

Lawyers Collective
Women's Rights Initiative

Staying Alive
Second Monitoring
&
Evaluation Report 2008
on the
Protection of Women from
Domestic Violence Act, 2005

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List of Abbreviations & Acronyms

CDPO	Child Development Project Officer
CPC	Code of Civil Procedure, 1908
CrPC	Code of Criminal Procedure, 1973
DIR	Domestic Incident Report
DSWO	District Social Welfare Officer
FCC	Family Counselling Center
HAMA	Hindu Marriage and Adoption Act, 1956
ICDS	Integrated Child Development Scheme
IPC	Indian Penal Code (45 of 1860)
LCWRI	Lawyers Collective (Women's Rights Initiative)
M&E Report	Monitoring and Evaluation Report on the PWDVA (2005)
NCRB	National Crime Records Bureau
NHFS	National Family Health Survey
PO	Protection Officer
PWDVA (2005)	Protection of Women from Domestic Violence Act, 2005
PWDVR (2005)	Protection of Women from Domestic Violence Rules, 2005
SP	Service Provider

Introduction

The Protection of Women from Domestic Violence Act (2005) was brought into force on October 26, 2006. In what is becoming a tradition, each autumn, the Lawyers Collective, Women's Rights Initiative (LCWRI) presents a Monitoring and Evaluation Report (M&E Report) on the functioning of the law over the past year. The 1st M&E Report was presented in October 2007; on behalf of LCWRI, it is my pleasure to present herewith the 2nd M&E Report.

LCWRI believes that such an ongoing monitoring and evaluation exercise is essential to redeeming the promise of the Act. It is only by mapping the implementation of the Act on the ground, analysing emerging trends, collating best practices and identifying infrastructural needs and challenges, that we can ensure that the law remains responsive to its context and, thus, effective in realising a woman's right to a violence-free home.

Consequently, LCWRI's M&E Reports aim to map the life of the PWDVA (2005): to observe the diversity in the manner of its implementation across the country. Diversity and change are the only two constants of any law, for the law is entrusted into the hands of those who bring it to life: judges, Protection Officers (POs) and Service Providers (SPs). There are, and always will be, legitimate differences of interpretation and approach between people. The heart of any law, including the PWDVA (2005), lies in the interpretation of the written word and the written word can have different meanings in different contexts. Judges, naturally, have a great deal of discretion in the way they interpret the text of the law, so as best to achieve its objective. A law must endure over time and, therefore, must be written in a manner which will permit its implementers to interpret it with sensitivity to the changing ethos of the times. As a document written in the 21st century, the PWDVA (2005), too, reflects the socio-legal ethos of its time and, thus, recognizes domestic violence as a violation of the human rights of a woman. This guiding principle must necessarily inform all interpretations of the law.

Given this standard, one overarching parameter of monitoring and evaluation is: does the PWDVA (2005) succeed, in some measure, in protecting the human rights of women? Perhaps two years is too short a time to find an answer to that question. It is given to very few people to see the movement of a law from the drafting board, where general principles are enunciated, to the provision of actual relief to individual women. LCWRI has had precisely that opportunity with the PWDVA (2005) and this panoramic perspective enables us to realise that, once the law has left the drafting board, it does not belong to the drafters anymore; rather, it belongs to the myriad users of the law: women, judges, POs and SPs. A new law is especially interesting to observe, for it has no beaten track to follow. What you are likely to see is something like the course of a river flowing down a mountain, towards the plains: beginning as a small stream, the river carves out a path for itself, changes its course to negotiate any roadblocks it encounters, disappears at some places only to re-emerge in others later and, finally, gathers strength and flows smoothly between its now well-defined banks.

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Indeed, what we are witnessing with the PWDVA (2005) is this early stage of the development of the law, still finding its way through uncharted terrain. This is evident from the fact that there is still no one standard way of implementing the law, no one standard model for a PO and many are still defining a role for themselves consistent with the human rights standards that the law sets for them. Like the 1st M&E Report, the 2nd M&E Report also maps the infrastructure put in place to implement the Act. However, where the 1st Report focussed on the explicit word of the Act, the 2nd M&E Report deals in large measure with its ambiguities and silences and the practices that have emerged in the space of these silences; it maps what is happening rather than defines what should be. We feel it is too early to mould evolving practices into a pre-determined matrix and best to allow POs, SPs and judges to experiment with the best solutions to a given problem.

Another noteworthy difference between the two Reports lies in the sources of the data they use: whereas the 1st M&E Report used data from courts to determine the ways in which women approached the court, this 2nd M&E Report uses data from POs to observe their role in facilitating women's access to justice. At the conclusion of last year's M&E exercise, LCWRI's hypothesis was that the role of the PO would become more significant in the years ahead. Now that all states have appointed POs, we are in a good position to observe the method of and variation in their functioning. LCWRI's data refutes the oft-banded allegation that POs might prove an obstacle to a woman's direct access to courts. Most encouragingly, our data reveals a sense of self-confidence among POs and an ability to innovate in order to resolve a problem. As one PO told us, "Previously, when women came to me in my capacity as a District Social Welfare Officer, I was only giving them 'things', like welfare benefits. Now, as a PO, I am giving them life: the ability to stand on their own feet."

The data also indicates that the number of cases being filed in various states has increased, leading us to conclude that awareness of the PWDVA (2005) is spreading. Magistrates, too, have adapted to the new law and realized the importance of a protection order directing the respondent to stop the violence. It is heartening to see this acceptance and usage of civil law remedies by criminal courts, vindicating the Act's decision to confer jurisdiction in Magistrates' Courts rather than just a few family courts. Several cases have now reached the High Courts and some of their judgements are noteworthy as they significantly impact the interpretation of the law. A recent challenge to the constitutional validity of the PWDVA (2005) has been concluded with the Delhi High Court deciding in favour of the Act. According to the Court, the granting of relief to women alone does not constitute a violation of Article 14 of the Constitution of India¹. Chapter 5 of the 2nd M&E Report analyses such legal issues further.

Although enormous progress has been made in the two years since the law came into effect, the 2nd M&E Report finds certain infrastructural inadequacies that we hope will be resolved by all concerned stakeholders. For instance, budgetary allocations at the Central and State level remain an issue. So too does a comprehensive and consistent method of data collection and training of POs. Thus far, the State has not adopted the monitoring and evaluation of the law as a policy requirement and as an instrument of accountability. This transfers the entire burden of monitoring onto civil society. For the 2nd M&E Report, LCWRI's partners have largely been NGOs who have assisted in data collection and, once again, demonstrated that they are important agents of social change. Their initial high level of engagement

1. *Aruna Shah vs. Union of India* WP (Cri) 425/2008

with the law has been maintained, reflecting their long-term commitment to the issue of ending violence against women.

Since POs are an integral link in facilitating an aggrieved woman's access to justice, it is important that their training fully equip them for their duties. This is another area that requires significant focus in the years to come. In an effort to develop a standardized, quality-controlled training module for POs across the country, LCWRI is in the process of preparing a *Protection Officer's Manual*. This *Manual* will be available by early-2009; Order Forms are enclosed at the back of this 2nd M&E Report. LCWRI is also preparing a *Handbook*, more specifically oriented towards legal issues, which will be available in early-2009.

Until now, the issue of domestic violence was primarily addressed by the Indian women's movement and civil society organizations. The goal of the PWDVA (2005) is to make domestic violence a public issue rather than a private problem, thus making it the responsibility of the State to end such violence and thus fulfil its Constitutional obligations to its citizens.

Indira Jaising
Director, LCWRI
November 14, 2008

Chapter I

The First Monitoring & Evaluation Report (2007): A Brief Summary

A crucial step towards ensuring the success of the PWDVA (2005) is through the regular monitoring of its implementation. Such monitoring enables the timely recruitment of concerned stakeholders, identification of emerging on-the-ground challenges and innovative best practices, and analysis of the degree to which the law is fulfilling the objective with which it was enacted, namely, the protection of a woman's right to live in a violence-free home.

On October 26, 2007, LCWRI organized the First National Conference on the PWDVA (2005), in collaboration with the Ministry of Women and Child Development (MWCD), the National Commission for Women (NCW) and the Bureau of Police Research and Development (BPR&D), with support from the United Nations Development Fund for Women (UNIFEM). At this conference, the First Monitoring and Evaluation Report (1st M&E Report) on the implementation of the PWDVA (2005) was released.

The 1st M&E Report attempted to map 10 months' functioning of the PWDVA (2005) with an intention of identifying best practices and shortcomings and suggesting remedial measures. The report put together:

- Data on infrastructure put in place under the PWDVA;
- Information on the operationalization of the law by examining cases filed, procedures adopted and reliefs obtained.

The objectives of the report were:

- To assess the implementation of the PWDVA (2005) by examining the infrastructure put in place in different states and examining cases filed in courts;
- To identify the major users of the law;
- To study procedures being used to access the courts and in arriving at decisions;
- To map regional variations in the numbers of cases filed in courts;
- To look at the types of relief being claimed by petitioners and granted by courts;
- To collate and present best practices;
- To provide suggestions for the uniform interpretation and effective implementation of the law;
- To suggest steps for better stakeholder coordination towards effective enforcement of the PWDVA (2005).

The data for the report was collected in collaboration with the following entities:

- Ministry for Women and Child Development
- National Commission for Women
- The Office of the Chief Justice of India
- The Gender Community, Solutions Exchange program of the United Nations Development Program
- Members of civil society including lawyers and women's groups.

The data was collected through the following methods:

- Circulating questionnaires on the infrastructure put in place by each state government (Protection Officers, Service Providers, medical facilities and shelter homes, public awareness campaigns and cases filed).
- Interviews and consultations with state functionaries, organizations and lawyers engaged in either using the law or monitoring its compliance.
- Collection of orders and judgments passed under the PWDVA (2005); the functioning of authorities appointed under the PWDVA (Protection Officers) and other authorities mentioned under the law (judiciary, police, legal aid services) based on orders passed by the court.
- LCWRI carried out field visits to 10 states, where it gathered information on implementation through an examination of at least 10 cases filed in each local Magistrates' Court.

Findings of the 1st M&E Report:

- A total of 7,913 applications were filed under the PWDVA (2005) for the period November 2006 – July 31, 2007. As of the date of publication of the Report, most of these proceedings were pending in court.
- The primary users of the law were married women. In a number of cases reliefs had been granted to widows and daughters.
- The most commonly granted relief was for maintenance. The second most commonly granted orders were residence orders and protection orders.
- There was an urgent need for adequate budgetary allocations to be made by the Central and State Governments to ensure the effective implementation of the PWDVA (2005).
- There was a need for coordination among different government departments, particularly the departments of women and child development/social welfare, home and law and legislative affairs in order to build a multi-agency response that is uniform across the country in the manner in which it offers relief to women facing domestic violence.
- There was a crucial need to provide trainings to the police on providing information about the Act to women approaching them with complaints of domestic violence.
- All states, except 5, had appointed Protection Officers. However, except in NCT Delhi and Andhra Pradesh, none of the appointments had been made on the needed full-time basis. Adequate infrastructure and training were yet to be made available to Protection Officers.

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- Only five states had registered Service Providers and only 12 had notified medical facilities and shelter homes. However, in these states, it was the existing shelter homes and medical facilities that were notified under the Act. Government-sponsored support facilities are not adequate in meeting the prevailing need.
- On the basis of its data analysis, the 1st M&E Report identified three different ‘models’ of implementation of PWDVA (2005): the private model, the public model and the mixed model, which are briefly described below.

(a) The Private Model

Under this model, there is a heavy reliance on privately appointed lawyers. This assumes that women have the ability to access and pay for their own lawyers. It also assumes that women are well-aware of the existence of the PWDVA (2005), either before they approach their lawyers or after they are advised of its provisions by their legal counsel. Lawyers themselves have demonstrated an ability to understand the complexity of the new law in a relatively short period of time.

As per the PWDVA (2005), a Domestic Incidence Report (DIR) can be signed only by a Protection Officer or registered Service Provider. Under the Private Model, applications are being filed in court without a DIR. In the absence of Protection Officers and negligible state-provided infrastructure, significant reliance is placed on the police and the existing machinery of the courts for activating the law.

Rajasthan, Punjab and Haryana were all seen to follow the Private Model.

(b) The Public Model

The Public Model is an excellent example of a holistic multi-agency response, in that the police, Protection Officers, Service Providers and Legal Aid Service Authorities coordinate their services to facilitate women’s access to court. The police, which continue to be the first port of call for women in distress, have been trained to set the PWDVA (2005) in motion. A DIR Index allows relevant personnel to keep track of ongoing developments in a case. Data indicated that a large number of cases were filed by Protection Officers and large numbers of women were referred to registered or unregistered Service Providers for counselling before the filing of a DIR.

Andhra Pradesh was the only state that followed the Public Model.

(c) The Mixed Model

In states that follow the Mixed Model, those women who can afford to hire lawyers, approach the courts directly, with or without a DIR in place. Some lawyers advise their clients to file a DIR with a Protection Officer, while others have chosen to file application without a DIR, leaving it to the courts to direct the Protection Officer to record a DIR, if the circumstances so require. The woman has the option to choose the most appropriate course to follow in view of her individual circumstances. In Mixed Model states, however, the lack of general information about the existence of Protection Officers and/or their inadequate numbers have been a serious handicap to women accessing justice through public channels.

The Mixed Model was followed by most states, including NCT Delhi, West Bengal, Goa and Kerala.

Chapter 2 will now address the objectives and methodologies of the 2nd M&E Report.

Chapter II

Objective and Methodology for the Second Monitoring & Evaluation Report

Objective

Under Section 11 of the PWDVA (2005), the Central and State Governments are mandated to appoint and train personnel, including Protection Officers and Service Providers; to ensure effective coordination between government stakeholders; and to carry out awareness campaigns on the issue of domestic violence and the Act. The intention of Section 11 is to put the state under an obligation to address the issue of domestic violence by facilitating women's access to justice.

The objective of the Second Monitoring and Evaluation Report (2nd M&E Report) is:

- To map the infrastructure put in place by state governments to implement the PWDVA (2005);
- To collate the experience of stakeholders in using this infrastructure to provide relief to victims of domestic violence;
- To draw provisional conclusions on the influence of this infrastructure on the smooth implementation of the Act.

In order to achieve its objective, the 2nd M&E Report seeks to answer a series of questions, including:

- To what extent have the infrastructural gaps identified in the 1st M&E Report been fulfilled in the past year?
- What are the significant changes in infrastructure and implementation since the 1st M&E Report?
- What are the different approaches adopted by states in putting in place infrastructure to comply with the provisions of the PWDVA (2005)?
- To what extent can the findings of the 1st M&E Report be revalidated? Are the identified "best practices" and "models" still in place?
- To what extent have states managed to develop a coordinated, multi-agency response mechanism as envisaged in the Act?
- How is jurisprudence evolving under the Act?
- Has there been any change in the number of cases filed under relevant sections of criminal law (Section 498A)?

Methodology

Data for the 2nd M&E Report was collected during March–August, 2008.

A two-pronged approach was adopted to gain an understanding of the functioning of the agencies put in place to implement the PWDVA (2005): (i) Primary data on the infrastructure put in place and the steps taken by the state towards effective implementation of the Act was collected from the nodal department of each state; (ii) In order to examine the manner in which the agencies are functioning on-the-ground, LCWRI conducted selective state field visits to interview various stakeholders.

The 1st M&E Report was prepared when the PWDVA (2005) was just 10 months old and its implementation was at a nascent stage: most of the infrastructural appointments had been made only recently, as a result of which most stakeholders were either unaware of their roles under the new law or had very little practical experience in using the law. In contrast, the 2nd M&E Report shows a significant shift: nodal agencies and appointees now have the experience of having worked with the law and the data collected reflects issues faced by them in the process of implementation. Unlike the 1st M&E Report, for this 2nd M&E Report, LCWRI has not collected information on proceedings in individual cases and it has not received any information from the office of the Chief Justice of India. Instead of examining orders by Magistrates' Courts, the 2nd M&E Report has compiled and analyzed judgments of the High Courts.

