; '
- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- (f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
- (g) committing any other act as specified in the protection order.

19. Residence orders.—(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

- (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
- (b) directing the respondent to remove himself from the shared household;
- (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;
- (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

- (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer-in charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her *stridhan* or any other property or valuable security to which she is entitled to.

20. Monetary reliefs.—(1) While disposing of an application under sub-section(1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to,—

- (a) the loss of earnings;
- (b) the medical expense;
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstance of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

(21) Custody order.—Notwithstanding anything contained in any other law for the time being in force the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this a Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:

Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful of the interest of the child or children, the Magistrate shall refuse to allow such visit.

(22) Compensation orders.—In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the act of domestic violence committed by the respondent.

(23) Power to grant interim and ex parte order.—(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application *prima facie* disclose that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an *ex parte* order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21, or as the case may be, section 22 against the respondent.

24. Court to give copies of order free of cost.—The Magistrate shall, in all cases where he has passed any order this Act, order that a copy of such order, shall be given free of cost, to the parties to the application the police officer-in-charge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider located with the local limits of the jurisdiction of the court and if any service provider has registered a domestic incident report, to that service provider.

25. Duration and alteration of order.—(1) A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.

(2) If the Magistrate, on receipt of an application from the aggrieved person of the respondent, is satisfied that there is a change in the circumstance requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

26. Relief in other suits and legal proceedings.—(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of the Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceeding other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

(27) Jurisdiction.—(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which—

- (a) The person aggrieved permanently or temporarily resides or carries on business or is employed; or
- (b) The respondent resides or carries on business or is employed; or
- (c) The cause of action has arisen,

shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

(28) Procedure.—(1) Save as otherwise provided in this Act, All proceedings under section 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

(29) Appeal.—There shall lie an appeal 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.

CHAPTER V

MISCELLANEOUS

(30) Protection Officers and members of service providers to be public servant.—The Protection Officers and members of service providers, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or order made there under shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(31) Penalty for breach of protection order by respondent.—(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who has passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1) Magistrate may also frame charges under section 498 A of the Indian Penal Code (45 of 1860) or any other provision of the Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

(32) Cognizance and proof.—Notwithstanding anything contained in the code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.

(33) Penalty for not discharging duty by Protection Officer.—If any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished 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.

(34) Cognizance of offence committed by Protection Officer.—No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government of an officer authorized by it in this behalf.

(35) Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the protection officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or order made there under.

(36) Act not derogation of any other law.—The provisions of this Act shall be in addition, and not in derogation of the provisions of any other law, for the time being in force.

(37) Power of Central Government to make rules.—(1) the Central Government may by notification, make rules for carrying out the provisions of the Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all any of the following matters, namely:—

- (a) The Qualifications and experience which a Protection Officer shall possess under sub-section (2) of section 8;
- (b) The terms and conditions of service of the Protection Officers and the other officers subordinate to him, under sub-section (3) of section 8;
- (c) The form and manner in which a domestic incident report may be made under clause (b) of sub-section (1) of section 9;
- (d) The form and the manner in which an application for protection order may be made to the Magistrate under clause (c) of sub-section (1) of section 9;
- (e) The form in which a complaint is to be filed under clause (d) of sub-section (1) of section 9;
- (f) The other duties to be performed by the Protection Officer under clause (i) of sub-section (1) of section 9;

- (g) The rules regulating registration of service providers under sub- (1) of section 10;
- (h) The form in which an application under sub-section (1) of section 12 seeking relief's under this Act may be made and the particulars which such application shall contain under sub-section (3) of that section;
- (i) The means of serving notice under sub-section (1) of section 13;
- (j) The form of declaration of service of notice to be made by the Protection Officer under sub-section (2) of section 13;
- (k) The qualifications and experience in counseling which a member of the service provider shall possess under sub-section (1) of section 14;
- (l) The form in which an affidavit may be filed by the aggrieved person under sub-section (2) of section 23;
- (m) Any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Annexure II

The Protection of Women from¹ Domestic Violence Rules, 2005

In exercise of the powers conferred by section 37 of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005), the Central Government hereby makes the following rules, namely:—

1. Short title and commencement.—(1) These rules may be called the Protection of Women from Domestic Violence Rules, 2006.

2. Definitions.—In these rules, unless the context otherwise requires,—

- (a) "Act" means the Protection of Women from Domestic Violence Act, 2005 (43 of 2005);
- (b) "Complaint" means any allegation made orally or in writing by any person to the Protection Officer;
- (c) "Counsellor" means a member of a service provider competent of give counseling under sub-section (1) of section 14;
- (d) "Form" Means a form appended to these rules;
- (e) "Section" means a section of the act;
- (f) words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Qualifications and Experience of protection Officers.—(1) The Protection officers appointed by the State Government may be of the Government of members of non-governmental organization:

Provided that preference shall be given to women.

(2) Every person Appointed as Protection Officer under the Act shall have at last three years experience in social section.

(3) The tenure of Protection Officer shall be a minimum period of three years.

(4) The state government shall provide necessary office assistance to the Protection officer for the efficient discharge of his or her functions under the Act and these rules.

4. Information to Protection officer.—(1) Any person who has reason to believe that an act of domestic violence has been, or is being, is likely to be committed by give information about it to the Protection Officer having jurisdiction in the area either orally or in writing.

¹ Vide G.S.R. No. 644(E), dated 17th October, 2006, published in the Gazette of India, Extra., Pt. II, Sec. 3(i) dated 17th October, 2006.

(2) In case the information is given to the Protection officer under sub-rule (1) orally, he or she shall cause it to be reduced to in writing and shall ensure that the same is signed by the person giving such information and in case the informant is not in a position to furnish written information the Protection officer shall satisfy and keep a record of the identity of the person giving such information.

(3) The Protection officer shall give a copy of the information recorded by him immediately to the informant free of cost.

5. Domestic incident reports.—(1) Upon receipt of a complaint of domestic violence, the Protection Officer shall prepare a domestic incident report in Form I and submit the same to the Magistrate and forward copies thereof to the police officer in charge of the the police station within the local limits of jurisdiction of which the domestic violence alleged to have been committed has taken place and to the service providers in that area.

(2) Upon a request of any aggrieved person, a service provider may record a domestic indecent report in Form I and Forward a copy thereof the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence is alleged to have taken place.

6. Applications to the Magistrate.—(1) Every application of the aggrieved person under section 12 shall be in Form II or as nearly as possible thereto.

(2) An aggrieved person may seek the assistance of the Protection Officer in preparing her application under sub-rule (1) and forwarding the same to concerned Magistrate.

(3) In case the aggrieved person is illiterate, the Protection Officer shall read over the application and explain to her the contents thereof.

(4) The affidavit to be filled under sub-section (2) of section 23 shall be filed in Form III.

(5) The Application under section 12 shall be dealt with under the order enforced in the same manner laid down under section 125 of the Code of Criminal Procedure, 1973, (2 of 1974).

7. Affidavit for obtaining *ex-parte* orders of Magistrate.—Every affidavit for obtaining *ex-parte* order under sub-section (2) of section 23 shall be filed in Form III.

8. Duties and function of Protection Officers.—(1) It shall be the duty of the Protection Officer—

- (i) to assist the aggrieved person in making a complaint under the Act, if the aggrieved person so desires;
- (ii) to provide her information on the rights of aggrieved persons under the act as given as given in form IV which shall be in English or in a vernacular local language;
- (iii) to assist the person in making and application under section 12, or sub-section (2) of section 23 or any other provision of Act or the rules made there under;
- (iv) to prepare a "Safety Plan" including measures to prevent further domestic violence to the aggrieved person, in consultation with the aggrieved person in Form V, after making assessment of the dangers involved in the situation and on an application being moved under section-12;
- (v) to provide legal aid to the aggrieved person, through the State Legal Aid Service Authority.

- (vi) to Assist the aggrieved person and any child in obtaining medical aid at a medical facility including providing transportation to get the medical facility;
- (vii) to assist in obtaining transportation for the aggrieved person and any child to the shelter;
- (viii) to inform the service providers registered under the Act that their service may be required in the proceeding under the Act and to invite applications from service providers seeking particulars of their members to be appointed as Counselors in proceeding under the Act under Sub-section (1) of section 14 or Welfare Experts under section 15;
- (ix) to scrutinize the applications for appointment as Counselors and forward a list of available Counsellors to the Magistrate.
- (x) to revise once in three years the list of available Counsellors by inviting fresh applications and forward a revised list of counsellors on the basis thereof the concerned Magistrate;
- (xi) to maintain a record and copies of the reports and documents forwarded under section 9,12,20,21,22,23 or any other provisions of the act or these rules;
- (xii) to provide all possible assistance to the aggrieved person and the children to ensure that the aggrieved person is not victimized or pressurized as a consequence of reporting the incidence of domestic violence;
- (xiii) to liaise between the aggrieved person or person, police and service provider in the manner provided under the Act and these rules;
- (xiv) to maintain proper record of the service providers, medical facility and shelter homes in the area of his jurisdiction.

(2) In addition to the duties and function assigned to a Protection Officer under clauses (a) to (h) of sub-section 9, it shall be the duty of every Protection Officer—

- (a) To protect the aggrieved person from domestic violence, in accordance with the provisions of the Act and these rules;
- (b) To take all reasonable measures to prevent recurrence of domestic violence against the aggrieved person, in accordance with the provisions of the Act and these rules.

(9) Action to be taken in case of emergency.—If the Protection officer or a service provider receives reliable information through e-mail or a telephone call or the like either from the aggrieved person or from any person who has reason to believe that an act of domestic violence is being or is likely to be committed and in a such an emergency situation, the Protection Officers or the service provider, as the case may be, shall seek immediate assistance of the police who shall accompany the Protection Officer or the service provider, as the case may be, to the place of occurrence and record the domestic incident report and present the same to the Magistrate without any delay for seeking appropriate orders under the Act.

(10) Certain other duties of the Protection Officer.—(1) The Protection Officer, if directed to do so in writing, by the Magistrate shall—

- (a) Conduct a home visit of the shared household premises and make preliminary enquiry if the court requires clarification, in regard to granting ex-part interim relief to the aggrieved person under the Act and pass order for such home visit

- (b) after making appropriate inquiry, file a report on the emoluments, assets, bank account or any other documents as may be directed by the court;
- (c) Restore the possession of the personal effects including gifts and jewellery of the aggrieved person and the shared household to the aggrieved person;
- (d) Assist the aggrieved person to regain custody of children and secure rights to visit them under his supervision as may be directly by the court;
- (e) Assist the court in enforcement of orders in the proceeding under the Act in the manner directed by the Magistrate, including orders under Section 12, Section 18, Section 19, Section 20, Section 21 or Section 23 in such manner as may be directed by the court;
- (f) Take the assistance of the police, if required, in confiscating any weapon involved in the alleged domestic violence.

(2) The Protection Officer shall also perform such other duties as may be assigned to him by the State Government or the Magistrate in giving effect to the provisions of the Act and these rules from time to time.

(3) The Magistrate may, in addition to the orders for effective relief in any case, also issue direction relating general practice for better handling of the cases, to the Protection Officers within his jurisdiction and the Protection Officers shall be bound to carry out the same.

11. Registration of service providers.—(1) Any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for time being in force with the objective of protection the right and interests of women by any lawful means including providing of legal aid, medial, financial or other assistance and desirous of providing service as a service provider under the Act shall make an application under sub-section (1) of section 10 for registration as service provider in Form VI to the State Government.

(2) The state Government shall, after making such enquiry as it may consider necessary and after satisfying itself about the suitability of the applicant, register it as a service provider and issue a certificate of such registration:

Provided that no such application shall be rejected without giving the applicant opportunity of being heard.

(3) Every association or company seeking registration under sub-section (1) of section 10 shall possess the following eligibility criteria, namely:—

- (a) It should have been rendering the kind of service it is offering under the Act for at least three years before the date of application for registration under the Act and these rules as a service provider.
- (b) In case an applicant for registration is running medical facility, or a psychiatric counseling center, or a vocational training institution, the State Government shall ensure that the applicant fulfils the requirements for running such a facility for institution laid down the respective regulatory authorities regulating the respective professions or institutions.

- (c) In case an applicant for registration is running a shelter home, the state Government shall, through an officer or any authority or agency authorized by it, inspect the shelter home, prepare a report and record its finding on the report, detailing that—
 - (i) The maximum capacity of such shelter home for intake of persons seeking shelter;
 - (ii) The place is secure for running a shelter home for women and that adequate security arrangements can be put place for the shelter home;
 - (iii) The shelter home has a record of maintaining a functional telephone connection or other communication media for the use of the inmates.

3. The state government shall provide a list of service providers in the various localities to the concerned Protection officer and also publish such list of newspaper or on its website.

4. The Protection officer shall maintain proper records by way of maintenance of registers duly indexed, containing the details of the service providers.

12. Means of service of notice.—(1) The notices for appearance in respect of the proceedings under the Act shall contain the names of the person alleged to have committed domestic violence, the nature of domestic violence and such other details which may facilitate the identification person concerned.

(2) The service of notice shall be made in the following manner, namely:—

- (a) The notice in respect of the proceeding under the Act shall be served by the Protection Officer or any other person directed by him to serve the notice, on behalf of the Protection Officer, at the address where the respondent is stated to be ordinarily residing in India by the complainant or aggrieved person or where the respondent is stated to be gainfully employed by the complainant or aggrieved person.
- (b) The notice shall be delivered to any person in charge of such place at the moment and in case of such delivery not being possible it shall be pasted at a conspicuous place on the premises.
- (c) For serving the notices under section 13 or any other provision of the Act, the provision under order V of the Civil Procedure Code, 1908 (5 of 1908) or the provisions under Chapter VI of the Code of Criminal Procedure, 1973 (2 of 1974) as far as practicable may be adopted.
- (d) Any order passed for such service of notices shall entail the same consequences, as an order passed under Order V of the Civil Procedure code 1908 (5 of 1908) or Chapter VI of the Code of Criminal Procedure, 1973 (2 of 1974) respectively, depending upon the procedure found efficacious for making an order for such service under section 13 or any other provision of the Act and in addition to the procedure prescribed under the Order V or Chapter VI, the court may direct any other steps necessary with a view to expediting the proceedings to adhere to the time limit provided in the Act.

(3) On a statement on the date fixed for appearance of the respondent, or a report of the person authorized to serve the notices under the Act, that service has been effected appropriate order shall be passed by the court on any pending application for interim relief, after hearing the complaint or the respondent, or both.

(4) When a protection order is passed restraining the respondent from entering the shared household or the respondent is ordered to stay away or not to contact the petitioner, no action of the aggrieved person including an invitation by the aggrieved person shall be considered as waiving the restraint imposed on the respondent, by the order of the court, unless such protection order is duly modified in accordance with the provision of sub-section (2) of section 25.

13. Appointment of counsellors.—(1) A person from the list of available counsellors forwarded by the Protection Officer, shall be appointed as a Counsellor, under intimation to aggrieved person.

(2) The following persons shall not be eligible to be appointed as counsellors in any proceeding, namely:—

- (i) any person who is interest or connected with the subject matter of the dispute or is related to any one of the parties or to those who represent them unless such objection is waived by all the parties in writing
- (ii) any legal practitioner who has appeared for the respondent in the case or any other suit or proceedings connected therewith.

(3) The counsellors shall as far as possible be women.

14. Procedure to be followed by counsellors.—(1) The Counsellor Shall work under the general supervision for the court or the Protection Officer or both.

(2) The Counsellor shall convene a meeting at a place convenient to the aggrieved person or both the parties.

(3) The factors warranting counseling shall include the factor that the respondent shall furnish an undertaking that he would refrain from causing such domestic violence as complained by the complainant and in appropriate cases an undertaking that he will not try to meet, or communicate in any manner through letter or telephone, electronic mail or through any medium except in the conselling proceeding before the counsellor or as permissibly by law or order of a court of competent jurisdiction.

(4) The Counsellor shall conduct the counseling proceedings bearing in mind that the conselling shall be in the nature of getting an assurance, that the incidence of domestic violence shall not get repeated.

(5) The respondent shall not be allowed to plead any counter justification for the alleged act of domestic vilence in counseling the fact that and any justification for the act of domestic violence by the respondent is not allowed to be a part of the Counselling proceeding should be make known to the respondent, before the proceeding begin.

(6) The respondent shall furnish an undertaking to the Counsellor that he would refrain from causing such domestic violence as complained by the aggrieved person and in appropriate cases an undertaking that he will not try to meet, or communicate in any manner through letter or telephone, e-mail, or through any other medium except in the counseling proceedings before the Counsellor.

(7) If the aggrieved person so desires, the Counsellor shall make efforts of arriving at a settlement of the matter.

(8) The limited scope of the efforts of the Counsellor shall be to arrive at the understanding of the grievances of the aggrieved person and the best possible redressal of her grievances and the efforts shall be to focus on evolving remedies or measures for such redressal.

(9) The Counsellor shall strive to arrive at a settlement of the dispute by suggesting measures for redressal of grievances of the aggrieved person by taking into account the measures or remedies suggested by the parties for counselling and reformulating the terms for the settlement, wherever required.

(10) The Counsellor shall not be bound by the provisions of the India Evidence Act, 1872(1 of 1872) for the Code of Civil Procedure, 1908,(5 of 1908), or the Code of Criminal Procedure, 1973 (2 of 1974) and his action shall be guided by the principles of fairness and justice and aimed at finding way to bring an end to domestic violence to the satisfaction of the aggrieved person and in making such an effort the Counsellor shall give due regard to the wishes and sensibilities of the aggrieved person.

(11) The Counsellor shall submit his report to the Magistrate as expeditiously as possible for appropriate action.

(12) In the event the Counsellor arrives at a resolution of the dispute, he shall record the terms of settlement get the same endorsed by the parties.