Methods and Sources of Data Collection

- Data on infrastructure was collected from representatives of relevant state nodal departments at a meeting organized by LCWRI and the National Commission for Women (NCW) on August 26, 2008, in New Delhi. The following states were represented: Andhra Pradesh, Assam, Chandigarh, Chattisgarh, Gujarat, Haryana, Himachal Pradesh, Kerala, Madhya Pradesh, Maharashtra, Mizoram, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh, Uttarakhand and West Bengal.

At the meeting, representatives completed a questionnaire providing details on:

- (i) Protection Officers (POs): Number of appointments; work profile; work procedures: supervision and accountability; administrative support provided by the nodal department; problems faced by POs.
- (ii) Service Providers (SPs): Number of appointments; organizational profile; government-funded or private, non-governmental organization.
- (iii) Shelter Homes and Medical Facilities: Number registered; organizational profile of these institutions.
- (iv) Budgetary allocations made by the state government to implement the PWDVA (2005) and the nature of awareness campaigns carried out.
- (v) Steps taken by the State Legal Services Authority, State Commission for Women and the Police Department to implement the PWDVA (2005).

In addition to completing the questionnaire, participants also made individual presentations to share information on best practices, challenges and emerging trends in implementation.

States that were not present at the meeting were sent the questionnaire by the NCW, which then returned the completed forms to LCWRI.

- LCWRI also collaborated with local partners to gather data from 20 states. 15 of these states were visited by LCWRI; in the remaining 5, field visits were carried out by LCWRI's partners. A list of the 20 states follows; brackets indicate who conducted the fieldwork.

States visited by LCWRI:

- (i) Assam [In collaboration with North East Network, Guwahati]
- (ii) Goa [In collaboration with Advocates Albertina Almeida and Caroline Collaso]
- (iii) Gujarat [In collaboration with Gender Resource Centre, Ahmedabad]
- (iv) Karnataka [In collaboration with Vimochana, Bangalore]
- (v) Kerala [In collaboration with Sakhi Resource Centre, Thiruvananthapuram and Anweshi, Calicut]
- (vi) Madhya Pradesh [In collaboration with Sangini, Bhopal]
- (vii) Maharashtra [LCWRI, Mumbai]
- (viii) Manipur [LCWRI, Imphal]
- (ix) Meghalaya [LCWRI in collaboration with North East Network, Shillong]
- (x) Nagaland [LCWRI, Kohima]
- (xi) New Delhi [LCWRI]
- (xii) Orissa [In collaboration with Ms. Srabani Das, Bhubaneswar]
- (xiii) Rajasthan [In collaboration with People's Union for Civil Liberties, Jaipur]
- (xiv) Tamil Nadu [In collaboration with Ms. Saroja Tiruvengatham, Vellore]
- (xv) West Bengal [In collaboration with Ms. Koely Roy, Kolkata]

States covered by LCWRI's partners:

- (i) Andhra Pradesh [Disha Centre for Social Justice, Hyderabad]
- (ii) Arunachal Pradesh [State Women's Commission, Itanagar]
- (iii) Chandigarh [Ms. Rubina Singh]
- (iv) Uttar Pradesh [Vanangana and Association for Advocacy and Legal Initiatives, Lucknow]
- (v) Uttaranchal [Mahila Samakhya, Dehradun]

The above states were chosen on the following basis:

- (i) States not included in the 1st M&E Report [For example: Arunachal Pradesh, Goa, Karnataka, Madhya Pradesh, Meghalaya, Nagaland, Orissa, Tamil Nadu and

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Uttaranchal]. In addition, LCWRI re-visited the states covered in the 1st M&E Report and hopes to further increase its network in time for the 3rd M&E Report (2009).

- (ii) An attempt was made to ensure the widest geographic spread by including states from each region.
- (iii) States that have undertaken successful initiatives in implementation [For example: Andhra Pradesh and New Delhi]
- (iv) States where LCWRI has local partners well-qualified to conduct field visits on account of their experience in working with the PWDVA (2005) [For example: Assam, Gujarat, Kerala and Rajasthan]

LCWRI developed an interview template which was used to interview the following stakeholders about their experience in implementing the PWDVA (2005):

- (i) Heads of nodal departments (for example: Department of Women & Child Development, Department of Social Welfare).
- (ii) Protection Officers (POs): Focus on their educational qualifications, work experience and pre- and post-litigation roles. For each state, a minimum of one and maximum of 10 POs were interviewed. POs were chosen on the basis of their geographical proximity to the areas visited by LCWRI and its partners and, therefore, the sample has an urban bias.
- (iii) Service Providers (SPs): Focus on their organizational profile and pre- and post-litigation roles. SPs were chosen on the basis of their geographical proximity to the areas visited by LCWRI and its partners and, therefore, the sample has an urban bias.
- (iv) Shelter Homes and Medical Facilities.
- (v) State Women's Commissions and State Legal Services Authorities: Focus on their role in the implementation of the PWDVA (2005).
- (vi) Women's organizations, civil society organizations, NGOs and legal practitioners: Focus on their experience of working with the PWDVA (2005).

LCWRI also collected relevant notifications, government circulars, government orders and court orders to get a comprehensive picture of the status of implementation.

Limitations of the 2nd M&E Report

Two major factors, beyond LCWRI's control, have resulted in certain statistical and logistical limitations to the 2nd M&E Report. The first factor is that the Central and State Governments are yet to develop a comprehensive and consistent method for gathering and maintaining up-to-date, primary data on the implementation of the PWDVA (2005). For instance, currently, High Courts do not necessarily maintain and make publicly available any data on the number of cases filed per year. Naturally, the absence of such essential data will affect a research study such as the 2nd M&E Report.

Second, a study of this nature should be conducted with a large sample size, to yield robust data on PWDVA (2005) implementation, successes, challenges and trends. As an NGO conducting independent research (albeit in collaboration with several national-, state- and local-level partners), LCWRI does not have the resources to conduct such a macro-level research study.

Consequently, the 2nd M&E Report has certain statistical and logistical limitations:

- The sample size is neither randomly chosen nor uniform in nature, making it difficult to assess representativeness. For instance, the number of POs interviewed varies from a sample size of one to 10, depending upon the scope of LCWRI's local networks and the number of POs who were accessible and agreed to respond to LCWRI's questionnaires and interviews. Similarly, field visits were conducted in only 20 states.
- The governments of the following states/Union Territories were unable to supply LCWRI with data pertaining to the implementation of the PWDVA (2005): Bihar, Jharkhand, Daman & Diu, Dadar & Nagar Haveli and Puducherry.
- Interviews have been conducted primarily with stakeholders working in urban areas; hence, the findings in this report have an urban bias. However, given that the implementation of the Act is still at an early stage, it is assumed that mechanisms for implementation shall be most efficiently established in urban centres due to their proximity to the headquarters of the state government and better access to other infrastructural facilities. Nonetheless, future studies will have to take steps to correct this geographical bias.

Until the Central and State Governments take proactive steps towards collecting and making publicly available primary data on the PWDVA (2005), such data limitations are inevitable and will influence not only research studies such as this Report, but also, and more importantly, the effective implementation of the Act on the ground. Under Section 11 of the Act, Central and State Governments are vested with the responsibility for facilitating inter-departmental coordination and developing protocols for service delivery. Rigorous data collection on the nature of implementation is the first step towards fulfilling these obligations.

Further, until the scope of the study is significantly expanded, any conclusions drawn in the 2nd M&E Report are of a provisional nature. Once again, the Central and State Governments, working in partnership with civil society organizations (CSOs), are ideally placed to undertake such large-scale survey and monitoring exercises. The infrastructural resources of the Government, coupled with the grassroots experience of CSOs, will allow for a thoughtfully developed, finely tuned, large-scale survey that can gather validated data so as to map practices and trends and make strong recommendations for the more effective implementation of the PWDVA (2005). Indeed, the Act is premised upon such multi-agency collaboration.

Based on the depth of its experience in working with the PWDVA (2005) and the range of its partnerships, LCWRI is confident that the conclusions of the 2nd M&E Report will be validated by a larger study. An ongoing internal review process is identifying lacunae in data, developing targeted and sensitive monitoring indicators and redesigning survey methodology for forthcoming reports; LCWRI always welcomes suggestions in this regard from users of the 2nd M&E Report.

Chapter III

Infrastructure Put in Place by State Governments to Implement the PWDVA (2005)

The PWDVA (2005) envisages a multi-agency response system that aims to provide immediate, civil reliefs that will allow an aggrieved woman to live in a violence-free situation. Chapter III examines four such agencies mandated by the Act to facilitate a woman's access to justice and other support services: Protection Officers (POs), Service Providers (SPs), Shelter Homes and Medical Facilities.

Protection Officers: An Overview of Current Status

According to Section 8 of the PWDVA (2005), the state government shall be vested with the responsibility of appointing Protection Officers. The number of POs appointed is left to the discretion of the respective state governments. Rule 3 of the PWDVR (2005) clearly states that:

- Every person appointed as Protection Officer under the Act shall have at least three years experience in social section;
- The tenure of Protection Officer shall be a minimum period of three years;
- The state government shall provide necessary office assistance to the Protection Officer for the efficient discharge of his or her functions under the Act.

According to the National Family Health Survey, 2007 (NFHS), one-third of women in the 15-49 age group have experience physical abuse and approximately one in 10 has experienced sexual violence. Nearly two out of every five married women have experienced some form of physical or sexual violence by their husband. 16% of women who have never been married have experienced physical violence since they were 15 years of age. Only one in four abused women has ever sought help to try to end the violence they have experienced. Only 2% of abused women have ever sought police help.

Until the PWDVA (2005) came into being, the only legal remedies available to women facing domestic violence were under criminal law. Table 3.1 below presents a macro-level, state-wise picture of female population and reported cases of gender violence under criminal law. Please note, however, that this Table enumerates violence faced by *married* women only¹. Note, also, that as per NFHS statistics cited in the box on the left, while the incidence of gender violence is high, only a small minority of women seeks police help and fewer yet follow through by registering the cases enumerated in column 4 of Table 3.1. Now that the PWDVA (2005) is in place, it remains to be seen if and how the existence of a civil law option influences the number

1. According to the 1st M&E Report, married women are the largest users of the PWDVA (2005). The 2nd M&E Report confirms this trend.

of cases registered under criminal law. Column 2 of Table 3.1 enumerates the number of POs and SPs potentially available to women who might seek (civil) institutional redress for violence.

Table 3.1
Potential Scope for PWDVA (2005)

State	Total Number of POs and SPs (To Date)	Approximate Female Population (Derived from Sex Ratio as per Census of India, 2001)	Number of Cases Registered under Section 304B ¹ , 498A ² of the IPC ³ and DPA ⁴ (NCRB ⁵ , 2006)
Andhra Pradesh	176	5,029,361	10,157
Arunachal Pradesh	15	97,117	15
Assam	59	2,173,488	2,684
Bihar	n/a ⁶	8,048,343	3,786
Chandigarh	15	50,552	112
Chattisgarh	16	1,767,627	829
NCT Delhi	43	909,298	1,880
Gujarat	29	3,609,276	5,028
Goa	18	71,532	14
Haryana	28	1,543,201	2,516
Himachal Pradesh	385	390,120	264
Jharkhand	n/a	2,403,077	1,294
Karnataka	288	3,481,893	2,849
Kerala	89	1,950,023	3,738
Madhya Pradesh	405	5,163,551	3,785
Maharashtra	3,772	6,558,157	7,180
Manipur	16	152,576	10
Meghalaya	7	230,667	19
Mizoram	14	69,452	1
Nagaland	31	137,215	3
Orissa	60	2,641,360	2,545
Punjab	148	1,481,088	938

1. Section 304B, Indian Penal Code, 1860: Dowry Death
2. Section 498A, Indian Penal Code, 1860: Husband or Relative of Husband of a Woman Subjecting Her to Cruelty
3. Indian Penal Code, 1860
4. Dowry Prohibition Act, 1961
5. National Crime Records Bureau
6. Data not available

**Table 3.1 (con't.)
Potential Scope for PWDVA (2005)**

State	Total Number of POs and SPs (To Date)	Approximate Female Population (Derived from Sex Ratio as per Census of India, 2001)	Number of Cases Registered under Section 304B ¹ , 498A ² of the IPC ³ and DPA ⁴ (NCRB ⁵ , 2006)
Rajasthan	627	5,106,492	7,435
Sikkim	4	36,491	6
Tamil Nadu	89	3,593,911	2,146
Tripura	4	212,397	506
Uttar Pradesh	105	14,962,548	7,630
Uttranchal	28	666,845	439
West Bengal	62	5,512,349	7,884
Andaman and Nicobar	6	20,067	7
Dadar and Nagar Haveli	n/a	17,978	6
Daman and Diu	n/a	8,544	2
Lakshadweep	n/a	4,424	1
Puducherry	n/a	58,608	24

Table 3.2 below presents a detailed, state-wise picture of PO appointments in 2008: numbers, level and post. The final column in this Table enumerates the number of POs appointed in 2007 for comparison. Please note that Table 3.1 above enumerates the number of POs *and* SPs per state, whereas Table 3.2 enumerates the number of POs *only*.

**Table 3.2
State-wise Appointment of Protection Officers**

State	Number of POs (To Date)	Level	Post	Number of POs as per the 1 st M&E Report
Andhra Pradesh	104	District and Revenue Division	Revenue Divisional Officers; Project Directors (WCD ¹)	23
Arunachal Pradesh	15	District	Deputy Directors & CDPOs ² (ICDS ³)	16
Assam	27	District	DSWOs ⁴	27

1. Women and Child Welfare Department (WCD)
2. Child Development Programme Officer (CDPO)
3. Integrated Child Development Scheme (ICDS)
4. District Social Welfare Officer (DSWO)

**Table 3.2 (con't.)
State-wise Appointment of Protection Officers**

State	Number of POs (To Date)	Level	Post	Number of POs as per the 1 st M&E Report
Chandigarh	3	n/a ⁵	<i>Tehsildars</i>	3
Chattisgarh	16	District	District Programme Officers (WCD)	16
NCT Delhi	18	District	Independent, on contractual basis.	19
Gujarat	25	District; Municipal Corporation Area	District Social Defense Officers; Zonal Dowry Prohibition Officers.	25
Goa	13	District; <i>Taluka</i>	Chief Executive Officer; Block Development Officer	2
Haryana	20	District	Existing Government Officials; District Programme Officers (ICDS); Appointment of independent POs on a contractual basis in process.	n/a
Himachal Pradesh	385	Sub-Block	Supervisors (ICDS)	324
Karnataka	212	District; Block	Deputy Directors (WCD); CDPOs (ICDS)	212
Kerala	31	District	District Probation Officers	31
Madhya Pradesh	367	Block	CDPOs (ICDS)	361
Maharashtra	3,687	District; Block	District WCD Officers; <i>Tehsildars, Nayab Tehsildars</i> , Sub-Divisional Magistrates; CDPOs (ICDS); Extension Officers; Block Development Officers; Community Development Officers	800
Manipur	9	District	CDPOs and District Programme Officers (ICDS)	9
Meghalaya	7	District	DSWOs	n/a
Mizoram	8	District	CDPOs (ICDS); DSWOs; Superintendent of Homes	9
Nagaland	30	n/a	District and Sub-Divisional Extra Assistant Commissioners	n/a

5. Data not available

Table 3.2 (con't.)
State-wise Appointment of Protection Officers

State	Number of POs (To Date)	Level	Post	Number of POs as per the 1 st M&E Report
Orissa	30	District	Programme Officers (WCD)	30
Punjab	148	Block	CDPOs (ICDS)	n/a
Rajasthan	548	District; Block	Project Directors (WCD); CDPOs (ICDS); Prachetas	0
Sikkim	4	District	Deputy/Joint/Assistant Directors (Nutrition Cell)	4
Tamil Nadu	31	District	DSWOs; Appointment of independent POs on a contractual basis in process	30
Tripura	4	District	Inspector of Social Welfare & Education	4
Uttar Pradesh	70	District	Probation Officers	39
Uttaranchal	13	District	CDPOs (ICDS)	13
West Bengal	19	District	DSWOs; Appointment of independent POs on a contractual basis is in process.	19
Andaman and Nicobar*	6	District	n/a	6
Dadar and Nagar Haveli*	n/a	n/a	n/a	1
Daman and Diu	n/a	n/a	n/a	n/a
Lakshadweep*	n/a	n/a	n/a	9
Puducherry	n/a	n/a	n/a	n/a

* Data for these states is gathered through informal sources.