(13) The court may, on being satisfied about the efficacy of the solution and after making a preliminary enquiry from the parties and after, recording reasons for such satisfaction, which may include undertaking by the respondents to refrain from repeating acts of domestic violence, admitted to have been committed by the respondents, accept the terms with or without conditions.

(14) The court shall, on being so satisfied with the report of counselling, pass an order, recording the terms of the settlement or an order modifying the terms of the settlement on being so requested by the aggrieved person, with the consent of the parties.

(15) In cases, where a settlement cannot be arrived at in the counselling proceedings, the Counsellor shall report the failure of such proceedings to the court and the court shall proceed with the case in accordance with the provisions of the Act.

(16) The record of proceedings shall not be deemed to be material on record in the case on the basis of which any inference may be drawn or an order may be passed solely based on it.

(17) The Court shall pass an order under section 25, only after being satisfied that the application for such an order is not vitiated by force, fraud or coercion or any other factor and the reasons for such satisfaction shall be recorded in writing in the order, which may include any undertaking or surety given by the respondent.

15. Breach of Protection orders.—(1) An aggrieved person may report a breach of protection order or an interim protection order to the Protection Officer.

(2) Every report referred to in sub-rule (1) shall be in writing by the informant and duly signed by her.

(3) The protection Officer shall forward a copy of such complaint with a copy of the protection order of which a breach is alleged to have taken place to the concerned Magistrate for appropriate orders.

(4) The aggrieved person may, if she so desires, make a complaint of breach of protection order or interim protection order directly to the Magistrate or the Police, if she so chooses.

(5) If, at any time after a protection order has been breached the aggrieved person seeks his assistance, the protection officer shall immediately rescue her by seeking help from the local police station and assist the aggrieved person to lodge a report to the local police authorities in appropriate cases.

(6) When charges are framed under section 31 or in respect of offences under section 498 A of the Indian Penal Code, 1860 (45 of 1860), or any other offence not summarily triable, the Court may separate the proceedings for such offences to be tried in the manner prescribed under Code of Criminal Procedure, 1973 (2 of 1974) and proceed to summarily try the offence of the breach of Protection order under Section 21 in accordance with the provisions of Chapter XXI of the Code of Criminal Procedure, 1973 (2 of 1974).

(7) Any resistance to the enforcement of the orders of the Court under the act by the respondent or any other person purportedly acting on his behalf shall be deemed to be a breach of protection order or an interim protection order covered under the Act.

(8) A breach of a protection order or an interim protection order shall immediately be reported to the local police station having territorial jurisdiction and shall be dealt with as a cognized offence as provided under sections 31 and 32.

(9) While enlarging the person on bail arrested under the Act, the court may, by order, impose the following conditions to protect the aggrieved person and to ensure the presence of the accused before the court, which may include—

- (a) an order restraining the accused from threatening to commit or committing an act of domestic violence;
- (b) an order preventing the accused from harassing, telephoning or making any contact with the aggrieved person;
- (c) an order directing the accused to vacate and stay away from the residence of the aggrieved person or any place she is likely to visit;
- (d) an order prohibiting the possession or use of firearm or any other dangerous weapon;
- (e) an order prohibiting the consumption of alcohol or other drugs,
- (f) any other order required for protection, safety and adequate relief to the aggrieved person.

16. Shelter to the aggrieved person.—(1) On a request being made by the aggrieved person, the Protection officer or a service provider may make a request under section 6 to the person in charge of a shelter home in writing, clearly stating that the application is being made under section 6.

(2) When Protection officer makes a request referred to in sub-rule (1), it shall be accompanied by a copy of the domestic incident report registered, under section 9 or under section 10:

Provided that shelter home shall not refuse shelter to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to the making of request for shelter in the shelter home.

(3) If the aggrieved person so desired, the shelter home shall not disclose the identity of the aggrieved person in the shelter home or communicate the same to the person complained against.

17. Medical facility to the aggrieved person.—(1) The aggrieved person or the protection officer or the service provider may make a request under section 7 to a person in charge of a medical facility in writing, clearly stating that the application is being made under section 7.

(2) When a Protection officer makes such a request, it shall be accompanied by a copy of the domestic incident report:

Provided that the medical facility shall not refuse medical assistance to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to making a request for medical assistance or examination to the medical facility.

(3) If no domestic incident report has been made, the person-in-charge of the medical facility shall fill in Form I and forwards the same to the local Protection Officer.

(4) The medical facility shall supply a copy of the medical examination report to the aggrieved person free of cost.

FROM 1

[See rules 5(1) and (2) and 17(3)]

**DOMESTIC INCIDENT REPORT UNDER SECTION 9 (B) AND 37 (2) (C)
OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE
ACT, 2005 (43 OF 2005)**

1. Details of the complainant/aggrieved person:
 - (1) Name of the complaint /aggrieved person:
 - (2) Age:
 - (3) Address of the shared household:
 - (4) Present Address:
 - (5) Phone Number, if any:

2. Details of Respondent:

S. No.	Name	Relationship with the aggrieved person	Address	Telephone No., if any

3. Details of children, if any, of the aggrieved person:
 - (a) Number of Children:
 - (b) Details of children:

Name	Age	Sex	With whom at present residing

4. Incidents of domestic violence:

S. No.	Date, place and time of violence	Person who caused domestic violence	Types of violence	Remarks
			Physical violence	
			Causing hurt of any kind, please specify	
(i) Sexual violence Please tick mark [✓] the column applicable.				
			<input type="checkbox"/> Forced sexual intercourse. <input type="checkbox"/> Forced to watch pornography or other obscene material <input type="checkbox"/> Forcibly using you to entertain others <input type="checkbox"/> Any other act of sexual nature, abusing, humiliating, degrading or otherwise violative of your dignity (please specify details in the space provided below):	
(ii) verbal and emotional abuse				
			<input type="checkbox"/> Accusation/aspersion on your character or conduct, etc. <input type="checkbox"/> Insult for not bringing dowry, etc. <input type="checkbox"/> Insult for not having a male child. <input type="checkbox"/> Insult for not having any child. <input type="checkbox"/> Demeaning, humiliating or undermining remarks/ statement. <input type="checkbox"/> Ridicule. <input type="checkbox"/> Name calling. <input type="checkbox"/> Forcing you to not attend school, college or any other educational institution. <input type="checkbox"/> Preventing you from taking up a job.	

(ii) verbal and emotional abuse				
			<input type="checkbox"/> Forcing you to get married against your will. <input type="checkbox"/> Preventing you from leaving the House. <input type="checkbox"/> Preventing you from meeting any particular person. <input type="checkbox"/> Forcing you to get married against your will. <input type="checkbox"/> Preventing you from marrying a person of your choice. <input type="checkbox"/> Forcing you to marry a person of his/their own choice. <input type="checkbox"/> Any other verbal or emotional abuse. (please specify in the space provide below)	
(iii) Economic violence				
			<input type="checkbox"/> Not Providing money for mainting you or your children. <input type="checkbox"/> Not providing food, clothes, medicine, etc., for you or your children. <input type="checkbox"/> Forcing you out of the house you live in. <input type="checkbox"/> Preventing you from accessing or using any part of the house. <input type="checkbox"/> Preventing or obstructing you from carrying on your employment. <input type="checkbox"/> Not allowing you to take up an employment. <input type="checkbox"/> Non-payment of rent in case of a rented accommodation <input type="checkbox"/> Not allowing you to use clothes or articles of general household use. <input type="checkbox"/> Selling or pawing your <i>stridhan</i> or any other valuables without informing you and without your consent.	

(iii) Economic violence				
			<input type="checkbox"/> Forcibly taking away your salary, income or wages etc. <input type="checkbox"/> Desposing your <i>stridhan</i> <input type="checkbox"/> Non-payment of other bills such as electricity, etc. <input type="checkbox"/> Any other economic violence (please specify in the space provided below)	
(iv) Dowry related harassment				
			<input type="checkbox"/> demands for dowry made, please specify <input type="checkbox"/> Any other details with regard to dowry, please specify. Whether details of dowry items, <i>stridhan</i> , etc. attached with the form <input type="checkbox"/> Yes <input type="checkbox"/> No	
(v) any other information regarding acts of domestic violence against you or your children				

(Signature or thumb impression of the complainant/aggrieved person)

5. List of documents attached

Name of document	Date	Any other detail
Medico-legal certificate		
Doctor's certificate or any other prescription		
List of <i>stridhan</i>		
Any other document		

6. Order that you need under the Protection of Women from Domestic Violence Act, 2005.

S. No.	Order	Yes/No	Any other
(1)	Protection order under section 18		
(2)	Residence order under section 19		
(3)	Maintenance order under section 20		
(4)	Custody order under section 21		
(5)	Compensation order under section 22		
(6)	Any other order (specify)		

7. Assistance that you need

S. No.	Assistance available	Yes/No	Nature of assistance
(1)	(2)	(3)	(4)
(1)	Counsellor		
(2)	Police assistance		
(3)	Assistance for initiating criminal proceedings		
(4)	Shelter Home		
(5)	Medical Facilities		
(6)	Legal aid		

8. Instruction for the Police officer assisting in registration of a Domestic Incident Report:

Wherever the information provided in this Form discloses an offence under the Indian Penal Code or any other law, the Police Officer shall—

- (a) inform the aggrieved person that she can also initiate criminal proceedings by lodging a First Information Report under the Code of Criminal Procedure, 1973 (2 of 1974)
- (b) if the aggrieved person does not want to initiate criminal proceedings, then make daily diary entry as per the information contained in the domestic incident report with a remark the the aggrieved person due to the intimate nature of the relationship with the accused wants to pursue the civil remedies for protection against domestic violence and has requested that on the basis of the information received by her, the matter has been kept pending for appropriate enquiry before registration of an FIR.

(c) if any physical injury or pain being reported by the aggrieved person, offer immediate medical assistance and get the aggrieved person medically examined.

Place: (Counter signature of Protection Officer/Service Provider)

Date: Name:

Address:

(Seal)

Copy forwarded to:—

- 1. Local Police Station
- 2. Service Provider/ Protection Officer
- 3. Aggrieved person
- 4. Magistrate

FORM II

(See rule 6(1)]

**APPLICATION TO THE MAGISTRATE UNDER SECTION 12
OF THE PROTECTIONS OF WOMEN FROM DOMESTIC
VIOLENCE ACT, 2005 (43 of 2005)**

To

The Court of Magistrate

.....

Application under section.....of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005)

SHOWETH:

1. That the application under section.....of Protection of Women from Domestic Violence Act, 2005 is being filed alongwith a copy of Domestic Incident Report by the:—

- (a) Aggrieved person
- (b) Protection Officer
- (c) Any other person on behalf of the aggrieved person

(tick whichever is applicable)

2. It is prayed that the Hon'ble court may take cognizance of the complaint/Domestic Incident Report and pass all/anyof the orders, as deemed necessary in the circumstances of the case,

- (a) Pass protection orders under setion 18 and/or
- (b) Pass residence orders under section 19 and/or
- (c) Direct the respondnet to pay monetary relief under section 20 and/or
- (d) Pass orders under section 21 of the Act and/or

- (e) Direct the respondent to grant compensation or damages under section 22 and/or
- (f) Pass such interim orders as the court deems just and proper;
- (g) Pass any orders as deems fit in the circumstances of the case.

3. Order required:

(i) Protection Order under section 18

- Prohibiting acts of domestic violence by granting an injunction against the Respondents from repeating any of the acts mentioned in terms of column 4(a)/(b)/(c)/(d)/(e)/(f)/(g) of the application
- Prohibiting Respondent (s) from entering the school/college/workplace
- Prohibiting from stopping you from going to your place of employment
- Prohibiting Respondent (s) from entering the school/college/any other place of your children
- Prohibiting from stopping you from going to your school
- Prohibiting any form of communication by the Respondent with you
- Prohibiting alienation of assets by the Respondent
- Prohibiting operation of joint bank lockers/accounts by the Respondent and allowing the aggrieved person to operate the same.
- Directing the Respondent to stay away from the dependants/relatives/any other person of the aggrieved person to prohibit violence against them
- Any other order, please specify

(ii) Residence Order under section 19

- An order restraining Respondent(s) from
- Dispossessing or throwing me out from the shared household
- Entering that portion of the shared household in which I reside
- Alienating/disposing/encumbering the shared household
- Renouncing his rights in the sharedhousehold
- An order entitling me continued access to my personal effects
- An order directing Respondent(s) to
- Remove himself from the shared household
- Secure same level of alternate accommodation or pay rent for the same
- Any other order, Please specify

(iii) Monetary reliefs under section 20

- Loss of earnings, amount Claimed
- Medical expenses, amount claimed
- Loss due to destruction/damage or removal of property from the control of the aggrieved person,

Amount claimed

- Any other loss or physical or mental injury as specified in clause 10(d)
 Amount claimed
- Total Amount claimed
- Any other order, please specify
- (vi) Monetary reliefs under section 20
 - Directing the Respondent to pay the following expenses as monetary relief:
 - Food, cloths, medications and other basis necessities, Amount per month
 - School fees and related expenses Amount per month
 - Household expenses Amount Per month
 - Any other expenses Amount Per month
 - Total Per month
 - Any other order, please specify
- (v) Custody Order under section 21
 Direct the Respondent to hand over the custody of the child or children to the—
 - Aggrieved Person Any other person on her behalf, details of such person
- (vi) Compensation order under section 22
- (vii) Any other order, please specify
- 4. Details of previous litigation, if any
 - (a) Under the Indian Penal Code, sections.....Pending in the court of
 Disposed of, details of relief
 - (b) Under Cr. P.C, sections.....Pending in the court of
 Disposed of, details of relief
 - (c) Under the Hindu Marriage Act, 1955, sections.....Pending in the court
 Disposed of, details of relief
 - (d) Under the Hindu Adoptions and Maintenance Act, 1956, sections..... Pending in the court of
 Disposed of, details of relief
 - (e) Application for maintenance, under section.....under Act
 Interim maintenance Rs. p.m.
 Maintenance granted Rs. p.m.
 - (f) Whether Respondent was sent to Judicial Custody.
 - For less than a week For less than a month
 - For more than a month
 - Specify period
 - (g) Any other order

Prayer:

It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to grant the relief (s) claimed therein and pass such order or orders other order as this Hon'ble Court may deem fit and proper under the given facts and circumstances of the case for protecting the aggrieved person from domestic violence and in the interest of justice.

Place: Complainant/Aggrieved person through

Dated: Counsel

VERIFICATION

Verified at.....place) on this day of.....that the contents of paras 1 to 12 of the above application are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

Deponent
Countersignature of Protection Officer with date.

FORM III

(See rule 6(4) and 7]

AFFIDAVIT UNDER SECTION 23 (2) OF THE PROTECTION OF WOMEN
FROM DOMESTIC VIOLENCE ACT, 2005

IN THE COURT OF....., MM,

P/S:.....

IN THE MATTER OF:

Ms. & Others ...COMPLAINANT

VERSUS

Ms. & Others ...RESPONDENT

AFFIDAVIT

I,, W/o Mr., R/O..... D/o Mr. R/o....., presently residing atdo hereby solemnly affirm and declare on oath as under:

1. That I am the Applicant in the accompanying Application for filed for myself and for my daughter/son.
2. That I am the natural guardian of.....
3. That being conversant with the facts and circumstances of the case I am competent to swear this affidavit.
4. That the Deponent had been living with the Respondent/s at..... since.....to.....
5. That the details provided in the present application for the grant of relief under section (s).....have been entered into by me/at my instructions.
6. That the contents of the application have been read over, explained to me in English/Hindi/any other local language (Please specify.....)
7. that the contents to the said application may be read as part of this affidavit and are not repeated herein for the sake of brevity.
8. That the applicant apprehends repetition of the acts of domestic violence by the Respondent(s) against which relief is sought in the accompanying application.

- 9. That the Respondent has threatened the Applicant that

- 10. That the reliefs claimed in the accompanying application are urgent in as much as the applicant would face great financial hardship and would be forced to live under threat of repetition/escalation of acts of domestic violence complained of in the accompanying application by the Respondent(s) if the said reliefs are not granted on an ex-parte ad-interim basis.
- 11. That the facts mentioned herein are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

DEPONENT

VERIFICATION

Verified at.....on this.....day of..... 20.....
That the contents of the above affidavit are correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.

DEPONENT

FORM IV

(See rule 8(1)(ii)]

INFORMATION ON RIGHTS OF AGGRIEVED PERSONS UNDER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

1. If you are beaten up, threatened or harassed in your home by a person with whom you reside in the same house, then you are facing domestic violence. The Protection of Women from Domestic Violence Act, 2005, gives you the right to claim protection and assistance against domestic violence.

2. You can receive protection and assistance under the Act, if the persons (s) with whom you are/were residing in the same house, commits any of the following acts of violence against you or a child in your care and custody—

1. Physical Violence:

For example—

- (i) Beating
- (ii) Slapping
- (iii) Hitting
- (iv) Biting
- (v) Kicking
- (vi) Punching
- (vii) Pushing,
- (viii) Shoving or
- (ix) Causing bodily pain or injury in any other manner.

2. Sexual Violence:

For example—

- (i) Forced sexual intercourse;
- (ii) Forces you to look at pornography or any other obscene pictures or material;
- (iii) Any act of sexual nature to abuse, humiliate or degrade you, or which is otherwise violative of your dignity or any other unwelcome conduct of sexual nature;
- (iv) Child sexual abuse.

3. Verbal and Emotional violence:

For example—

- (i) Insults;
- (ii) Name-calling;
- (iii) Accusations on your character conduct etc.;
- (iv) Insults for not having a male child;
- (v) Insults for not brining dowry etc;
- (vi) Preventing you or a child in your custody from attending school, college or any other educational institution;
- (vii) Preventing you from taking up a job;
- (viii) Forcing you to leave your job;
- (ix) Preventing you or a child in your custody from leaving the house;
- (x) Preventing you from meeting any person in the normal course of events;
- (xi) Forcing you to get married when you do not want to marry
- (xii) Preventing you from marrying a person of your own choice
- (xiii) Forcing you to marry a particular person of his/their own choice;
- (xiv) Threat to commit suicide;
- (xv) Any other verbal or emotional abuse.