Observations on Tables 3.1 and 3.2

- As compared to the 1st M&E Report, LCWRI's data for the 2nd M&E Report indicates that all states have appointed POs.²
- In the 1st M&E Report, most states had appointed POs at the District level; only five states had PO appointments below the District level: Bihar, Himachal Pradesh, Jharkhand, Karnataka and Madhya Pradesh. However, in this 2nd M&E Report, we find an increase in appointments at the sub-District level (total 10 states), thus improving women's access to justice at the

2. However, data for the following states/Union Territories is unavailable: Bihar, Daman & Diu, Dadar & Nagar Haveli, Jharkhand and Puducherry.

local level. In these states, the officials appointed as POs include *Tehsildars*, *Prachetas* and *Nayab Tehsildars*.³

- Maharashtra has made a special effort to make appointments at lower jurisdictional levels so as to maximise women's access to POs. However, a balance must be maintained between the need to have high numbers of POs and the need for these POs to be well-qualified to provide services under the PWDVA (2005). It remains to be seen whether this balance can be achieved in Maharashtra.
- Although the post of officials appointed as POs varies from state to state, the most common post seems to be District Social Welfare (DSW)⁴ officers and officers serving under the Integrated Child Development Scheme (ICDS)⁵ scheme.
- Furthermore, with regard to posts, Kerala and Uttar Pradesh are an exception to the trend in that they have appointed Probation Officers as POs. Some states, such as Andhra Pradesh, have also appointed revenue officials as POs.
- Except in Delhi and, recently (effective October 2008), West Bengal, where POs are on contract and full-time, all other states have given the duty of working as POs to existing government officials. Informal sources indicate that Haryana and Tamil Nadu are also in the process of appointing POs on an independent, contractual, full-time basis.

Protection Officers: Qualifications, Training and Support

Section 9 of the PWDVA (2005) addresses the duties and the functions of POs. This provision is further elucidated under Rules 8 and 10 which divide the role of the PO into two stages:

- Pre-litigation role: To assist the woman in accessing the courts and support services as well as taking steps to prevent further violence.
- Post-litigation role: As per the directions of the court; assisting the court in arriving at a decision and in the enforcement of orders.

In light of these responsibilities, ideally, POs should be appointed⁶ keeping in mind the following:

- A PO's post should be full-time;
- A PO should have an educational degree in social work and/or law, in addition to training and sensitization on gender issues;
- Since the PO must assist the Magistrate in the discharge of his/her duties, each Magistrate's Court should have one dedicated PO assigned to it.
- POs must be provided training and skills upgrading on a regular basis.

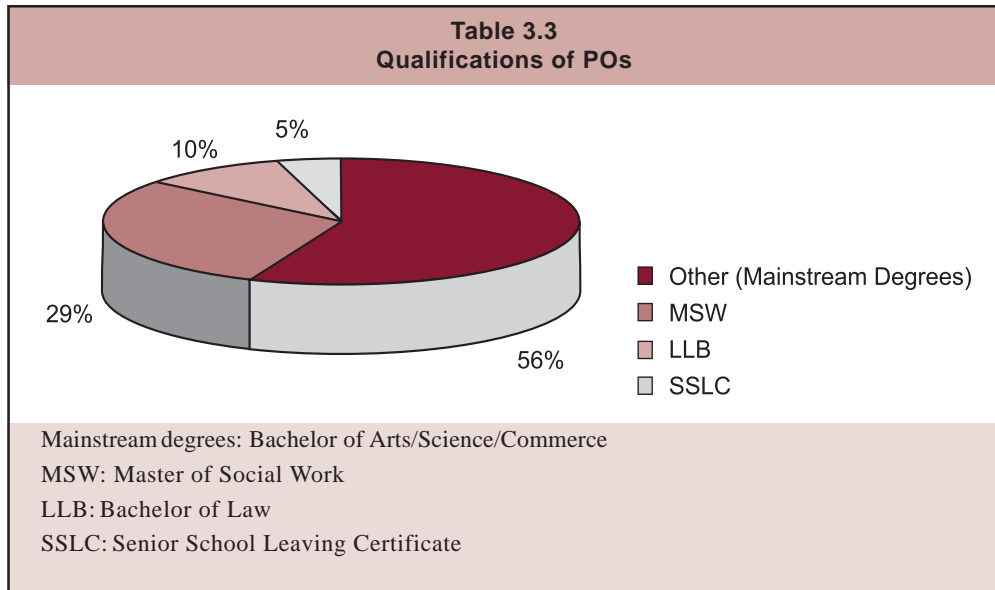
3. The nomenclature applied to administrative divisions at the sub-district level varies from state to state: for instance, *Tehsil*, *Taluk* and *Block* all refer to the same sub-district level.

4. Appointments of officers within states are conducted by state governments, which specify differing qualifications. Therefore, DSWs in different states bring to the position different, state-specified qualifications and experience.

5. ICDS is a centrally-funded scheme and, as such, the Central Government has issued guidelines for the qualifications and experience of officers appointed under this scheme. Most PWDVA (2005) PO appointments have been made among District Programme Officers (DPOs) and Child Development Programme Officers (CDPOs) of the ICDS. DPOs work at the District level; CDPOs work at the sub-District level.

6. The term "appointed" used in Rule 3 of the PWDVA (2005) is conventionally understood to imply the creation of a separate cadre of officers rather than the assigning of additional charges to existing officers, which is currently the predominant practice of state governments.

Table 3.3 represents the qualifications of POs interviewed for this Report.



Observations on Table 3.3

- The majority of POs appointed thus far (56%) have B.A., B.Com. or B.Sc. degrees. Fewer have degrees in either Social Work (29%) or Law (10%), both of which, as discussed above, would provide the ideal educational background for a PO. This situation can be explained by the fact that the PWDVA (2005) does not specify educational qualifications for POs and the majority of appointments are of existing officers who are not required to have a social work or law background. Interestingly, in Delhi, where POs are appointed on an independent contractual basis, a degree in social work was considered a basic job requirement and all the state’s POs have graduate degrees in social work.
- 5% of POs have an SSLC degree, but this tends to be supplemented by several years of relevant work experience.

Sumitra Chandel works as an ICDS Supervisor in the Department of Social Justice and Empowerment, Government of Himachal Pradesh, a post she has held since 1993. Her duties as a PO are an additional charge.

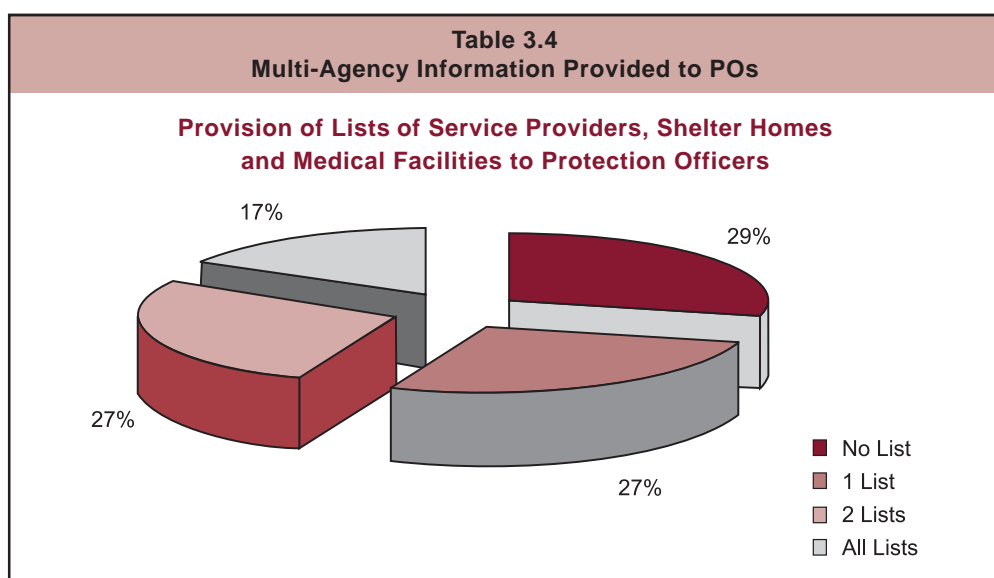
Sumitra believes that a detailed understanding of the PWDVA (2005) is essential to being a good PO: “From the very first day that it came into effect, I have taken a keen interest in the law and familiarised myself with each and every Section and Rule. I feel that my acquisition of detailed knowledge about the law and court procedure is the most important step I have taken to do my job well and overcome infrastructural obstacles.” This legal familiarity has made Sumitra a confident and resourceful PO who has not been afraid to take on wealthy and politically powerful respondents in her state. Her expertise is now also recognised by the judiciary: “my presentation of reports, recording of DIRs and drafting of applications is praised even by the Judges. In one case, a Judge advised the Senior Advocate to seek my help on how to draft an interim relief application. Advocates and the police also send me cases now.”

Section 11 of the PWDVA (2005), “Duties of Government,” states that the Central Government and every State Government, shall take measures to ensure that:

- 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;
- 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;
- 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.

As part of its goal to mainstream gender justice, the Act places the onus of implementation on the State. Infrastructural investments, such as the training of and logistical support to POs, are an integral part of the successful implementation of the Act. In view of the fact that most POs have little or no prior understanding of legal provisions and procedures, gender issues and social work principles, there is an urgent need for their adequate training and sensitization. According to LCWRI data, 64% of POs interviewed have received some sort of training under the PWDVA (2005), mostly carried out by the respective nodal department, State Women’s Commission or local NGOs. However, the quality of the training provided varies with regard to curriculum, trainers and duration and is, according to POs interviewed, rarely adequate to the need.

According to Rule 11(3) of the PWDVR (2005), “the state government shall provide a list of service providers in the various localities to the concerned Protection Officer and also publish such a list in the newspaper or on its website.” In order to facilitate a multi-agency response, it is essential that the PO be fully informed about the services available in his/her jurisdiction. However, as Table 3.4 below illustrates, only 17% of POs interviewed had received lists of Service Providers, Shelter Homes and



Medical Facilities. 27% had received a list of only one of the services and another 27% had received lists of two services. 29% had received no list at all from the state government, which constrains their ability to fulfil their responsibilities under Section 9(e) of the PWDVA (2005).

Post of Protection Officers

As Table 3.2 delineated, the vast majority of states assign PO duties as an additional charge to already existing government officers. Thus far, only two states, Delhi and West Bengal, have appointed independent and full-time POs. This sub-section addresses the advantages and disadvantages of both types of appointment.

Additional Charge to Existing Officers

- Although assigning PO duties as an additional charge to existing officers allows PO appointments to be made speedily, there is a significant disadvantage to this choice as these officers already have full-time commitments to other government schemes. Under the PWDVA (2005), POs are officers of the court and, as such, the court insists that they prioritize their work under the Act and relegate their responsibilities under other government schemes to secondary status, leading to a potential conflict between the orders of the court and the expectations of the department to whom the officers were originally assigned. It also causes some confusion in the minds of POs as they attempt to reconcile various authorities with different and simultaneous demands. Since these other, non-PWDVA (2005) duties cannot be entirely neglected, in practical terms this means that POs cannot devote adequate time to any of their responsibilities, whether under the Act or other schemes. Since POs are not provided adequate administrative/logistical infrastructural support – i.e., personnel, office space, transport, telephone, travel allowance, etc. – their responsibilities are even more time-consuming: for instance, they have to serve notice themselves because they do not have anyone else to whom they can delegate this responsibility although the Act itself does allow such delegation.
- In their capacity as CDPOs, DSWs, etc., officers do not require the kind of legal training that is recommended for POs. Since they lack some of the desirable qualifications, existing officers are often unfamiliar with legal provisions and proceedings and require legal advice on a regular basis. The exceptions are Kerala, where probation officers were appointed as POs, and Goa, where police officers were appointed as POs.
- Another important exception to the above trend is Karnataka, where the State Legal Services Authority has deputed two legal aid lawyers per PO. In fact, Karnataka's model is emerging as a best practice to emulate.
- In other words, assigning PO duties as an additional charge can mean that under-qualified and under-supported POs are over-burdened with responsibilities under multiple government programmes, making it difficult to fulfil any of their duties in a satisfactory manner.
- However, in some instances, as the adjoining box demonstrates, this model has proven advantageous because the officers can mobilize existing infrastructure provided under other schemes to fulfil their obligations under the PWDVA (2005). They also tend to have a better understanding of state-sponsored schemes and support services as well as of methods to avail

them for women who approach them under the Act. Finally, as government functionaries, they have a certain status which they can mobilize to complete their PO responsibilities in an efficient manner.

Saroja Thiruvengadam is a PO from Vellore district in Tamil Nadu. She holds this post in addition to her position as District Social Welfare Officer (which she has held for the past 8 years). Saroja is also the nodal officer for Women's Welfare and a Dowry Prohibition Officer. She is an active member of numerous government committees and engages with a wide variety of government officers on issues ranging from women's and children's welfare to watershed management and juvenile justice.

As a professionally trained social worker (she holds an MSW degree with a specialisation in Medicine and Psychiatry), Saroja's familiarity with social work principles has made a qualitative difference to the manner in which she fulfils her duties as a PO: for instance, upon the orders of the court and with the assistance of a team of trained social workers, Saroja has conducted counselling and has satisfactorily resolved 20 cases.

Moreover, Saroja has skillfully marshalled the organisational and interpersonal resources gained from her 21 years as a government officer and committee member to facilitate awareness-raising and multi-agency cooperation for the better implementation of the PWDVA (2005). For instance, on her very first case under the new law, Saroja successfully obtained a residence order and monthly maintenance. As she says, "I immediately informed the District Magistrate and Commissioner of this successful outcome and that evening itself the Collector arranged a press conference that was carried by news outlets throughout the state. This led to increased awareness of the Act and, to date, I have received more than 325 petitions from women in Vellore district".

Saroja has used her vast network of colleagues, such as the Collector's Office and Regional Transport Office, to obtain documentary proof needed for her DIRs; she has used her existing support staff to serve notices throughout South India; and she has even used email successfully to serve notice on an NRI in Singapore. The Superintendent of Police has issued instructions of cooperation to his department and Saroja has confidently elicited support from police personnel, an exercise made easier by the fact that she has also trained all inspectors and sub-Inspectors in the district on the PWDVA (2005). She also liaises with the District Legal Services Authority to get necessary legal support for her clients.

POs as Full-Time, Contractual Appointments

- In contrast to POs as additional charges, in those states where POs have been appointed on full-time contract, their sole duty is that of a PO. In theory, this corrects the main problem of over-burdening and lack of time discussed above. However, in practical terms, as currently implemented, this model also has certain problems, as states fail to provide these independent appointments with the necessary infrastructural support and these POs cannot rely on an already existing mechanism of logistical support as do some of the POs discussed above.
- POs who are on full-time contract frequently do not receive adequate support from the police vis-à-vis service of notice and enforcement of orders, thus increasing their work load.

- Currently, contractual PO appointments have been made at the District level, which has several Magistrate’s Courts that a PO must attend. Even when not every court requires attending each hearing or issues orders to be complied with, there are always enough to generate work that keeps a PO frequently away from the office and, thus, unavailable to potential clients.
- Currently, POs in Delhi have not been allocated a separate office space, thus compromising the privacy rights of women who approach them for assistance.

Common Problems Faced by Protection Officers

“Our problems are time, budget, knowledge and follow-up.”
[PO Supervisor, Uttar Pradesh; August 2008]

Over-burdening of Responsibilities

As discussed above, over-burdening is a major problem for all POs, whether they are appointed as additional charges or on full-time contract. In the former case, they have too many simultaneous government programmes to implement, making it difficult to devote adequate time and attention to any one responsibility. In the latter case, although they have just one job profile – that of PO – they are given little or none of the infrastructural support required to realize the multi-agency response system mandated by the PWDVA (2005).

Inadequate Budgetary Allocations and Infrastructural Investments

As noted earlier, in the majority of states, PO duties have been allocated as additional charges to government officials with pre-existing duties. These officers have had to use the budget and infrastructure allotted to them for their other duties in order to fulfil their obligations as POs, since their state governments have failed to provide them with the infrastructure mandated by the PWDVA (2005).

Most POs are concerned about: the lack of a separate office (which compromises a woman’s privacy rights); lack of administrative/logistical support (support staff to serve notice, photocopying machines, mobile phones for co-ordination purposes and emergency use, daily/travel allowances).

In some states, however, specific budgetary allocations have been made to implement the PWDVA (2005), as illustrated by Table 3.5 below.

State	Budgetary Allocation for PWDVA (2005)	Support Services Available to Protection Officers
Andhra Pradesh	Rs 10 crore (2007-09)	<ul style="list-style-type: none"> • One data entry person per PO. • Two messengers from the Home Department. • 2 counsellors (one social worker and one advocate) attached to POs for each district.
Assam	Yes, but data not available	n/a ¹
NCT Delhi	Rs 50,00,000 per annum (2006-08)	n/a
Gujarat	Rs 1,034,000	n/a
Haryana	Rs 1 crore	It is expected that POs will be provided with one data operator on contract basis and one multi-purpose work head on a contract basis.
Karnataka	n/a	<ul style="list-style-type: none"> • Each PO has been provided with one data entry person who also attends to aggrieved women in case the PO is unavailable. • Each PO has also been provided with a messenger who can serve notices on behalf of the PO.
Kerala	Rs 1 crore earmarked for PO appointment and infrastructure.	One staff member has been provided per PO
Madhya Pradesh	Rs 29,200,000	n/a
Maharashtra	Rs 25,00,000 for training	n/a
Orissa	The nodal department has earmarked Rs 75,000 in the 1st supplementary budget per district.	n/a
Punjab	Rs 50,00,000 (2008-09)	n/a
Rajasthan	Rs 25,00,000	n/a
Sikkim	Rs. 10,00,000 (2008-09)	n/a
Tamil Nadu	Rs 96,72,000 (POs & infrastructure) + Rs 3,53,000 (training) + Rs 50,000 per district (awareness raising)	One junior assistant-cum-typist sanctioned per POs

1. Data not available

Observations on Table 3.5

- Only 14 states have made separate budgetary allocations for the implementation of the PWDVA (2005), although even in these states not all allocations are aimed at providing support to POs, which is our focus here. Unfortunately, data is limited and not disaggregated: frequently, it is difficult to assess precisely where an allocation is targeted and in what amount. What is clear, however, is that there is no uniformity in the nature of state allocations for the Act.
- Tamil Nadu is the only state for which data indicates specific and separate allocations for infrastructure, training and awareness raising and it is commendable that the state equips POs to handle the increase in clients that will be the likely result of increased public awareness by providing them with infrastructure and training.
- Observations on Table 3.2 included the challenge of maintaining a balance between a high number of PO appointments and their adequate training, with special reference to Maharashtra. As per Table 3.5, Maharashtra has allocated Rs 25 lakhs for training and it will be important to assess the impact of this allocation in the years ahead.

Early on in the life of the PWDVA (2005), as documented in the 1st M&E Report, Andhra Pradesh emerged as a model of best practice because of the state's proactive role in implementing the Act. As Table 3.5 indicates, the state has allocated Rs 10 crore for the implementation of the Act, an amount far in excess of any other state for which data is available. This allocation is significant not merely for its numerical amount, but because it reflects the depth of the state's commitment towards developing the coordinated, multi-agency response system envisaged by the Act. As has often been said, state investment (in the form of budgetary allocations, infrastructure, training, awareness-raising and coordination) are essential for the smooth functioning of the law: the Andhra Pradesh government has played and continues to play a pioneering role in this regard. Consequently, two years into the Act, Andhra Pradesh makes an excellent candidate for a preliminary assessment of the impact of a well-implemented PWDVA (2005) on cases filed under Section 498A of the Indian Penal Code. As per Table 3.6 below, each of the state's 24 districts reports a decrease in cases filed under Section 498A; the average decrease in cases filed under Section 498A from 2007 to 2008 is 41.20%.

Table 3.6
District-wise Registration of Cases under Section 498A (IPC) in Andhra Pradesh: 2006-2008

District	2006 (January 1- December 31)	2007 (January 1- December 31)	2008 (January 1- December 31)	Numerical Decrease: 2008 vs. 2007	Percentage Decrease: 2008 vs. 2007
Mahaboobnagar	260	203	102	101	50
Adilabad	315	268	177	91	34
Kurnool	150	165	119	46	28
Ananthapur	177	189	88	101	53
Nizamabad	403	401	196	205	51
Prakasham	208	206	123	83	40
Nalgonda	385	418	213	205	49
Khammam	186	219	193	26	12

Table 3.6 (con't.)
District-wise Registration of Cases under Section 498A (IPC) in Andhra Pradesh: 2006-2008

District	2006 (January 1- December 31)	2007 (January 1- December 31)	2008 (January 1- December 31)	Numerical Decrease: 2008 vs. 2007	Percentage Decrease: 2008 vs. 2007
Guntur	353	493	258	235	48
West Godavari	427	477	354	123	26
East Godavari	386	491	258	233	47
Srikakulam	155	327	177	150	46
Warangal	453	585	298	287	49
Ranga Reddy	63	90	66	24	27
Karimnagar	604	618	310	308	50
Cuddapah	168	205	195	10	5
Nellore	158	177	112	65	37
Krishna	282	336	204	132	39
Vizianagaram	159	251	116	135	54
Medak	212	250	159	91	36
Chittoor	189	379	120	259	68
Hyderabad	893	1138	628	510	45
Cyberabad	748	806	398	408	51
Visakhapatnam	458	641	356	285	44

Another potential candidate for best practice, if it is operationalised in the near future, is the scheme for appointments and infrastructure proposed by the government of NCT Delhi. This scheme envisages the post of a Chief Protection Officer (CPO) to supervise the work of all POs so as to ensure quality control of services offered to women and, thus, to facilitate the effective implementation of the PWDVA (2005). Located in the Department of Social Welfare of the Delhi state government, the office of the CPO shall be provided with one statistical assistant, one Upper Divisional Clerk (UDC), one stenographer, one dispatcher and one peon.

In addition, the number of POs will be significantly increased to include Grade I- as well as Grade II-level appointments. Each Grade I-level PO shall be assigned a Grade II-level PO to assist him/her in the discharge of his/her functions. The office of the Grade I PO shall be provided with one UDC, one stenographer, one Lower Divisional Clerk (LDC), one dispatcher and one peon.

Further, all CPOs and POs shall be provided with office furniture, vehicles and mobile phones.

This proposed scheme aims to put in place adequate infrastructural and staff support that has the potential to enhance PO efficiency levels. In addition, it enables the data collection which is essential for the proper monitoring and evaluation of the law. It is recommended that the CPO's office undertake an exercise similar to the Andhra Pradesh case cited above: i.e., compare the numbers of DIRs recorded

and cases filed under the PWDVA (2005) with the number of complaints filed under Section 498A of the IPC to evaluate the effect of a well-implemented civil law remedy like PWDVA (2005) upon criminal law usage.

Lack of Training and Awareness

64% of POs interviewed have received some training under the PWDVA (2005), but it is not possible to assess the quality of this training, other than to say that the majority of POs interviewed find it inadequate to their day-to-day needs. (A PO in Meghalaya even stated that she has not initiated any action under the Act because she is unaware of her duties as a PO.) There is an urgent need for a consistent training module that incorporates aspects of legal provisions and procedures, gender sensitization and social work principles, all three of which are required for a PO to fulfil his/her obligations to a woman in need.

Accountability of Protection Officers

According to Section 9(2) of the PWDVA (2005), “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”. As a result, POs sometimes feel torn between their obligations under the Act (which are especially time-consuming because of the lack of infrastructural support) and their pre-existing obligations under the other government schemes that they are charged with implementing. POs find that Magistrates expect them to prioritize their responsibilities under the PWDVA (2005) and do not make allowances for lapses or delays caused by over-burdening and lack of time. In some instances, Magistrates have even penalized POs for the inability to complete their tasks in a timely manner.

Miscellaneous Concerns

- POs receive no feedback from courts and are not intimated of orders granted by courts.
- In some instances, POs have faced threats and harassment from respondents and, consequently, fear for their personal safety while serving notices and enforcing orders.

Concluding Observations

- Although the full-time, contractual model has problems, it should be noted that these are due to external factors – primarily, the lack of infrastructural support – and are not inherent to the model itself. Indeed, it is our recommendation that full-time PO posts be sanctioned across the country.
- When appointing existing officers as POs, it is advisable to give preference to those who have some background in law, as is the case in Kerala where probation officers have been given the additional charge of POs.
- Regardless of their background, it will take some time for POs to be fully conversant with the relevant legal provisions and procedures. In the meanwhile, it is highly recommended to follow the example of Karnataka which has made two lawyers appointed by the State Legal Services Authority available to each PO on a bi-weekly basis.

- In order to realize the multi-agency response system envisaged by the PWDVA (2005), it is essential for every state government to provide its POs with a comprehensive list of state-sponsored services and schemes, offered not only by the nodal department, but also other government departments, that may be availed of by women in need.
- State governments must engage with law departments to issue protocols on the reporting requirements of POs.

Service Providers: An Overview of Current Status

Section 10 of the PWDVA (2005) states that, “any voluntary association registered under the Societies Registration Act, 1860...or a company registered under the Companies Act, 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 purpose of this Act.”

Rule 11 provides the method of registration and the minimum requirements to be fulfilled by those desirous of registering as Service Providers under the PWDVA (2005). According to Section 10(2) of the Act, a duly registered service provider has the power to:

- Record a Domestic Incidence Report if the aggrieved person so desires and forward a copy thereof to the Magistrate and Protection Officer having jurisdiction in the area where the domestic violence occurred;
- Have 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 occurred;
- Ensure that the aggrieved person is provided shelter in a shelter home if she so requires and forward a report of shelter home lodging to the concerned police station.

Finally, Section 10(3) of the Act states that, “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”.

The registration of Service Providers (SPs) under the PWDVA (2005) is a recognition of the pioneering role played by NGOs in providing women in distress various forms of relief not limited merely to legal remedies. In addition, SPs with experience of domestic violence cases are in a position to provide POs much-needed support in dealing with complaints received under this Act. Enshrining their services in law grants their actions important legitimacy; according them the status of public servants (as per Section 30 of the Act) protects them from frivolous persecution. The maintenance of an up-to-date registry of SPs provides a valuable resource to POs and their clients.

Table 3.7
State-wise Registration of Service Providers

State	Number of SPs	Profile of SP	Services of Provided	Whether Government Funded or Not
Andhra Pradesh	72	NGOs working on issues of child rights, HIV/AIDS, domestic violence, etc.	Counseling; Vocational training	Most receive government funds
Arunachal Pradesh	Registration in process	n/a ¹	n/a	n/a
Assam	32	NGOs working mainly on women's issues	Counseling; Shelter	Yes
Chandigarh	12	NGOs	n/a	Yes
Chattisgarh	Registration in process	n/a	n/a	n/a
New Delhi	27	n/a	Counseling; Shelter Homes; Legal Counseling	Yes
Gujarat	Registration in process	n/a	n/a	n/a
Goa	5	NGOs	Family counseling; Vocational training	n/a
Himachal Pradesh	Registration in process	n/a	n/a	n/a
Haryana	8	NGOs; Child Welfare Councils; Red Cross Society; Women's Development Corporations	n/a	Yes
Kerala	58	22 NGOs; 9 Helpline Centres; 27 FCCs ²	n/a	NGOs notified as SPs are given Rs 5,000 to appoint a legal counselor and Rs 10,040 to provide other assistance.
Madhya Pradesh	38	NGOs; Police <i>Paramarksh Kendra</i>	n/a	n/a
Maharashtra	85	20 Special Cells for Women and Children; 62 FCCs; 3 NGOs	Family Counseling	FCCs and Special Cells receive government funds under several Central and State government schemes.
Manipur	7	NGOs	n/a	n/a
Mizoram	6	NGOs working on gender-related issues and HIV/AIDS	n/a	No
Nagaland	1	Nagaland State Social Service Board	n/a	Yes

1. Data not available

2. Family Counselling Centres (FCCs)

**Table 3.7 (con't.)
State-wise Registration of Service Providers**

State	Number of SPs	Profile of SP	Services of Provided	Whether Government Funded or Not
Orissa	30	n/a	n/a	n/a
Punjab	Registration in process	n/a	n/a	n/a
Rajasthan	79	Women's groups; NGOs	Work with women and children.	No
Sikkim	Registration in process	n/a	n/a	n/a
Tamil Nadu	58	NGOs; Helpline ¹ Centres; FCCs	n/a	Yes
Tripura	1	n/a	n/a	n/a
Uttar Pradesh	35	n/a	n/a	n/a
Uttaranchal	15	NGOs	n/a	n/a
West Bengal	43	NGOs	Organizations working on social welfare	Most receive government funds.

Observations on Table 3.7

- As compared to the 1st M&E Report, where only five states had registered SPs (Andhra Pradesh, Orissa, Tamil Nadu, Tripura and Uttar Pradesh), LCWRI data for the 2nd M&E Report indicates that 18 states have taken proactive steps towards registering SPs.
- The profile of organizations registered as SPs varies across and within states. However, the predominant trend is to register as SPs those organizations that provide either counselling or shelter home services or some combination of both.
- Organizations that are registered as SPs are either entirely state-run or receive funds from Central or state government schemes. Very few entirely privately-funded organizations are registered as SPs and LCWRI has received anecdotal evidence of state governments rejecting the registration applications of privately-funded organizations that meet the qualifying criteria of SPs. This trend is discussed further in the sub-section, “Noteworthy Issues Regarding Service Providers” below.

Types of Service Providers: The Special Cells for Women and Children

The Special Cells for Women and Children (“Special Cells”) are an example of a registered SP under the PWDVA (2005).

The Special Cells were started in 1984 as a joint collaboration between the Department of Women and Child Development (Government of Maharashtra), Maharashtra state police and Tata Institute of Social Sciences (TISS). Although the police are the first port of call for a woman in crisis, they are rarely trained and frequently unwilling to provide the kind of specialized help that a woman in crisis needs. The Special Cells aim to ameliorate this situation by placing trained social workers at police premises, thus enabling a woman to access a range of expert assistance under one roof. At present, the

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Special Cell has branches in 17 districts of Maharashtra and, in October 2007, was registered as an SP by the Government of Maharashtra.

Each Special Cell employs two full-time, fully-qualified social workers housed in a police station. The Special Cell shares infrastructure with the police station, which provides it with administrative assistance, such as office space and furniture, telephone, vehicle, etc.

Reviewing the work of the Special Cell in Nanded district of Maharashtra allows us to see how this type of SP fulfils its functions under the PWDVA (2005). As an SP, the Nanded branch office deals with cases of domestic violence, conducts counselling, completes Domestic Incidence Reports (DIRs), forwards cases to Protection Officers and Magistrates, undertakes home study visits, follows-up with cases referred to POs, accompanies women to court and provides them information on legal provisions and procedures, thus playing an important role in helping women navigate the legal system.

The primary goal of the Special Cell is immediate crisis intervention and its pre-litigation role is pivotal: it seeks to give the aggrieved woman assistance as fast as possible and remove her from the crisis situation. Only if the woman so desires, does it focus on long-term intervention. In its capacity as an SP, the Special Cell acts as a catalyst for the implementation of the PWDVA (2005). Since it is located at the police station, it is able to coordinate with the police (whom it assists in the execution of court orders), POs (whom it assists in the discharge of their duties), shelter homes and District Legal Services Authority. It also conducts training programs for the police and women's groups.