4. Economic Violence:

For example—

- (i) Not providing you money for maintaining you or your children
- (ii) Not providing food, clothes, medicines etc, you or your children,
- (iii) Stopping you from carrying on your employment
- (iv) Disturbing you in carrying on your employment
- (v) Not allowing you to take up an employment or,
- (vi) Taking away your income from your salary, wages etc;
- (vii) Not allowing you to use your salary, wages etc,
- (viii) Forcing you out of the house you live in
- (ix) Stopping you from accessing our using any part of the house,
- (x) Not allowing use of clothes, articles or things or general household use,
- (xi) Not paying rent if staying in a rented accommodation, etc.

3. If an act of domestic violence is committed against you by a person/s with whom you are/were residing in the same house, you can get all or any of the following orders against the person(s)

(a) *Under section 18:*

- (i) To Stop committing any further acts of domestic violence on you or your children,
- (ii) To give you the possession of your stridhan, jewellery, clothes etc.
- (iii) Not to operate the joint bank accounts or lockers without permission of the court.

(b) *Under section 19:*

- (i) Not to stop you from residing in the house where you were residing with the person/s
- (ii) Not to disturb or interfere with the house where you were residing with the court.
- (iii) Not to dispose of the house in which you are residing
- (iv) If your residence is a rented property then either to ensure payment of rent or secure any other suitable alternative accommodation which offers you the same security and facilities as earlier residence,
- (v) Not to give up the rights in the property in which you are residing without the permission of the court
- (vi) Not to take any loan against the house/property in which you are residing or mortgage it or create any other financial liability involving the property,
- (vii) Any or all of the following orders for your safety requiring the person/s to—

(c) *General order:*

- (i) Stop the domestic violence complained /reported

(d) *Special orders:*

- (i) Remove himself/stay away from your place of residence or workplace
- (ii) Stop making any attempts to meet you,
- (iii) Stop calling you over phone or making any attempts to communicate with you by letter, e-mail etc;
- (iv) Stop talking to you about marriage or forcing you to meet a particular person of his/ their choice or marriage;
- (v) Stay away from the school of your child/children, or any other place where you and your children visit;
- (vi) Surrender possession of firearms, any other weapon or any other dangerous substance;
- (vii) Not to acquire possession of firearms, any other weapon or any other dangerous substance and not to be in possession of any similar article;
- (viii) Not to consume alcohol or drugs with similar effect which led to domestic violence in the past;
- (ix) Any other measure required for ensuring your or your children's safety.

(e) *An order for interim monetary relief under section 20 and 22 including—*

- (i) Maintenance for you or your children
- (ii) Compensation for physical injury including medical expenses,
- (iii) Compensation for mental torture and emotional distress,
- (iv) Compensation for loss of earning
- (v) Compensation for loss caused by destruction, damages removal of any property from your possession or control.

Note I. Any of the above relief can be granted on an interim basis, as soon as you make a complaint to domestic violence and present your application for any of the relief before the court.

II. A complaint for domestic violence made in From I under the Act is called a “Domestic Incident Repot”

4. If you are a victim of domestic violence, you have the following rights;

- (i) The assistance of a protection officer and service providers to inform you about your rights and the relief which you can get under the Act under section 5.
- (ii) The assistance of protection officer service providers of the officer-in-charge of the nearest police station to assist you in registering your complaint and filing and application for relief under section 9 and 10
- (iii) To receive protection for your and your children form acts of domestic violence under section 18.
- (iv) You have right to measures and orders protecting you against the particular dangers or insecurities you or your child are facing
- (v) To stay in the house where you suffered domestic violence and to seek restraint on other persons residing in the same house, from interfering with or disturbing peaceful enjoyment of the house and the maternities, facilities therein by you or your children under section 19.
- (vi) To regain possession of your *stridhan*, jewellery, clothes, articles of daily use and other household goods under section 18.
- (vii) To get medical assistance, shelter, counselling and legal aid under sections 6, 7, 9 and 14.
- (viii) To restrain the person committing domestic violence against you from contacting you or communicating with you in any manner under section 18.
- (ix) To get compensation for any physical or mental injury or any other monetary loss due to domestic violence under section 22.
- (x) To file complaint or applications for relief under the Act directly to the court under sections 12, 18, 19, 20, 21, 22 and 23.
- (xi) To get the copies of the complaint filed by you, applications made by you, reports of any medical or other examination that you or your child undergo.
- (xii) To get copies of any statements recorded by any authority in connection with Dimestic Violence.
- (xiii) The assistance of the Protection Officer or the Police to rescue you from any danger.

5. The person providing the from should ensure that the details of all the registered service providers are entered in the manner and space provided below. The following is the list of service providers in the area:

Name of Organization	Service Provided	Contact Details

Continue the list on a separate sheet, if necessary.....

FORM V
(See rule 8(1)(iv))
SAFETY PLAN

1. When a Protection Officer, Police Officer or any other service provider is assisting the woman in providing details in this form, then details in columns C and D are to be filled in by the Protection Officer, Police Officer or any other service provider, as the case may be, in consultation with the complainant and with her consent.
2. The aggrieved person in case of approaching the court directly may herself provide details in columns C and D.
3. If any aggrieved person leaves columns C and D blank and approaches the court directly, then details in the said columns are to be provided by the Protection Officer to the court, in consultation with the complainant and with her consent.

Sl. No.	A	B	C	D	E
	Violence by the Respondent	Consequences of violence mentioned in column A suffered by the Aggrieved Person	Apprehensions of the Aggrieved Person regarding violence mentioned in Column A	Measures required for safety	Orders sought from the court
1.	Physical violence by the Respondent	Complainant's perception that she and her children are at risk of repetition of physical violence	(a) Repetition (b) Escalation (c) Fear of injury (d) Any other, specify		
2.	Any sexual act abusing, Humiliating or degrading, otherwise violative of your dignity	(a) Depression (b) At risk of repetition of Such an act (c) Facing attempts to commit such acts	(a) Repetition (b) Escalation (c) Any other, specify		
3.	Attempts at strangulation	(a) Physical injury (b) Mental ill health (c) Any other, specify	(a) Repetition (b) Any other, specify		
4.	Beatings to the children	(a) Injury to the children (b) Adverse mental effect of the same on the children (c) Any other, specify	(a) Repetition (b) Adverse effect of violent behaviour/environment on the child		

	A	B	C	D	E
5.	threats to commit suicide by the Respondent	(a) Violent environment in the house (b)Threat to safety (c) Any other, specify	(a) Actually trying to commit the same (b) Repetition (c) any other, specify		
6.	Attempts to commit Suicide by the Respondent	(a) Violent environment in the house (b)Insecurity, anxiety, depression, Mental trauma (c) Any other, spcify	(a) repetition, escalation, aggravation of the same (b) Mental trauma, pain (c) Any other, specify		
7.	Psychological & emotional abuse of the complainant like insults, ridicule, name calling, insults for not having a male child, false accusation of unchastity, etc.	(a) Depression (b) Mental trauma, pain (c) Unsuitable atmosphere for the child/children (d) Any other, specify	(a)Repetition, escalation, aggravation of the same (b) mental truma, pain (c) Any other, specify		
8.	Making verbal threats to cause harm to the aggrieved person/her children/Parents/relatives	(a) Living in constant fear (b) Mental trauma, pain (c) any other, specify	(a) Respondent may carry out the mentioned threats (b) Mental trauma, pain (c) any other, specify		
9.	Forcing not to attend school/college/any other educational institution	(a) Depression (b) Mental trauma, pain (c) Any other, specify	(a) Repetition (b) Mental trauma, pain (c) Any other, specify		
10.	Forcing to get married when do not want to/ forcing not to marry a person of choice/forcing to marry a particular person of Respondent/s choice	(a) Depression (b) Mental trauma, pain (c) Fear of being married forcibly (d) Any other	(a) Repetition (b) Mental trauma, pain (c) Any other		
11.	Threatening to kidnap the Child/children	(a) Living in constant fear (b) threat to the child/ children's safety (c) any other, specify	(a) Children might be kidnapped (b)Any other, specify		

	A	B	C	D	E
12.	Actually causing harm to The aggrieved person/children/relatives	(a) Living in constant fear of further harm (b) Any other, specify	(a) Repetition (b) Escalation (c) Fear of injury (d) Any other, specify		
13.	Substance abuse (drugs/alcohol)	(a) Living in constant fear of abusive and violent behaviour by the Repondent due to substance abuse (b) Deprived of leading a Normal life (c) Any other, specify	(a) Physical violence after Consuming the same (b) Abusive behaviour after Consuming the same (c) Non-payment of maintenance/household expenses (d) Any other, specify		
14.	History of criminal behaviour	(a) Constant fear of violence (b) Fear of revenge by the Respondent the court against him	(a) Respondent has a tendency to violate law and is likely to flout orders passed by (b) Respondent might cause harm to the aggrieved person/children for filing any further proceedings (c) Any other, specify		
15.	Not provided money towards maintenance, food, clothes, medicines etc.	(a) Driven towards vagrancy and destitution (b) Any other, specify	(a) Have to face great hardship to fulfill the needs and requirements of her child/children and herself (b) Any other, specify		
16.	Stopped, disturbed from carrying on employment or not allowed to take up the same	(a) Not able to fulfill the basis needs for yourself and your children (b) Any other, specify	(a) Have to face great hardship to fulfill the needs and requirements of her child/children and herself (b) Any other, specify		

	A	B	C	D	E
17.	Forced out of the house, stopped from accessing or using any part of the house or prevented from leaving the same	(a) having no place to stay for yourself and your children (b) Being restricted to a particular area of the house	(a) Safety of her child/ children and herself have to face great hardship in providing shelter for her (c) Any other, specify		
18.	Not allowed use of clothes, articles or things of general household use	(a) Losing possession of the same (b) Not having resources to replace the same	(a) The same may be disposed of by the Respondent (b) Any other		
19.	Non-payment of rent in case of a rented accommodation	(a) Being asked to leave the same by the owner on such non-payment (b) No alternate accommodation to go to (c) No income to afford a rented accommodation	(a) Losing shelter (b) Facing great hardship (c) any other, specify		
20.	Sold, pawned stridhan or any other valuables without informing or without consent	(a) Loss of valuables or property (b) Any other, specify	(a) The same may be disposed of by the Respondent (b) Any other, specify		
21.	Dispossessed of <i>stridhan</i>	(a) Deprived of the property in her possession (b) Any other, specify	(a) The same may be disposed of by the Respondent (b) Feat of never receiving the same again (c) Any other, specify		
22.	Breach of civil/criminal court order, specify order	Please specify	Please specify		

Signature
Aggrieved person

Signature
Service Provider/Protection Officer/Police Officer

FROM VI

[See rule 11(1)]

**FORM FOR REGISTRATION AS SERVICE PROVIDERS UNDER
SECTION 10 (1) OF THE PROTECTION OF WOMEN FROM
DOMESTIC VIOLENCE ACT, 2005**

1. Name of the applicant	
2. Address alongwith Phone number, e-mail address, if any	
3. Service being rendered	<input type="checkbox"/> Shelter <input type="checkbox"/> Psychiatric counselling <input type="checkbox"/> Family counselling <input type="checkbox"/> Vocational Training Centre <input type="checkbox"/> Medical Assistance <input type="checkbox"/> Awareness Programme <input type="checkbox"/> Counselling for a group of people who are victims of domestic violence and family disputes <input type="checkbox"/> Any other, specify.
4. Number of persons employed for providing such service:	
5. Whether providing the required services in your institution requires certain statutory minimum professional qualification? If yes, please specify and give details.	
6. Whether list of names of the persons and the capacity in which they are working and their professional qualification is attached?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7. Period for which the services are being rendered:	<input type="checkbox"/> 3 years <input type="checkbox"/> 4 years <input type="checkbox"/> 5 years <input type="checkbox"/> 6 years <input type="checkbox"/> More than 6 years
8. Whether registered under any law/regulation If yes, give the registration number	<input type="checkbox"/> Yes <input type="checkbox"/> No

9. Whether requirements prescribed by any regulatory body or law fulfilled?	
If yes, the name and address of the regulatory body:	
Note: —In case of a shelter home, details under column 10 to 18 are to be entered by registering authority after inspection of the shelter home.	
10. Whether there is adequate space in the shelter home	<input type="checkbox"/> Yes <input type="checkbox"/> No
11. Measured area of the entire premise	
12. Number of rooms]	
13. Area of the rooms	
14. Details of security arrangements available	
15. Whether a record available for maintaining a functional telephonic connection for the use of inmates for the last 3 years	
16. Distance of the nearest dispensary/ clinic/medical facility	
17. Whether any arrangement for regular visits by a medical professional has been made?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, name of the Medical Professional	
Address	<input type="text"/>
	<input type="text"/>
Contact number	<input type="text"/>
Qualification	<input type="text"/>
Specialisation	<input type="text"/>
18. Any other facilities available, specify	<input type="text"/>
	<input type="text"/>
	<input type="text"/>
	<input type="text"/>
Note: —In case of a counselling centre, details under column 19 to 25 are to be entered after inspection by registering authority	

19. Number of counsellors in the centre <input type="text"/>
20. Minimum qualification of the counsellors, specify <input type="checkbox"/> Under graduate <input type="checkbox"/> Graduate <input type="checkbox"/> Post graduate <input type="checkbox"/> Diploma holder <input type="checkbox"/> Professional degree <input type="checkbox"/> Any other, specify
21. Experience of the counsellors <input type="checkbox"/> Less than a year <input type="checkbox"/> 1 year <input type="checkbox"/> 2 years <input type="checkbox"/> 3 years <input type="checkbox"/> More than 3 years
22. Professional qualification/experience of counsellors <input type="checkbox"/> Professional degree <input type="checkbox"/> Experience in family counselling as a.....(designation) in the..... (Name of the organization) <input type="checkbox"/> Experience in psychiatric counselling as..... (designation) in the.....(Name of the organization) <input type="checkbox"/> Any other relevant experience, please specify <input type="text"/> <input type="text"/> <input type="text"/>
23. Whether a list of names of counsellors along with their qualifications has been annexed <input type="checkbox"/> Yes <input type="checkbox"/> No
24.(A). Type of counselling provided <input type="checkbox"/> Supportive one-to-one counselling <input type="checkbox"/> Cognitive behavioural therapy (CBT) (Mental Process that people use to remember, reason, understand, solve problems and judge things) <input type="checkbox"/> Providing counselling to a group of people suffering <input type="checkbox"/> Family counselling
*24.(B). Facilities provided <input type="checkbox"/> Offering personal professional and confidential counselling sessions <input type="checkbox"/> A safe environment to discuss problems and express emotions <input type="checkbox"/> Information on counselling services, support groups and mental health care resources <input type="checkbox"/> One to one counselling and group work

* Ed.—In Gazette of India, 24B is shown as 7 & 24C is shown as (C).

<input type="checkbox"/> Therapies, ongoing counselling and health related support <input type="checkbox"/> Any other, please specify <input type="text"/> <input type="text"/>
24(C). Any other service (1) Services being provided <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
(2) Personnel appointed <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
(3) Statutory minimum qualifications required for providing such service <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
(3) Whether a list of names of Personnel engaged for providing service along with their professional qualification is annexed <input type="checkbox"/> Yes <input type="checkbox"/> No (5) Any other details which the service provider desirous of registration may provide <input type="text"/> If necessary continue on a separate sheet.

Place:
Date:

Signature of authorised official
Designation:

(Seal)

FORM VII

(See rule 11(1)]

**NOTICE FOR APPEARANCE UNDER SECTION 13(1) OF THE PROTECTION
OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005**

IN THE COURT OF.....

P/S:.....

IN THE MATTER OF:

Ms.

...COMPLAINANT

VERSUS

Ms.

...RESPONDENT

To,

Mr.....

S/o.....

R/o.....

.....

.....

WHEREAS the Petitioner has filed an application(s) under section.....of the Protection of Women from Domestic Violence act, 2005 (43 of 2005);

You are hereby directed to appear before this Court on the.....day of.....20..... at..... O' clock in the.....noon personally or through a duly authorised counsel of this Court to show cause why the relief(s) claimed by the Applicant against you should not be granted, failing which the court shall proceed *ex parte* against you.

Given under my hand and the seal of the Court of.....on the.....day of.....20.....

Seal of the Court

Signature

Annexure III

Provisions of Other Laws Relevant to Domestic Violence

I. THE CODE OF CRIMINAL PROCEDURE, 1973 (2 Of 1974)

2. Definitions. -

- (c) “cognizable offence” means an offence for which, and “cognizable case” means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;
- (j) “local jurisdiction”, in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may exercise all or comprise the whole of the State, or any of its or his powers under this Code 1 [and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify];
- (k) “metropolitan area” means the area declared, or deemed to be declared, under section 8, to be a metropolitan area;
- (l) “non-cognizable offence” means an offence for which, and “non-cognizable case” means a case in which a police officer has no authority to arrest without warrant;

CHAPTER VI

PROCESSES TO COMPEL APPEARANCE

A - Summons

61. Form of summons.- Every summons issued by a Court under this Code shall be in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court.

62. Summons how served.- (1) Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.

(2) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

(3) Every person on whom a summons is so served shall, If so required by the serving officer, sign a receipt therefore on the back of the other duplicate.

63. Service of summons on corporate bodies and societies. – Service of a summons on a corporation may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the corporation in India, in which case the service shall be deemed, to have been effected when the letter would arrive in ordinary course of post.

Explanation. – In this section “corporation” means an incorporated company or other body corporate and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).

64. Service when persons summoned cannot be found. – Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate.

Explanation. – A servant is not a member of the family within the meaning of this section.