As of March 2008, the Special Cell, Nanded Branch, had received 59 complaints, out of which it filed 10 cases under the PWDVA (2005). It sought the following orders: Protection Orders (6 cases); Interim Orders (6 cases); Ad Interim Order (1 case); Residence Orders (4 cases); and Compensation Orders (1 case).

According to the Nanded branch, if the DIR is completed properly and the application drafted cautiously, then Courts tend to play a very proactive in passing orders. The Nanded branch has been successful in restoring the woman's right to residence, securing the return of the woman's assets, restraining the respondent from further harassing the victim, etc.

Types of Service Providers: Family Counselling Centres

The Family Counselling Centres (FCCs) are another example of registered SPs under the PWDVA (2005).

The roots of FCCs can be traced to the Voluntary Action Bureau (VAB) established in 1982 at national and state levels by the Central Social Welfare Board (CSWB) and the various state boards respectively. The idea was to galvanize the government and voluntary organizations, through financial assistance, specifically to tackle crimes against women and children. This resulted in the setting-up of FCCs, which are currently under the purview of the State Social Welfare Advisory Board (SSWAB).

FCCs provide a safe space where victims of domestic violence are provided counselling, referral and rehabilitative services (free legal aid, short stay homes, medical treatment and vocational training) by trained social workers. FCCs also provide women with information about prevailing laws relating to women and children.

A brief description of an FCC in Mumbai will help illustrate the functioning of this type of SP. Generally speaking, cases of domestic violence are referred to the FCC by POs, the police or women's organizations. Although in its capacity as an SP, the FCC is authorized to complete a DIR, it does not do so immediately. Instead, it first uses its counselling expertise and meets with both parties. If the parties reach an amicable settlement, the counsellor records the mutually agreed upon terms and conditions and asks both parties to sign the document to signal their acceptance. If the parties are unable to reach a mutually satisfactory settlement or if the respondent does not appear for the counselling sessions, then the counsellor completes the DIR and forwards a copy to the Magistrate, police, PO and aggrieved woman to initiate necessary action in the matter. When an order is passed in the matter, the FCC seeks the help of POs and the police in getting the order executed.

Types of Service Providers: *Mahila Samakhya/Sanghas* in Andhra Pradesh

Although it has not been registered as an SP under the PWDVA (2005), one federation in the *Mahila Samakhya* scheme in Andhra Pradesh is fulfilling many of the functions of an SP and is described here as a case study.

Mahila Samakhya is a programme of the Andhra Pradesh government, currently operating in 12 districts of the state. It aims to mobilize women at the grassroots level to form collectives that implement educational initiatives, thus facilitating women's empowerment. At the *mandal* level, *Mahila Samakhya*s can form federations that are recognized as societies under the Societies Registration Act, 1860. One such federation that is now autonomous has approached the Integrated Child Development Scheme (ICDS) at the District level, seeking to be registered as an SP under the PWDVA (2005).

Among other gender-related initiatives, this federation's legal literacy programme imparts awareness on various laws related to women, which has led to the formation of a socio-legal *Nyaya* Committee that seeks to resolve issues of violence against women at the village level. The *Nyaya* Committee is a gender sensitive forum that provides rural women with easy access to legal information and support and is emerging as a compelling intermediary between the victim and the formal justice system. The *Nyaya* Committee works closely with *Samakhya* members, local lawyers, police and, when needed, the District Legal Services Authorities (with whom they have been identified as paralegal volunteers). They refer cases, as needed, to the District Project Directors of ICDS who are appointed as POs under the PWDVA (2005).

Noteworthy Issues Regarding Service Providers

Factors Influencing State Registration of Service Providers

Rule 11 of the PWDVA (2005) elucidates the eligibility criteria of any organization seeking registration as an SP:

- (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;
- (b) In case an applicant for registration is running a medical facility, or a psychiatric counselling centre, or a vocational training institution, the State Government shall ensure that the applicant fulfils the requirements for running such a facility laid down by 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.

Specifically regarding SPs, the PWDVA (2005) does not mandate the state government to make a separate infrastructural investment by way of budgetary allocations. The move to register SPs is intended, as discussed earlier, to provide legitimacy to the services provided by NGOs and immunity to these organizations from frivolous persecution. Although, in practical terms, the Act relies upon the mobilization by SPs of a portion of their pre-existing budgetary allocations under other schemes for the purposes of the PWDVA (2005), realizing the *spirit* of the Act would require the central and state governments to make budgetary allocations to SPs targeted towards the Act.

In the current circumstances, however, the government prefers to register as SP those organizations that are either state-run or receive government funding. This is due not just to the budgetary reasons discussed, but also because, as per Rule 11, the government is obliged to scrutinize organizations volunteering for registration as SPs. It is much easier, then, for the government to accept the applications of state-run and/or funded organizations as these have already passed a scrutiny threshold and have reporting systems in place in order to be eligible for government support. This might explain the anecdotal evidence that LCWRI has received where the applications of otherwise duly qualified, privately-funded organizations are refused SP registration: processing these applications would require a due diligence process that the government might be unwilling to undertake.

Needless to say, such a process of selection is not one that was intended by the PWDVA (2005). Any more or less blanket approval of state-run or funded organizations raises questions about the credibility of the SPs so registered.

Financial Allocations for Service Providers

While the PWDVA (2005) does not mandate budgetary allocations for SPs, in field studies conducted for the 2nd M&E Report, registered SPs did indicate their concern about the financial demands incurred by the additional duties they undertake as SPs. This is a problem even for those SPs that already receive government funding, albeit for other schemes, that they then attempt to channelise towards the Act.

Medical Facilities and Shelter Homes

The PWDVA (2005) obligates state governments to notify medical facilities and shelter homes. According to Sections 6 and 7 of the Act, if an aggrieved person or, on her behalf, a Protection Officer or Service Provider requests the person in charge of the shelter home or medical facility to provide shelter or medical aid, then the person in charge of the shelter home or the medical facility shall be bound to provide the relevant services to the aggrieved person.

Table 3.8
State-wise Notification of Medical Facilities and Shelter Homes

State	Medical Facilities & Their Profile	Shelter Homes & Their Profile
Andhra Pradesh	All government hospitals and health centres instructed to provide free medical facilities.	78 shelter homes notified, of which 26 are <i>Swadhar</i> homes and the rest are Short Stay Homes.
Arunachal Pradesh	n/a ¹	n/a
Assam	None yet notified.	5 private shelter homes selected, but not yet notified.
Bihar	All civil surgeons instructed to provide free medical facilities to women who produce reference letters from POs.	n/a
Chandigarh	None yet notified.	No special notification, but existing shelter homes under <i>Swadhar</i> Scheme are functioning as shelter homes under the PWDVA (2005).
Chattisgarh	n/a	None yet notified.
New Delhi	Notification in process.	Notification in process.
Gujarat	Notification in process.	21 shelter homes under the <i>Swadhar</i> scheme notified.
Goa	All doctors working at government hospitals and health centres notified.	5 shelter homes notified.
Haryana	Notification of government medical institutions at District and Block level in process.	Notification of shelter homes operating under <i>Swadhar</i> Scheme, <i>Mahila Ashram</i> and <i>Nari Niketan</i> in process.
Himachal Pradesh	Notification in process.	Notification in process.
Karnataka	All hospitals owned, maintained or controlled by the state government notified as medical facilities under the PWDVA (2005).	19 <i>Swadhar</i> homes + 28 Short Stay Homes + 70 <i>Santhwana</i> Centres + 175 Family Counselling Centres notified as shelter homes.
Kerala	None notified yet, but shelter homes have been provided with budget to provide medical help.	27 shelter homes (15 government + 12 private) operating under <i>Abala Mandirams</i> notified as shelter homes under the PWDVA (2005).
Madhya Pradesh	Notification issued.	13 shelter homes notified (4 government + 9 private)
Maharashtra	n/a	85 shelter homes notified (20 government + 65 private)
Manipur	None yet notified.	No special notification, but 11 existing shelter homes operating under <i>Swadhar</i> Scheme are functioning as shelter homes under the PWDVA (2005).
Meghalaya	None yet notified.	1 (government) shelter home notified.

1. Data not available

Table 3.8 (con't.)
State-wise Notification of Medical Facilities and Shelter Homes

State	Medical Facilities & Their Profile	Shelter Homes & Their Profile
Mizoram	Notification in process.	Notification in process.
Nagaland	None yet notified.	None yet notified.
Orissa	Medical facilities notified.	Existing government shelter homes and private shelter homes receiving government funds have been notified.
Punjab	Notification in process.	Notification in process.
Rajasthan	All government district and satellite hospitals and health centres notified.	12 (5 government + 7 private) shelter homes notified.
Sikkim	Notification issued.	2 shelter homes notified: NGOs working under the guidelines of the Department of Social Welfare.
Tamil Nadu	All government hospitals notified.	24 shelter homes (Service homes, Short Stay Homes, <i>Swadhar</i> homes and homes run by recognized SPs).
Tripura	Department of Health has been requested by nodal department to issue suitable instruction.	One existing shelter home (operated by state government) notified.
Uttar Pradesh	Existing government and private doctors notified.	Existing shelter homes operating under SITA ² scheme have been notified.
Uttaranchal	n/a	n/a
West Bengal	Notification in process.	45 (mostly privately-operated) shelter homes.

2. Suppression of Immoral Trafficking Act (SITA)

Observations on Table 3.8

- Data for the 1st M&E Report indicates that only four states had specifically issued instructions to existing state medical facilities to provide free medical services under the Act (Bihar, Gujarat, Tamil Nadu and Uttar Pradesh). The other states were relying on existing medical facilities and shelter homes to provide services under the PWDVA (2005). This trend seems to persist in the 2nd M& E Report as well, without any of the states having made additional provisions for medical and shelter services.
- In most states, existing shelter homes running under various schemes of the government (such as the *Swadhar* scheme) have been notified. Even when the shelter homes are run by private NGOs, they receive some sort of government funding for various schemes.
- Similarly regarding medical facilities, in most states, existing government hospitals and primary health care centres have been notified.
- The notification of medical facilities is taking longer than that of shelter homes, which could be due to the following reasons:

- (i) Since most government hospitals and health care centres already provide free medical treatment, states might not feel it necessary to issue a separate notification to these facilities under the PWDVA (2005).
- (ii) In most cases shelter homes are run by the Department for Social Welfare which, in most states, is the nodal department for the implementation of the PWDVA (2005), leading to a swifter notification of shelter homes. On the other hand, medical facilities come under the purview of the Health Department and coordinating notification by a non-nodal agency might cause delays.

Working Towards Better Coordination by the State

The PWDVA (2005) recognizes that women facing violence within the home require various forms of assistance that are not limited to facilitating their access to courts. In this Chapter, the attempt has been to map activities undertaken by state governments in discharging their duties explicitly mandated by the law such as the appointment of POs, registration of SPs and notification of shelter homes and medical facilities.

However, the PWDVA (2005) also mentions other entities, namely the police and legal services authorities, who have a crucial role to play in ensuring that the objectives of the law are met. Neither the police nor the legal services authorities reports to the nodal departments responsible for the implementation of the PWDVA (2005), which are primarily Departments of Women and Child Development or Social Welfare. Instead, the police reports to the Home Department and Legal Services Authorities report to the department that deals with issues of law and justice. As discussed in the preceding section, often shelter homes and medical facilities also come under the purview of different departments, which affects the efficiency of their notification.

In light of these circumstances, Section 11(c) of the PWDVA (2005) mandates, as a duty of Central and State governments, the ensuring of effective coordination between all concerned departments: “The Central Government and every State Government shall take all measures to ensure that...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.” Section 11(d) further mandates the Central and State governments to prepare and put in place protocols for various ministries concerned with the delivery of services to women under this Act.

In the 1st M&E Report, Andhra Pradesh was the only state that had succeeded in providing such coordinated responses. Here, the nodal department was supported by initiatives taken by the police and legal services authorities to ensure effective enforcement. In a circular memo dated December 22, 2006, issued by the office of the Additional Director General of Police (Crime Investigation Department), personnel in 1,650 police stations were instructed to make general diary entries of all women approaching them with complaints of domestic violence. In addition, the police were directed to provide information on legal rights and options to such women. If, based on the information she received, a woman decided to initiate civil instead of criminal proceedings, then she had to be escorted by a lady constable to the PO’s office for necessary action.

On June 20, 2007, the Andhra Pradesh Legal Services Authority issued a circular stating that: “The District Legal Services Authority shall organize regular awareness camps and sensitization workshops for Advocates, Protection Officers, NGOs and Judicial Officers; the District Legal Services Authority shall constitute a legal aid cell for the effective implementation of the PWDVA consisting of the Chairman and Secretary, District Legal Services Authority, Superintendent of Police, Public Prosecutor, four lady Advocates, Protection Officers, Project Directors and District Rural Development Agency as members of the cell to ensure effective implementation of the PWDVA. Compliance reports shall be submitted to the state authority. In addition to this, legal aid is being made available to any woman filing an application under the PWDVA through the Protection Officer.”

According to data gathered for the 2nd M&E Report, while protocols for coordinated responses have not yet been prepared by any state, Kerala and Uttarakhand have appointed committees with representation from different state departments to monitor the implementation of the law. These efforts may be viewed as current best practices in evolving protocols for service delivery and interdepartmental coordination.

In Kerala, as mentioned earlier, District Probation Officers have been given the additional charge of POs under the PWDVA (2005). The Department of Social Welfare, which is the nodal agency in the state, has sought to ensure better coordination and build linkages between the different agencies involved in the implementation of the law through the setting up of State- and District-level Coordination Committees. This has been done through the circular GO (Rt.) No.340/2007/SWD (dated 29.08.2007). According to the notification, the State-level Coordination and Monitoring Committee, which is convened quarterly, is a 12-member body, with the Minister of Social Welfare as its Chairperson. The Chairpersons of the State Women’s Commission, State Women’s Development Corporation, State Social Welfare Board and representatives of the Departments of Law, Home, Local Self-Government, Health and Family Welfare, Social Welfare and Public Relations are its members. The state-level committee also includes three NGO representatives. The District-level Coordination and Monitoring committees, convened monthly, are headed by the District Collector and follow a similar template, with representatives from the police as well as other relevant agencies, including the District Medical Officer, *Panchayat* President and women MLAs from the District.

In Uttarakhand, the nodal agency – the Department of Women and Child Development –has appointed District-level committees to ensure a coordinated multi-agency response to domestic violence. The committees comprise of the following representatives: one level ‘A’ women officer of the district administration or the District Collector, Senior Superintendent of Police or Superintendent of Police, depending upon availability, one representative deputed by the State Women’s Commission, Chief Medical Officer, District Public Prosecutor, secretary of an NGO, District Social Welfare Officer and District Programme Officer.

The committees are headed by the District Collector or a woman officer of the district administration, depending upon their availability. Although data is not currently sufficient to allow an evaluation of the functioning of these committees, it is hoped that by the 3rd M&E Report a clearer picture of the effectiveness of these monitoring committees will emerge.

A common impediment faced in the effective enforcement of any law is inadequate budgetary allocations and infrastructural provisions. One of the ways in which challenges posed by resource scarcity may be overcome is to put in place systems that allow for the optimum and efficient use of available resources. Building coordinated interdepartmental response systems is crucial in this regard. By adopting such networking practices and protocols, not only will nodal departments be better aware of schemes and policies implemented by other departments upon which they can build, but they will also guard against the reproduction of already existing initiatives. The formation of State- and District-level committees for monitoring implementation is a crucial first step that should be adopted by all states. Lessons learnt through such a process of monitoring will provide the basis for evolving protocols for service delivery and interdepartmental coordination. This shall, in turn, lead to the optimal use of available resources.