65. Procedure when service cannot be effected as before provided. - If service cannot by the exercise of due diligence be effected as provided in section 62, section 63 or section 64, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that summons has been duly served or order fresh service in such manner as it considers proper.

66. Service on Government servant. - (1) Where the person summoned is in the active service of the Government, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in the manner provided by section 62, and shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service.

67. Service of summons outside local limits. – When a Court desires that summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served.

68. Proof of service in such cases and when serving officer not present. – (1) When a summons issued by a Court is served outside its local jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in the manner provided by section 62 or section 64) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

69. Service of summons on witness by post. – (1) Notwithstanding anything contained in the preceding section of this Chapter, a Court issuing a summons to a witness may, in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain.

(2) When an acknowledgment purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received, the Court issuing the summons may declare that the summons has been duly served.

CHAPTER – IX

ORDER FOR MAINTENANCE OF WIVES, CHILDREN AND PARENTS

125. Order for maintenance of wives, children and parents. – (1) If any person having sufficient means neglects or refuses to maintain-

- (a) his wife, unable to maintain herself, or
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
- (d) his father or mother, unable to maintain himself or herself,

A Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly rate² [***], as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, married, is not possessed of sufficient means.

¹[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim proceeding which Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation. – For the purposes of this Chapter, -

(a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

² The words “not exceeding five hundred rupees in the whole” omitted by Act 50 of 2001, sea. 2 (w.e.f. 24-9-2001).

¹ Ins. By Act 50 of 2001, sec. 2(i)(b) (w.e.f. 24-9-2001).

² [(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's³ [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. – If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an³ [allowance for the maintenance or the interim maintenance and expenses of she is living in adultery, or if, without any sufficient reason, she reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

126. Procedure. – (1) Proceedings under section 125 may be taken against any person in any district-

- (a) where he is, or
- (b) where he or his wife resides, or
- (c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

(2) All evidence to such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte* and any order so made may be

² Subs. by Act 50 of 2001, sec. 2(ii), for sub-section (2) (w.e.f. 24-9-2001).

³ Subs. by Act 50 of 2001, sec. 2(iii), for "allowance" (w.e.f. 24-9-2001).

set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

(3) The Court in dealing with application under section 125 shall have power to make such order as to costs as may be just.

127. Alteration in allowance.- ¹ [(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.]

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-

- (a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;
- (b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order-
 - (i) in any other case, where such sum was paid before such order, from the date on which such order was made,
 - (ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;
- (c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to ² [maintenance or interim maintenance, as the case may be] after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom ¹ [monthly allowance for the maintenance and interim maintenance or any of them has been ordered] to be paid under section 125, the Civil Court shall take into account that sum which has been paid to, or recovered by, such person ² [as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of] the said order.

128. Enforcement of order of maintenance. – A copy of the order of maintenance ¹ [or interim maintenance and expenses of proceeding, as the case may be,] shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance ² [for the maintenance or the allowance for the interim maintenance and expenses of proceeding, as the case may be,] is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the ³ [allowance, or as the case may be, expenses, due].

II. THE INDIAN PENAL CODE, 1860 (45 of 1860)

Of Hurt

319. Hurt.- Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

320. Grievous hurt. – The following kinds of hurt only are designated as “grievous”:-

- First - Emasculation.
- Secondly - Permanent privation of the sight of either eye.
- Thirdly - Permanent privation of the hearing of either ear,
- Fourthly - Privation of any member or joint.
- Fifthly - Destruction or permanent impairing of the powers of any member or joint.
- Sixthly - Permanent disfiguration of the head or face.
- Seventhly - Fracture or dislocation of a bone or tooth.
- Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

339. Wrongful restraint.- Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.- The obstruction of a private way over land or water which person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

340. Wrongful confinement.- Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limit, is said “wrongfully to confine” that person.

¹ [376A Intercourse by a man with his wife during separation.- Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.]

Of Criminal Breach of Trust

405. Criminal breach of trust.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation any direction of law prescribing the mode in which trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”.

¹ [Explanation ² [1].- A person, being an employer ³ [of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

¹ [Explanation 2.- A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

406. Punishment for criminal breach of trust.- Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XXA

OF CRUELTY BY HUSBAND OR RELATIVES OR HUSBAND

498A. Husband or relative or husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a women, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.- For the purpose of this section, "cruelty" means-

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

304B. Dowry Death.- (1)Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances Within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative deemed to have caused her death.

Explanation:- For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life]

III. THE DOWRY PROHIBITION ACT, 1961 (No. 21 of 1961)

2. Definition of “Dowry” – in this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly –

- a. By one party to a marriage to the other party to the marriage; or
- b. By the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before 2[or any time after the marriage] 3[in connection with the marriage of the said parties but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II – The expression “valuable security” has the same meaning as in section 30 of the Indian Penal code (45 of 1860).

IV. CODE OF CIVIL PROCEDURE, 1908

ORDER V - ISSUE AND SERVICE OF SUMMONS (THE FIRST SCHEDULE)

Issue of Summons

1 - Summons

¹[(1) When a suit has been duly instituted, a summons may issued to the defendant to appear and answer the claim and to file the writ statement of his defence, if any, within thirty days from the date of service summons on that defendant;

Provided that no such summons shall be issued when a defendant has appeal at the presentation of the plaint and admitted the plaintiff’s claim:

Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other days as may be specified by the Court for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.;

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear—

- (a) in person, or
- (b) by a pleader duly instructed and able to answer all material questions relating to the suit, or
- (c) by a pleader accompanied by some person able to answer all such questions

(3) Every such summons shall be signed by the Judge or such officer as appointed, and shall be sealed with the seal of the Court.

1[2. Copy of plaint annexed to summons

Every summons shall be accompanied by a copy of the plaint].

¹ Sub-rule (1) was substituted by Act No. 46 of 1999, section 15 and now further substituted Act No. 22 of 2002, section 6 (w.e.f. 1-7-2002).

¹ Subs, by Act No. 46 of 1999, section 15 for rule 2 (w.e.f. 1-7-2002).

3. Court may order defendant or plaintiff to appear in person

(1) Where Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specific

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

4. No party to be ordered to appear in person unless resident within certain limits

No party shall be ordered to appear in person unless he resides—

- (a) within the local limits of the Court’s ordinary original jurisdiction, or
- (b) without such limits but at place less than fifty or (where there is railway steamer communication or other established public conveyance for five-sixths (the distance between the place where he resides and the place where the Court situate) less than two hundred miles distance from the Court-house.

5. Summons to be either to settle issues or for final disposal.

The Court shall determine, at the time, of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

6. Fixing day for appearance of defendant

The day for the appearance of the defendant ¹[under sub-rule (1) of the rule 1] shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

7. Summons to order defendant to produce documents relied on by him—

The summons to appeal and answer shall order the defendant to produce ¹[all documents or copies thereof specified in rule 1A of Order VIII] in his possession or power upon which he intends to rely in support of his case.

8. On issue of summons for final disposal, defendant to be directed to produce his witnesses.

Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.

¹ Subs. by Act 46 of 1999, sec. 15, for “for the appearance of the defendant” (w.e.f. 1-7-2002).

¹ Subs, by Act No. 46 of 1999, section 15 (w.e.f. 1-7-2002) for certain words.

Service of Summons

1[9. Delivery of summons by Court

(1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.

(2) The proper officer may by an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgement due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due), the provisions of rule 21 shall not apply.

(5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal articles containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).

9A. Summons given to the plaintiff for service

(1) The Court may, in addition to the service of summons under rule 9, on the application of the plaintiff for the issue of a summons for the appearance of the defendant, permit such plaintiff to effect

¹ Rule 9 was substituted by Act No. 46 of 1999 section 15 and now further substituted by Act No.22 of 2002, section 6 (w.e.f. 1-7-2002).

service of such summons on such defendant and shall, in such a case, deliver the summons to such plaintiff for service.

(2) The service of such summons shall be effected by or on behalf of such plaintiff by delivering or tendering to the defendant personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court or by such mode of service as is referred to in sub-rule (3) of rule 9.

(3) The provisions of rules 16 and 18 shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.]

10. Mode of service.

Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

11. Service on several defendants.

Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

12. Service to be on defendant on person when practicable, or on his agent—

Wherever it is practicable service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

13. Service on agent by whom defendant carries on business

(1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or chartered.

14. Service on agent in charge in suits for immovable property

Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

1[15. Where service may be on an adult member of defendant's family

Where in a suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on his at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on

his behalf service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this rule.]

16. Person served to sign acknowledgement

Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgement of service endorsed on the original summons.

17. Procedure when defendant refuses to accept service, or cannot be found

Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgement, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, ¹[who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time] and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did do, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

18. Endorsement of time and manner of service.

The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

19. Examination of serving officer.

Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

1[19A. Simultaneous issue of summons for service by post in addition to personal service]

20. Substituted service

(1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in

¹ Rule 19A was inserted by Act No. 104 of 1976, sec. 55 (w.e.f. 1-2-1977) now omitted by Act No. 46 of 1999, section 15 (w.e.f. 1-7-2002)..

which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

¹ (1A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.]