Chapter IV

Role of the Protection Officer

Introduction

Section 9 of the PWDVA (2005) presents the duties and functions of Protection Officers (POs), which should be read in conjunction with Rules 8-10. (Please refer to the boxes below.) The role of the PO can broadly be divided into two stages:

- (i) Pre-litigation: During which the PO assists the aggrieved person;
- (ii) Post-Litigation: During which the PO carries out the orders of the court and, thus, assists both the court and the aggrieved person.

The PO's pre-litigation role includes:

- (i) Receiving complaints of domestic violence [Section 9(b)];
- (ii) Taking preventive or emergency action [Rule 9];
- (iii) Facilitating the aggrieved person's access to legal processes and relevant support services [Section 9(d)-(g) and Rule 8(ii)-(viii)].

The PO's post-litigation role [as per Section 9(h)-(i) and Rule 10] includes: serving of notice, making enquiries and providing assistance in the enforcement of court orders.

Section 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 of 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 to 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.

Section 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.

Rule 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 in Form IV which shall be in English or in a vernacular local language;
 - (iii) To assist the person in making an 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 to 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 Counsellors in proceeding under the Act under sub-section (1) of section 14 or Welfare Experts under section 15;
 - (ix) To scrutinise the applications for appointment as Counsellors 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 to the concerned Magistrate;
 - (xi) To maintain a record and copies of the reports and documents forwarded under sections 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 victimised or pressurised as a consequence of reporting the incidents of domestic violence;
 - (xiii) To liaise between the aggrieved person or persons, police and Service Provider in the manner provided under the Act and these Rules;
 - (xiv) To maintain proper record of the Service Providers, medical facilities 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 this Act and these Rules.

Rule 9. Actions to be taken in case of emergency

If the Protection Officer or a Service Provider receives reliable information through email 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 such an emergency situation, the Protection Officer 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 Incidence Report and present the same to the Magistrate without any delay for seeking appropriate orders under the Act.

Rule 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-parte* interim relief to the aggrieved person under the Act and pass orders for such home visits;
 - (b) After making appropriate enquiry, 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 directed 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 sections 12, 18, 19, 20, 21 or 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.

The PWDVA (2005) provides multiple options for activating the law and filing applications for legal relief. The first step provided under the law is the Domestic Incidence Report (DIR) to be completed by the PO or Service Provider (SP). The DIR (Form I) is a faithful record of the complaint and is a public document as it is completed by the PO or SP who are accorded the status of public servants under Section 33 of the Act. Whether or not legal proceedings are initiated, each DIR that is recorded must be submitted to the Magistrate. In accordance with the proviso to Section 12 of the Act, prior to granting any orders, a Magistrate has to consider all DIRs received pertaining to the aggrieved person. However, the DIR is not meant to impede a woman's direct access to court.

Most PO appointments had not been made at the time of compiling the 1st M&E Report, as the PWDVA (2005) was only 10 months old. Most women approached the courts directly and, therefore, the 1st M&E Report was based on an analysis of court orders to discern the manner in which women activated the law. This analysis yielded three broad models of activation, summarized in Chapter 1 and recapitulated below:

- **Private Model:** Women approached the courts directly through their lawyers. This model was seen primarily in states where no POs were appointed at all.

- **Public Model:** This model was evolved in and specific to Andhra Pradesh. Here, women approached the police who referred them to POs, who in turn completed DIRs and provided assistance as mandated by the law.
- **Mixed Model:** In this model, women had their own lawyers, but did approach the PO to complete a DIR and file it in court. When women approached courts directly, they were referred to POs to complete DIR formalities.

Some additional observations can be made:

- In states with the Private Model, such as Rajasthan, Punjab and Haryana, courts did not insist on a DIR. In Rajasthan, which recorded the highest number of cases filed, courts granted reliefs in applications that were not accompanied by DIRs.
- In certain states, such as Maharashtra and West Bengal, courts were reluctant to commence legal proceedings without a DIR. At the time of compiling the 1st M&E Report, both states had only recently appointed POs and there was a general lack of clarity on the provisions of the law. In order to clarify the law, the High Court of Bombay passed an order stating that applications under the PWDVA (2005) are to be proceeded upon even in the absence of DIRs and/or POs¹. However, courts in West Bengal continued to insist on the DIR as they gave the term “shall” used in the proviso to Section 12 a mandatory interpretation.

In its analysis of the implementation of the PWDVA (2005), the 2nd M&E Report differs from the 1st M&E Report in two significant ways:

- The 2nd M& E Report is primarily based on data collected from and about POs rather than from and about courts.
- Whereas the 1st M& E Report sought to map practices of implementing what the law explicitly mandated, the 2nd M&E Report aims, instead, to map those practices that emerge in the spaces of the law’s ‘silence’: i.e., where and how do methods of implementing the PWDVA (2005) diverge from the letter of the law without disregarding it? What practices are being adopted that, while not explicitly mandated, nonetheless represent an organic unfolding of the law on-the-ground?

Chapter 4 is divided into two parts to correspond with the two stages of a PO’s role: Part I addresses the PO’s pre-litigation function and Part II addresses the PO’s post-litigation functions.

Part I : Pre-Litigation Duties and Functions of Protection Officers

How do Aggrieved Women Approach POs?

Under the PWDVA (2005), an aggrieved woman may approach a PO in any of the following ways:

- Direct approach;
- Referrals from SPs;
- Referrals from the police;
- Referrals from court.

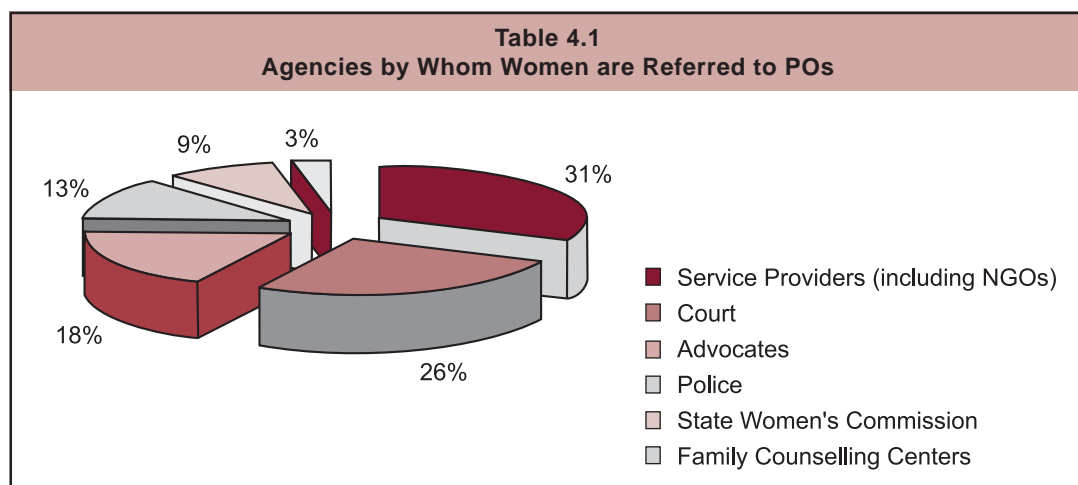
We shall now discuss each of these approaches in further detail.

1. *Surekha Mote v. State of Maharashtra* (PIL No. 10 of 2007, High Court of Bombay)

Only 12% of the POs interviewed stated that women approached them directly for assistance. A direct approach reflects a high level awareness of the Act as well as of the availability of the local PO. This awareness might be due to two factors: (i) the efforts of the state government in publicizing the Act and the availability of the PO through awareness campaigns; (ii) the outreach conducted by an individual PO in his/her jurisdiction.

3% of POs interviewed stated that they had never been approached by any woman for assistance under the PWDVA (2005). These POs were from Madhya Pradesh, Nagaland, Uttar Pradesh and Uttaranchal. The case of Nagaland deserves special mention: most North-Eastern states have customary laws and courts that women approach for arbitration in family matters rather than approaching government agencies.

For those instances when women do not approach a PO directly, Table 4.1 below illustrates the agencies that refer women to POs.



Observations on & Analysis of Table 4.1

- As Table 4.1 illustrates, at 31% of all referrals, the largest referring agencies are Service Providers (including NGOs). Family Counselling Centres (also a type of SP) provide another 3% of referrals. (A caveat to this data is that it is collected primarily from urban areas where SPs have a well-established and active presence.)
- In rural areas, it is likely that the police have a greater presence than do SPs (especially NGOs). However, the relatively low percentage of police referrals (13%) indicates that the police in some jurisdictions are either unaware of the PWDVA (2005) or reluctant to initiate proceedings under this law.
- Advocates form 18% of all referral sources. In these instances, it is likely that the aggrieved woman can afford to hire her own lawyer and has decided to initiate legal proceedings. She chooses to approach a PO not as a first port of call in a crisis, but in order to comply with

legal prerequisites (such as filing a DIR) and avoid any delays in legal proceedings, especially in states where it is known that the court will insist upon a DIR before hearing a case.

- Indeed, the fact that, in some cases, courts insist upon a DIR is evidenced by the high percentage of referrals (26%) from court. In these cases, women have gone directly to court and filed applications for relief without approaching a PO to prepare a DIR. As POs have now been appointed in all states, applications filed without a DIR are frequently referred back by the courts to POs, for completion of formalities. As many as 72% of all POs interviewed stated that they have had to deal with such referrals from courts.

Interestingly, the basis for such court referrals to POs is not explicitly provided for in the PWDVA (2005). The purpose of a DIR is to make a public record of a complaint at the pre-litigation stage that may be relied upon by the aggrieved woman if she chooses to pursue legal proceedings at a later stage. Once a case is initiated, a DIR is not a strict necessity as an application typically contains all the relevant information, but, as mentioned earlier in the introduction to this Chapter, several courts choose to give a mandatory interpretation to the proviso to Section 12 of the Act and, consequently, insist upon the DIR. Another reason for insisting upon a DIR is that the application could be missing necessary details that the DIR can supply. Finally, some courts require that the application be authenticated by a PO: for example, in Karnataka, POs rely on *anganwaadi* workers to confirm DIR details such as the address of the applicant.

Similarly, in Rajasthan, courts require POs to conduct a “*jaanch*” (investigation) prior to completing the DIR and to record their own impressions of the complaint in the “Remarks” column of Form I. The Rajasthan case represents a divergence from the letter of the law which states that a DIR is merely a recording of the aggrieved woman’s complaint rather than a PO’s impression of its authenticity [Section 2(e)]. A DIR lists the various possible types of violence that the aggrieved woman may have suffered. If she feels that this list does not adequately reflect her situation, she is provided with the “Remarks” column in which she can explain her particular situation. In other words, this “Remarks” column is intended for the aggrieved woman rather than for the PO.

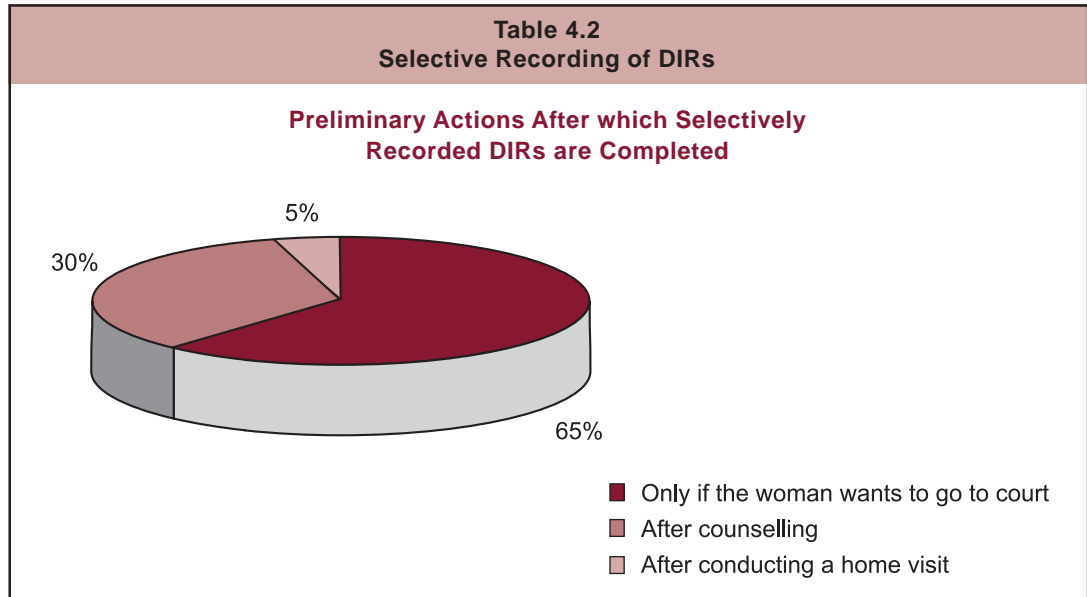
How do POs Manage Complaints Received from Aggrieved Women?

Domestic Incidence Reports (DIRs)

Once a woman meets the PO, either through a direct approach or referral, the PO is duty-bound to initiate action. The first step, as discussed above, is the recording of a DIR. The DIR format is designed to include a faithful recording of the aggrieved woman’s statement and the kind of assistance (legal and non-legal support) that she might require. When recording a DIR, the PO must also ensure that the necessary supporting documents are attached; these supporting documents could include a Medico-Legal Certificate issued by appropriate authorities who have treated the woman for injuries sustained as a result of domestic violence, records of prior complaints made by the aggrieved woman to any authority, records of relevant legal proceedings, etc.

52% of all POs interviewed stated that they record a DIR in each instance that a woman approaches them with a complaint of domestic violence. Kerala and Gujarat stand out as states where 100% of the POs interviewed always record a DIR.

The remaining 48% of POs record DIRs only after undertaking certain preliminary actions, as illustrated in Table 4.2 below.



As illustrated, 65% of those POs who record DIRs selectively, do so only if the aggrieved woman decides to go to court, as there is a common misperception among POs and women that completing a DIR marks the necessary beginning of legal proceedings as an official document is being created. Often, therefore, in deference to an aggrieved woman's wishes, the PO may refrain from taking the "legal action" of recording a DIR. In some instances, the aggrieved woman may seek other forms of assistance from the PO, such as mediation to effect reconciliation (30% of selective recorders as per Table 4.2); here too, a PO might postpone completing the DIR until such time as the woman so desires.

The first time that an aggrieved woman approaches me, I simply talk to her. I don't record a DIR immediately because she is often in no state of mind for this procedure. It is only later, when the woman is in a better state of mind, that I sit down with her to prepare the DIR. At this time, I tell her to make sure she brings along all the supporting documents so that I can refer to them in order to ensure the accuracy of the DIR and also so that I can attach necessary documents to the DIR.

[Saroja Thiruvengadam; PO; Vellore, Tamil Nadu]

However, even though 48% of POs interviewed do not automatically record a DIR, the majority of POs do maintain some form of documentation of complaints received and assistance rendered. In fact, 89% of all POs interviewed (including the 52% automatic recorders) confirmed that they maintain a register, frequently modelling itself on the police practice of maintaining "Daily Diaries" which record details of all people visiting the police station with complaints.

Evidently, as the PWDVA (2005) is being implemented, one of the trends emerging is a misunderstanding of the law vis-à-vis the recording of DIRs: while the law provides the DIR as a pre-

litigation device and mandates that it always be completed, in practice the DIR is perceived to be a tool of litigation and, consequently, is not completed or is postponed until after certain preliminary actions are taken by POs and/or certain decisions are made by the aggrieved woman.

However, in addition to the tendency towards misunderstanding, the practice of not automatically recording DIRs also illustrates another trend whereby the silences of the law allow for its context-specific implementation on the ground: in undertaking preliminary actions, such as counselling and home visits, POs are expanding their pre-litigation roles beyond that envisaged by the law. The law is silent on this matter in that it does not explicitly forbid such preliminary actions and it is in the space created by this silence that *ad hoc* practices are emerging. As is the nature of *ad hoc* practices, some are innovative and have the potential of evolving into best practices, while others tend to run counter to the spirit of the law. It is too early in the life of the PWDVA (2005) to make a definitive assessment of the nature of these *ad hoc* practices; as a first step, the 2nd M&E Report seeks merely to map them.

Counselling

Pre-litigation home visits, discussed in the case of Rajasthan above, are one area of expansion of the PO's duties beyond that envisaged by the PWDVA (2005). Counselling is another such area of expansion. LCWRI's data indicates that, among those POs who record DIRs selectively, there is a high reporting (30%) of attempts at counselling and mediation (see Table 4.2). Further, when all POs are considered together – i.e., both those who automatically record DIRs as well as those who only selectively do so – as many as 83% stated that they conduct counselling before the aggrieved woman approaches the court. In other words, even those POs who do not wait until after counselling to record a DIR, frequently do conduct counselling before the woman approaches the court.

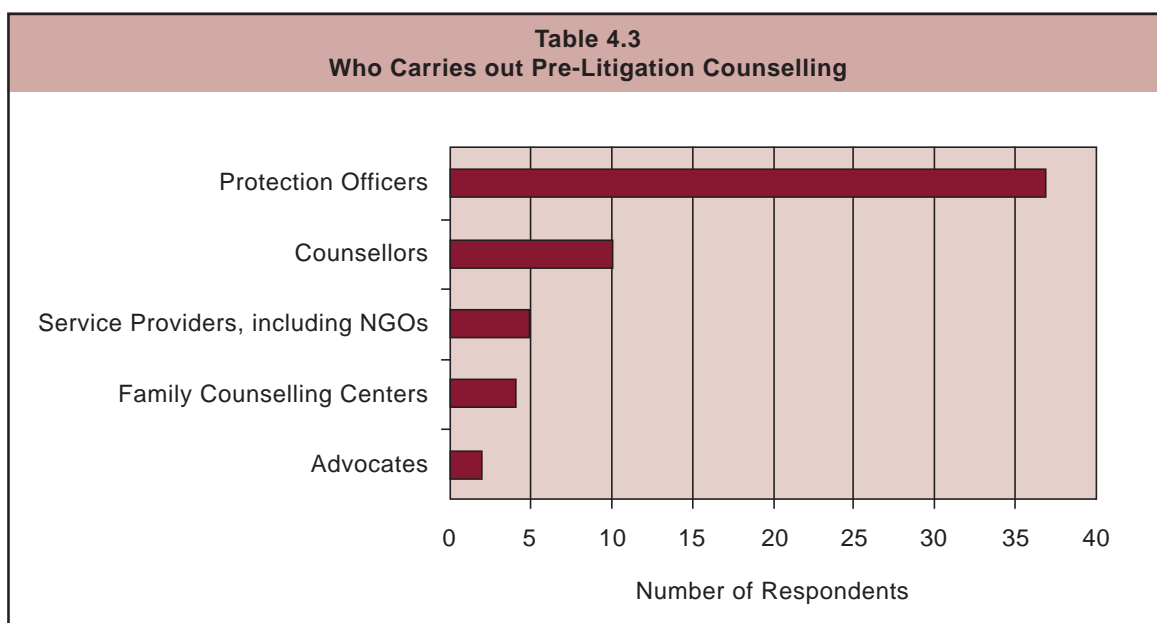
The PWDVA (2005) does not contain any explicit provisions on pre-litigation counselling except to state that it is the duty of the PO to maintain a list of counsellors available in her/his jurisdiction to whom she/he can refer any aggrieved woman who desires counselling services (Section 9 and Rule 8).

However, the Act does contain detailed provisions on post-litigation counselling, which we review briefly here, in order to place the current practice of pre-litigation counselling by POs in context. According to Section 14 of the PWDVA (2005), a “Magistrate may...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 counselling as may be prescribed”. Rule 14 elaborates on the procedure to be followed while conducting such counselling.

The objective of providing such detailed guidelines in the law is to recognise domestic violence as a human rights violation that merits a comprehensive legal response rather than treating it merely as an ‘internal family matter’ that can be settled through informal mediation/counselling that could effect forced reconciliation. Under the PWDVA (2005), counselling is 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 that 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 (2005) allows 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 assure 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 a 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.

Recognising counselling as an arena of technical proficiency, the PWDVA (2005) specifies the conditions under which it must be carried out at the post-litigation stage. However, the law is silent on counselling at the pre-litigation stage: it neither vests the responsibility of pre-litigation counselling with POs nor expressly forbids it. In the space of this silence has emerged the *ad hoc* practice of pre-litigation counselling by both POs and others to whom POs may refer the aggrieved woman. Table 4.3 below illustrates this situation.



As the preceding discussion has made clear, counselling must always be conducted by experienced professionals. However, as Table 4.3 illustrates, POs refer only a minority of pre-litigation counselling cases to such experts: counsellors (10 respondents) or Family Counselling Centres (fewer than 5 respondents). Over 35 POs said that they conduct pre-litigation counselling themselves.

The justifications advanced and methods adopted for carrying out counselling differ from one PO to another and LCWRI's data indicates that a PO's decision to conduct counselling herself/himself is influenced by a combination of personal choice and institutional parameters: individual workload, available infrastructure, assessment of the complaint and sense of self-competence, as demonstrated by the list below:

- In many cases, POs that were interviewed were of the opinion that since the disputes they were dealing with were of a "minor" nature, they were best settled by negotiation, over two-three meetings between the two parties, rather than through litigation.

- In some cases, POs stated that the aggrieved woman herself asks the PO for counselling and in these cases the PO feels obliged to comply with her request.
- It also appears that POs with Social Work degrees (see Table 3.3) consider themselves qualified to undertake counselling.
- In many states, and especially in rural areas, trained counsellors have either not been notified and/or are geographically inaccessible, leading POs to take over counselling functions.
- None of the POs interviewed in Delhi conduct counselling themselves, a fact that may be attributed to a combination of heavy workloads and inadequate infrastructure.
- In Gujarat, POs stated that the Magistrate orders POs to conduct counselling.
- In Goa and Andhra Pradesh, the nodal department has made trained counsellors available to POs, who are, therefore, able to refer women to qualified assistance.
- In contrast, POs in Madhya Pradesh and Chandigarh carry out counselling themselves.

As discussed, when counselling is conducted by lay people, there is a risk that the process followed and results achieved do not respect a woman's agency and fall short of basic human rights standards. Another concern, of an explicitly legal nature, arises from the duality of a PO's 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, as such, works under the supervision of the court and assists the court in discharging its function. Pre-litigation counselling by a PO can create a potential conflict of interest vis-à-vis his/her position as an officer of the court.

Our discussion is now moving towards a PO's post-litigation role, but first we describe the process whereby applications are filed in court under the PWDVA (2005).

How are Applications Filed in Court?

The PWDVA (2005) provides multiple options for filing applications for relief in court as it believes it essential that a woman's direct access to the courts be ensured and that procedural requisites not pose any impediment to court access. In addition to Section 12, under which all applications are to be filed before a Magistrate, Section 26 provides that an application may also be filed in any pending legal proceedings, before a civil, family or criminal court, that might affect any of the rights of the aggrieved person, whether such proceedings were initiated before or after the commencement of the Act. Such proceedings could include criminal proceedings under Section 498A of the Indian Penal Code, civil proceedings for divorce or child custody or partition suits. The objective behind providing multiple options for filing applications is to avoid multiple proceedings in different courts.

An aggrieved woman may file an application by adopting any of the following methods:

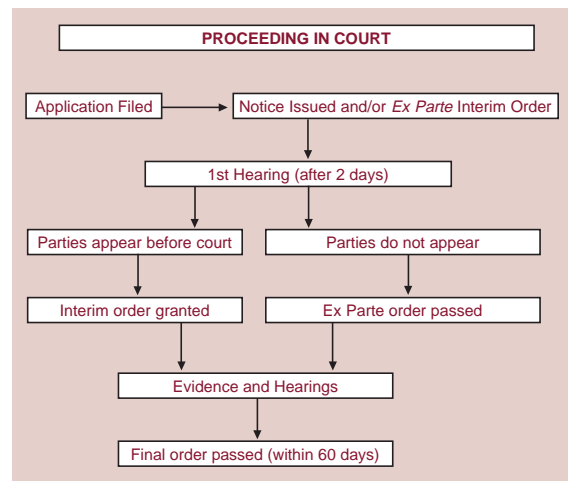
- The aggrieved woman approaches the PO who records the DIR (Form I) and assists her in completing the application (Form II) and filing it before the Magistrate.
- The aggrieved woman approaches the police who make a daily diary entry and refer her to a PO, who then records the DIR and assists the woman in completing and filing the application.

- The aggrieved woman approaches a registered SP who records the DIR and assists her in completing and filing the application. In such cases, a copy of the DIR should be forwarded to the concerned PO.
- The aggrieved woman hires a lawyer and files an application directly in court without a DIR duly recorded by the PO. In such cases, the court may proceed with the case without the DIR or may order the PO to record the DIR prior to passing any order.
- The aggrieved woman files in an application for reliefs under the PWDVA (2005) in any other pending litigation.

Part II : Post-Litigation Duties and Functions of Protection Officers

As per Section 9 and Rule 10 of the PWDVA (2005), once an application is filed under the Act, the PO performs his/her duties upon the orders of the court. The Act contains provisions that detail the procedure to be followed under this civil law; the procedural aspect of the Act combines elements of the Code of Civil Procedure (CPC) and the Code of Criminal Procedure (CrPC) so as to ensure a speedy and fair trial.

The stages of legal proceedings under the PWDVA (2005), once an application is filed, are listed below and illustrated in the box to the right.



- Notice is served on the respondent/s (Rule 12 read with Section 13)
- Respondent/s are expected to appear in court and file a reply to the notice. However, if a *prima facie* case is made out, an *ex-parte* interim order may be passed.
- The court may direct the PO to conduct a home visit prior to passing an interim order.
- The trial stage commences and, as per Section 28 read with Rule 6, the procedure laid out in Section 125 of the CrPC is to be followed. In addition, the court may direct the PO to conduct an enquiry into the financial status of the respondent/s; this is particularly important in cases where monetary reliefs are claimed.
- On the completion of taking evidence, a judgement is rendered and the order passed. In the order, the court may include directions to the PO to ensure compliance. Additionally, the court may direct the police to assist the PO in discharging his/her post-litigation functions.

Service of Notice

The purpose of serving notice to the respondent is to secure his attendance in court in order to reply to the complaint filed against him. Service of notice is the first stage of legal proceedings after the application is filed and before the trial begins. In other civil and criminal proceedings, the task of serving notice is performed by either court functionaries or the police. Under Section 13 of the PWDVA (2005),

the responsibility of ensuring that notice is served is vested on the PO. The means of serving notice is prescribed in Rule 12. After notice is served, the PO has to make a declaration of service of notice to the Magistrate in accordance with Section 13(2) of the Act.

Rule 12 of the PWDVA (2005) combines elements from the CPC (Order V) and the CrPC (Chapter VI) to provide a multiple options for the service of notice:

- Notice may be served on the respondent at a place where he lives or works [Rule 12(2)(a)].
- If the respondent refuses to accept the notice or if other problems arise, the notice may be delivered to the person in charge of his workplace or pasted at a conspicuous place on the workplace premises [Rule 12(2)(c)].
- In cases, where the respondent lives outside the jurisdiction of the PO, notice may be served through registered post or methods prescribed under the CPC or CrPC.

Section 13 provides that notice has to be served within two days of the application being filed or within a further reasonable period as may be allowed by the Magistrate.

While the PWDVA (2005) vests the responsibility of serving notice on the PO, there is no explicit requirement that the PO has to *personally* serve the notice and, in fact, Rule 12(2)(a) allows the PO to delegate this function to any other person, such as a court functionary or the police. The court may also directly issue instructions to court functionaries or the police to serve notice.

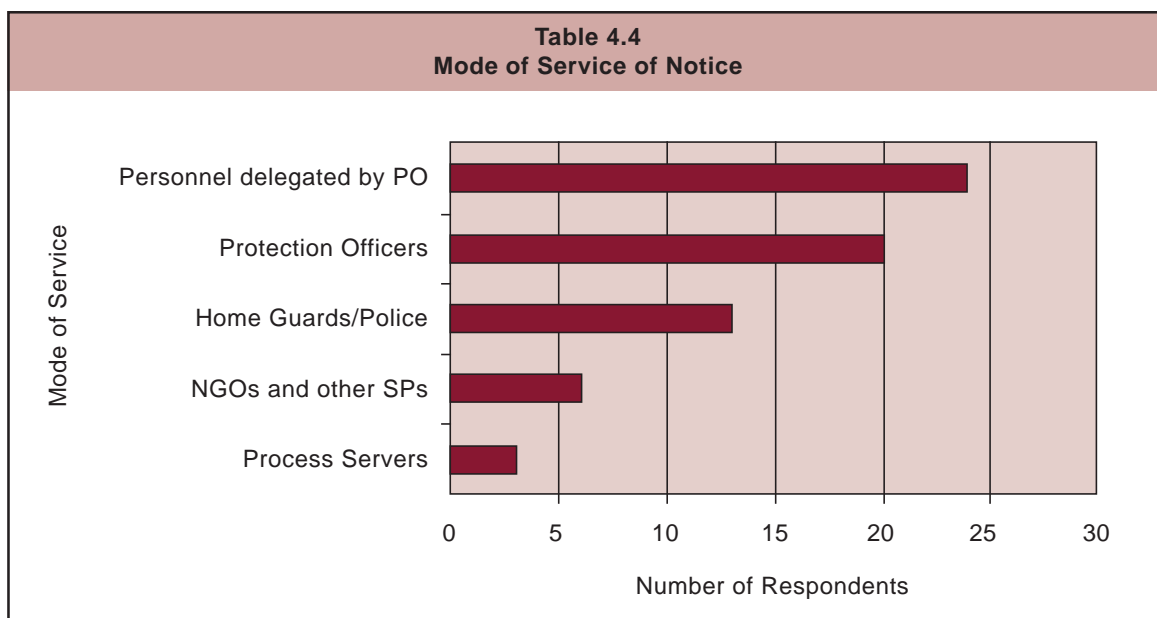
Mode of Service of Notice

In the 1st M&E report, the following practices in serving notices were reported:

- Notice was being served by the PO;
- Notice was served by the PO through other agencies;
- Notice was served by the process servers of the court;
- Notice was served by the police.

In states that had appointed POs, it was primarily the PO who was directed to serve notice. In many cases it was noted that Magistrates insisted upon notices being served personally by the PO, which resulted in a substantial proportion of a PO's time being taken up with serving notices, particularly in cases where the respondent avoided accepting delivery or where the respondent lived outside the jurisdiction of the PO. Even so, some POs were using innovative methods to ensure that notice was served within stipulated time period: for instance, in Himachal Pradesh, when respondents avoided service, notices were served by public announcements in local dailies.

In this 2nd M&E Report, we find that the practices adopted last year continue. As all states have now appointed POs, the predominant practice is for courts to issue directions to POs to serve notices. In those states where POs have an existing infrastructure to rely upon, the task is delegated to their office staff, such as attendants or supervisors reporting to CDPOs. However, in those states where POs are appointed on contract, such delegation is rare and the duty of serving of notice still takes up a considerable amount of each PO's time.



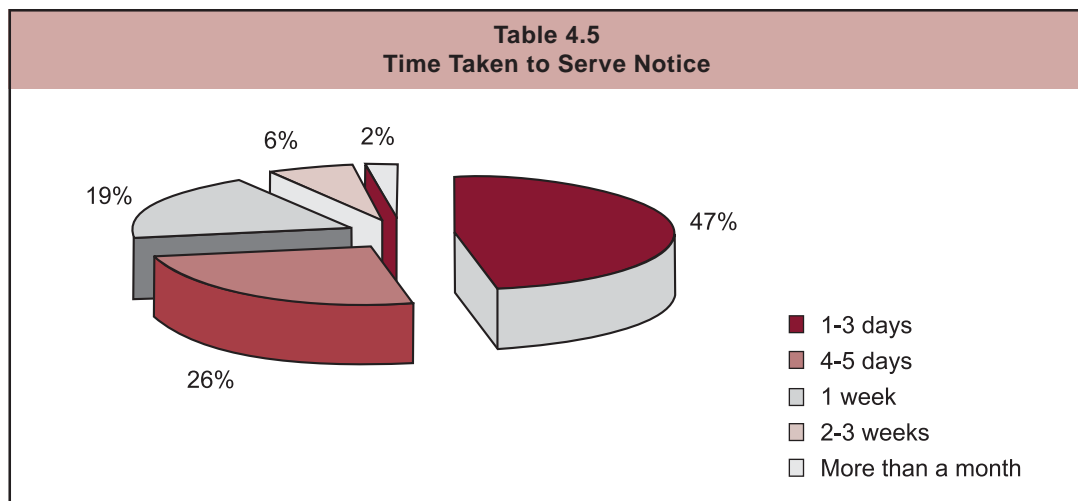
Further, as Table 4.4 above indicates, the police – rather than the process server of courts – play a significant role in serving notices under the PWDVA (2005). One possible explanation for this is that, under the Act, all applications lie to Magistrates who have the power to issue directions to the police for assistance with legal procedures. For instance, in some districts of Maharashtra, Magistrates specifically ordered the Station House Officer in the area to serve notice.