(2) Effect of substituted service—Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

(3) Where service substituted, time for appearance to be fixed—Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

1[20A. Service of summons by post.

Rep. by the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976), s. 55 (w.e.f. 1-2-1977).]

21. Service of summons where defendant resides within jurisdiction of another Court

A summons may sent by the Court by which it is issued, whether within or without the State, either by one of its officers ¹[or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court] to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

22. Service within presidency-towns of summons issued by Courts outside—

Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras ¹[and Bombay] is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

23. Duty of Court to which summons is sent

The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

24. Service on defendant in prison

Where the defendant is confined in a prison, the summons shall be delivered or sent ¹[by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court] to the officer in charge of the prison for service on the defendant.

¹ Ins. by Act No. 104 of 1976, sec. 55 (w.e.f. 1-2-1977).

¹ Ins. by Act 66 of 1956, sec. 14 (w.e.f. 1-1-1957).

¹ Subs, by Act No. 46 of 1999, section 15 (w.e.f. 1-7-2002) for “or by post”.

¹ Subs. by the A.O. 1937, for “Bombay and Rangoon”.

¹ Subs, by Act No. 46 of 1999, section 15 (w.e.f. 1-7-2002) for certain words.

25. Service where defendant resides out of India and has no agent

Where the defendant resides out of ⁴[India] and has no agent in ⁴[India] empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him ¹[by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court], if there is postal communication between such place and the place where the Court is situate:

⁵[Provided that where any such defendant ²[resides in Bangladesh or Pakistan] the summons, together with a copy thereof, may be sent for service on the defendant, to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides:

Provided further that where any such defendant is a public officer ³[in Bangladesh or Pakistan (not belonging to the Bangladesh or, as the case may be, Pakistan military naval or air forces)] or is servant of a railway company or local authority in that country, the summons, together with a copy thereof, may be sent for service on the defendant, to such officer or authority in that country as the Central Government may, by notification in the Official Gazette, specify in this behalf.]

1[26. Service in foreign territory through Political Agent or Court

Where—

(a) in the exercise of any foreign jurisdiction vested in the Central Government, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons, issued by a Court under this Code, in any foreign territory in which the defendant actually and voluntarily resides, carries on business or personally works for gain, or

(b) the Central Government has, by notification in the Official Gazette, declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service, the summons may be sent to such Political Agent or Court, by post, or otherwise, or if so directed by the Central Government, through the Ministry of that Government dealing with foreign affairs, or in such other manner as may be specified by the Central Government for the purpose of being served upon the defendant: and, if the Political Agent or Court returns the summons with an endorsement purporting to have been made by such Political Agent or by the Judge or other officer of the Court to the effect that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

26A. Summonses to be sent to officer to foreign countries

Where the Central Government has, by notification in the Official Gazette, declared in respect of any foreign territory that summonses to be served on defendants actually and voluntarily residing or carrying

¹ Subs, by Act No. 46 of 1999, section 15 (w.e.f. 1-7-2002) for “by post”.

² Subs, by Act No. 104 of 1976, sec. 53, for “resides in Pakistan” (w.e.f. 1-2-1977).

³ Subs, by Act No. 104 of 1976, sec. 55, for “resides in Pakistan” (w.e.f. 1-2-1977).

⁴ Subs. by Act 2 of 1951, sec. 3 for “the States”.

⁵ Ins. by Act 19 of 1951, sec. 2.

¹ Subs. by Act No. 104 of 1976, sec. 55, for rule 26 (w.e.f. 1-2-1977).

on business or personally working for gain in that foreign territory may be sent to an officer of the Government of the foreign territory specified by the Central Government, the summonses may be sent to such officer, through the Ministry of the Government of India dealing with foreign affairs or in such other manner as may be specified by the Central Government; and if such officer returns any such summons with an endorsement purporting to have been made by him that the summons has been served on the defendant, such endorsement shall be deemed to be evidence of service.]

27. Service on civil public officer or on servant of railway company or local authority.

Where the defendant is a public officer (not belonging to ¹[the Indian] military, ²[naval or air] forces ³[***]) or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed together with a copy to be retained by the defendant.

28. Service on soldiers, sailors or airmen

Where the defendant is a soldier, ¹[sailor] ²[or airman], the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

29. Duty of person to whom summons is delivered or sent for service

(1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it if possible and to return it under his signature, with the written acknowledgement of the defendant, and such signature shall be deemed to be evidence of service.

(2) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

30. Substitution of letter for summons

(1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons.

(3) A letter so substituted may be sent to the defendant by spot or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

¹ Subs. by the A.O. 1950, for "His Majesty's".

² Subs. by Act 10 of 1927, sec. 2 and Sch. 1, for "or naval".

³ The words "or His Majesty's Indian Marine Service" omitted by Act 35 of 1934, sec. and Sch.

¹ Ins. by Act 35 of 1934, sec. 2 and Sch.

² Ins. by Act 10 of 1927, sec. 2 and Sch. I.

IV. THE LEGAL SERVICES AUTHORITIES ACT, 1987

12. Criteria for giving legal services.- Every person who has to file or defend a case shall be entitled to legal services under this Act if that person, is-

- (a) A member of a Scheduled Caste or Scheduled Tribe;
- (b) A victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
- (c) A women or a child;
- (d) A mentally ill or otherwise disabled person;
- (e) A person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) An industrial workman; or
- (g) In custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956), or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986), or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or
- (h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.]

15. Subs. by Act 59 of 1994, sec. 10.

(Rules have already been amended to enhance this income ceiling).

According to section 2(1) (a) of the Act, legal aid can be provided to a person for a 'case' which includes a suit or any proceeding before a court. Section 2(1) (aaa) defines the 'court' as a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions. As per section 2(1)(c) 'legal service' includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter.

Legal Services Authorities after examining the eligibility criteria of an applicant and the existence of a prima facie case in his favour provide him counsel at State expense, pay the required Court Fee in the matter and bear all incidental expenses in connection with the case. The person to whom legal aid is provided is not called upon to spend anything on the litigation once it is supported by a Legal Services Authority.

A nationwide network has been envisaged under the Act for providing legal aid and assistance. National Legal Services Authority is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame most effective and economical

schemes for legal services. It also disburses funds and grants to State Legal Services Authorities and NGOs for implementing legal aid schemes and programmes.

In every State a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA) and to give legal services to the people and conduct Lok Adalats in the State. State Legal Services Authority is headed by the Chief Justice of the State High Court who is its Patron-in-Chief. A serving or retired Judge of the High Court is nominated as its Executive Chairman.

District Legal Services Authority is constituted in every District to implement Legal Aid Programmes and Schemes in the District. The District Judge of the District is its ex-officio Chairman. Taluk Legal Services Committees are also constituted for each of the Taluk or Mandal or for group of Taluk or Mandals to coordinate the activities of legal services in the Taluk and to organize Lok Adalats. Every Taluk Legal Services Committee is headed by a senior Civil Judge operating within the jurisdiction of the Committee who is its ex-officio Chairman.

After the constitution of the Central Authority and the establishment of NALSA office towards the beginning of 1998, following schemes and measures have been envisaged and implemented by the Central Authority:-

- (a) Establishing Permanent and Continuous Lok Adalats in all the District in the country for disposal of pending matters as well as well as disputes at per-litigative statge;
- (b) Establishing separate Permanent & Continuous Lok Adalats for disposal of pending cases as well as disputes at per-litigative stage;
- (c) Accreditation of NGOs for Legal Literacy and Legal Awareness campaing;
- (d) Appointment of "Legal Aid Counsel" in all the Courts of Magistrates in the Country;
- (e) Disposal of cases through Lok Adalats on old pattern;
- (f) Publicity to Legal Aid Schemes and programmes to make people aware about legal aid facilities;
- (g) Emphasis on competent and quantity legal services to the aided persons;
- (h) Legal aid facilities in jails;
- (i) Setting up to Counseling and Conciliation Centers in all the District in the country;
- (j) Sensitisation of Judicial Officers in regard to Legal Services Schemes and programmes;
- (k) Publication of "Nyaya Deep", the official newsletter of NALSA;
- (l) Enchancement of Income Ceiling to Rs. 50,000/- p.a. for leagal aid before Supreme Court of India and to Rs. 25,000/- p.a. for legal aid up to High Court; and
- (m) Steps for framing rules for refund of court fees and execution of Awards passed by Lok Adalat.

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) was brought into force on October 26, 2006. This *Manual for PWDVA Protection Officers* is intended to provide comprehensive, step-by-step guidance to Protection Officers (POs) on how best to fulfil their duties under the Act, from the time that they are approached by an aggrieved person through to the litigation stage, including their Court-directed duties. Written especially for a predominantly non-legal readership and based on LCWRI's extensive legal knowledge of and practical experience with the PWDVA, the *Manual* is an essential training resource for POs, empowering them to implement the law effectively, resourcefully and in a manner consistent with their legal obligations and the law's overall objective of human rights and gender equality.

This *Manual* shall also be useful to the police, service providers, medical facilities, shelter homes and other civil society groups working on domestic violence, as well as to women seeking recourse to the law.



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