New practices that have emerged include:

- In Karnataka, a messenger has been assigned to every PO. 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 service of notice to Home Guards and ICDS attendants.
- In West Bengal, POs take police assistance in serving notices outside their jurisdiction by using radiograms in police stations.
- In Tamil Nadu and Kerala, some POs have mentioned that they delegate service of notice to SPs. However, this practice has increased some SPs' concern about financial constraints.

Time Taken to Serve Notice

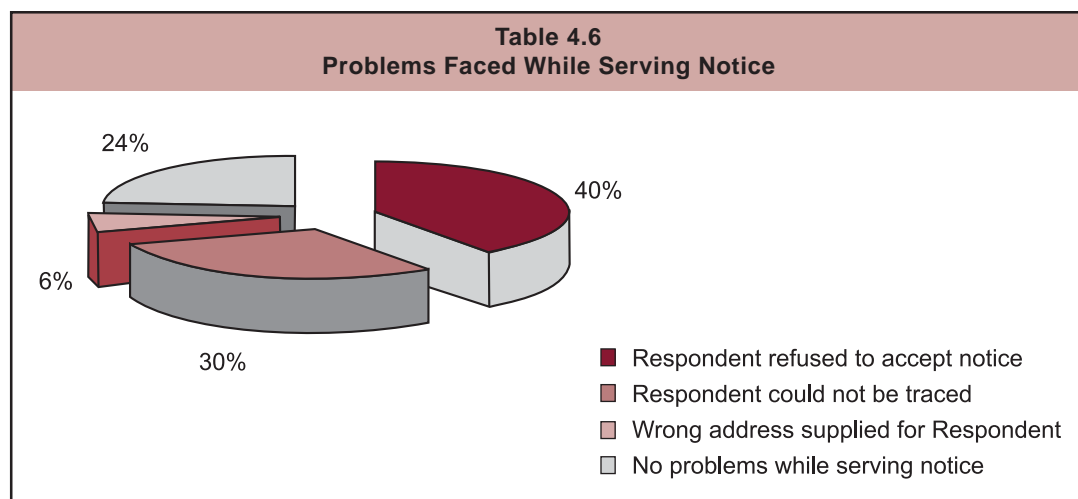
As per Table 4.5 below, whether or not POs are provided new resources or mobilize existing infrastructure and/or personnel, a majority of the POs interviewed (47%) stated that they managed to comply with the prescribed time stipulation of 1-3 days for service of notice. Another significant proportion (45%) manages to serve notices within a week. In only 6% of cases did service of notice take over a week; in a minimal 2% of cases it took over a month.



These are encouraging statistics for they indicate that, despite continuing and significant infrastructural inadequacies, POs are building a body of experience in using the law and becoming adept at utilizing the resources they have to fashion tools that will increase the efficiency of their functioning. For instance, a commonly-reported problem in the 1st M&E Report was that of serving notices to respondents outside the PO's jurisdiction. POs have solved this problem by sending notices via Registered Post or, as in the case of Delhi, Kerala, Manipur and Orissa, networking with their counterparts in the other jurisdiction who can serve the notice on their behalf. In a context of institutional constraints, such self-generated innovativeness and coordination among stakeholders makes a crucial and commendable difference.

Problems Faced in Service of Notice

It is heartening to note that 24% of the POs interviewed stated that they encountered no major impediments in serving notice, as can be seen in Table 4.6 below. This, coupled with the successful adherence to time lines stipulated, is an improvement over the findings of the 1st M&E Report.



Further, the problems mentioned by POs in serving notice appear due, in the main part, to the attitude of the respondents, rather than to major systemic limitations. A significant 40% of the POs interviewed cited the respondent's willful avoidance of notice as a major problem faced. It appears that respondents are more likely to avoid service in cases where the POs serve notices personally or through their attendants without taking police assistance. 24% of POs said respondents could not be traced at all; another 4% said respondents could not be traced because they were given the wrong address. In a few cases, POs have faced harassment from the respondent at the time of serving notice: for instance, in Delhi, a PO was physically abused by the women in the respondents' family and their neighbours². This raises serious issues of securing the safety of a PO fulfilling his/her statutory duties.

Although notices are served within the stipulated time period in a majority of the cases, many POs across the country have expressed their grievances over the short time period prescribed for serving notices and Magistrates' insistence on complying with the statutory deadline. For instance, in Madhya Pradesh and Orissa, some Magistrates require the immediate service of notice to all parties in order to expedite hearings. POs must provide multiple respondents with copies of all court-related documents that are, often, not provided by the court. In such situations, complying with the limited time stipulation for service of notice can be difficult. The fact that most POs do manage to comply with statutory stipulations must not excuse the Central and State government from their responsibility for providing the infrastructural and budgetary investments that will provide POs with essential support in the fulfilment of their duties.

Role of Protection Officers during Court Proceedings

As per Rule 10 of the PWDVA (2005), after serving notice, the PO is required to assist the court by complying with directions, if any, issued to:

- Conduct a home study prior to passing an *ex parte* interim order [Rule 10(1)(a)]

2. Hindustan Times; "Women Assault Court Officer in their House"; September 7, 2008; New Delhi [See Annexures]

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- File a report on the financial status of the respondent after enquiring into his emoluments, assets, bank accounts, etc. [Rule 10(1)(b)]
- Assist in the enforcement of orders [Rule 10(1)(e)]
- Perform any duties assigned by the Magistrate in giving effect to the provisions of the PWDVA. [Rule 10(2)]

Attendance in Court

The PWDVA (2005) does not require that a PO be present at all court hearings. In the 1st M&E Report, a majority of the courts reported that the PO's attendance at all court hearings was not insisted upon.

This trend continues in the 2nd M&E Report, with most POs (66%) stating that they attend court only when summoned. However, a sizeable 26% stated that they attend all hearings. The remaining 8% stated that they attend court on all dates of hearing in those cases that they consider require close monitoring.

Functions Performed on the Directions of the Court: Home Visits

Prior to granting an *ex-parte* interim order under Section 23(2) of the PWDVA (2005), a court may direct a PO to conduct a home visit of the shared household premises, as per Rule 10(1)(a), to make preliminary enquiries so that the Magistrate may assess whether a *prima facie* case has been made. This is the only provision of the law that allows for conducting a home visit. Ordinarily, a home visit should be limited to an investigation only of those facts alleged that are capable of physical and objective verification and the PO's report must contain only factual details and not his/her opinions. In this sense, the home visit is akin to the report of a Local Commissioner directed in civil proceedings³.

51% of the POs interviewed stated that they have conducted home visits. Of this 51%, 64% stated that they undertake home visits only upon court orders, but did not provide details on when such orders are issued or the nature of these orders. (Some POs in Kerala have stated that they file an "enquiry report" after conducting a home visit in reported cases of breach of protection orders.)

Of the 51% who have conducted home visits, 21% have done so prior to completing court-ordered DIRs; however, it is not clear whether the court mandates home visits at this stage or these POs conduct them of their own accord. Table 4.1 indicates that 26% of referrals to POs are linked to court-mandated DIRs; it is highly likely that a portion of the above-mentioned 21% home visits are part of this 26% court referral, although an exact percentage cannot be determined⁴.

3. Order XXVI Rule 9 of the CPC provides for investigations by Local Commissioners in the following manner: "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..."

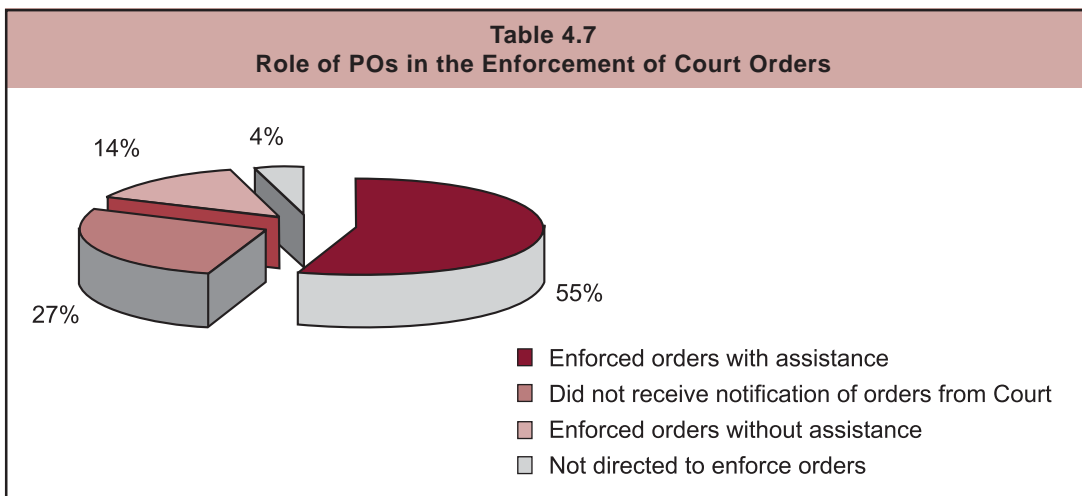
4. Part I of this Chapter discussed the practice of court-ordered enquiries or *jaanch* in Rajasthan. While it is not necessary that a *jaanch* always involve a home visit, it is likely that a portion of the 21% of POs who conduct home visits prior to completing court-mandated DIRs, do so as part of this *jaanch* process.

Again, of those 51% of POs who have conducted home visits, and separate from the 64% cited above, 15% stated that they have done so on the directions of the court, before the court passes any orders. This appears to be a correct interpretation of the law.

The data indicates that courts do not necessarily order POs to conduct home visits only for the purposes of granting *ex parte* orders. Home visits may be directed to verify facts recorded in the DIR or to clarify issues that arise on statements made, at any stage of the proceedings. A majority of POs (79%) stated that the reports that they file, pursuant to having conducted a home visit, are accepted by the court and considered by Magistrates in arriving at a decision on the case at hand.

Role in the Enforcement of Court Orders

The court may direct POs to provide assistance in enforcing court orders. As per table 4.7 below, a majority of the POs interviewed (69%) stated that they have been directed to assist in enforcing orders, of whom 55% took assistance primarily from the police or staff available to comply with these court directions and the remaining 14% sought no assistance from any sources in complying with these court directions.



4% of POs interviewed stated that they have never been directed by court to assist in the enforcement of orders.

A noteworthy 27% of the POs interviewed, particularly from Assam, Kerala, Madhya Pradesh and Orissa, stated that they do not receive any notification of orders granted by the courts – not even of those orders that they are meant to carry out – and, hence, have a limited role to play in the enforcement of orders. The lack of a system whereby POs are routinely and regularly informed about court orders is a common problem across the country and has been mentioned in Chapter 3 as well. POs tend to acquire information on court orders either when summoned to court or on their own initiative. For instance, a PO from Karnataka reported that she visits the court on a fortnightly basis in order to obtain an update on the proceedings in cases under her purview. She initiates further action based on the information she collects during these court visits.

Chapter V

Review of High Court Judgments

From October 2007 through October 2008, approximately 22 judgments were reported under the PWDVA (2005) by High Courts across the country. LCWRI has reviewed these judgments through the lens of human rights norms in order to examine whether the objectives of Act are being furthered by courts. This Chapter presents a selection of judgments reviewed, categorised into four themes:

- Challenges to the constitutionality of the Act
- Substantive law: Definitions, coverage and rights under the Act
- Interpretation of the right to reside and “shared household” under the Act
- Procedures followed, mechanisms established and enforcement of the Act

As per its Statement of Objects and Reasons, the PWDVA (2005) is enacted, “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 a victim of domestic violence and to prevent the occurrence of domestic violence in the society”.

The PWDVA (2005) is a gender-specific law that recognises the fact that women are disproportionately affected by domestic violence due to their socio-historical position of inequality. Hence, this legislation under falls under the mandate of Article 15(3) that allows the State to take special measures for women to remedy these historical disadvantages and equalise relationships within the home. The law recognizes a woman’s right to a violence-free home and provides for remedies in cases of breach of this right. Procedures prescribed under the law are meant to facilitate a woman’s access to speedy and efficacious remedies by giving effect to the substantive right recognized in this statute. The point of enquiry in this analysis is whether the reviewed judgments promote this understanding of the law.

Part I : Challenge to the Constitutionality of the PWDVA (2005)

Article 13 of the Indian Constitution states that any law, which is in contravention of the fundamental rights shall, to the extent of such contravention, be void. To date, five petitions challenging the constitutionality of the PWDVA (2005) have been filed in various High Courts. These challenges have been filed, *inter alia* on the ground that the Act, by providing reliefs only to women, is in violation of the constitutional right to equality. Judgment has been delivered in only one of these five cases and is reviewed here.

*Aruna Parmod Shah v. UOI*¹ (Decided by: Vikramajit Sen and P.K. Bhasin, JJ.)

1. WP (CrI.) 425/2008, High Court of Delhi, (Decided on 07.04.2008)

This judgment of the Delhi High Court was delivered on a writ petition filed by a mother-in-law seeking to quash proceedings under the PWDVA (2005) initiated against her in a lower court. The petition challenged the constitutionality of the PWDVA (2005) on two grounds:

- (i) The gender-specific nature of the Act, by excluding men, is arbitrary and, hence, violates Article 14 of the Constitution
- (ii) The definition of “domestic relationship” contained in Section 2(f) of the Act is objectionable. The petitioner contended that the placing of “near or like marriage” status (relationships in the nature of marriage) at par with ‘married’ status leads to the derogation of the rights of the legally-wedded wife.

The Court dismissed the first contention on the grounds that, “there is a difference between class legislation and reasonable classification”². The gender-specific nature of the PWDVA (2005) was held to be a reasonable classification in view of the object that the Act seeks to achieve and, hence, was held to be constitutionally valid.

The Court rejected the second contention by saying that there is no reason why equal treatment should not be accorded to a wife as well as a woman who has been living with a man as his “common law”³ wife or even as a mistress. The court opined that, “like treatment to both does not, in any manner, derogate from the sanctity of marriage since an assumption can fairly be drawn that a ‘live-in relationship’ is invariably initiated and perpetuated by the male”. The Court appears to acknowledge the vulnerability of women and their lack of negotiating capacity within such a relationship. The Court also noted that the social stigma in such cases is usually faced by women although both partners are parties to the relationship.

This judgment sets an important precedent as the first case to address the issue of constitutionality of the law. More crucially, however, it serves as a model in the manner in which the object and spirit of the Act has been understood and treated by the court. In its judgment, the Delhi High Court clearly articulates the purpose and elements of formulating a law as a “special measure” under Article 15(3) of the Indian Constitution, and reaches the conclusion that the gender-specific nature of the PWDVA (2005) is mandated in the context of the purpose of “achieving equality of status for women”.

Furthermore, the approach with regard to women who are in “relationship in the nature of marriage” marks a progressive recognition of the fact that violence against women within the home cannot be given impunity just because the aggrieved person is not in a legally valid marriage with the perpetrator. This is a vindication of the fact that every woman, irrespective of her status and relationship, has the

2. The doctrine of “reasonable classification” has been evolved by Indian courts to examine whether a law is consistent with the right to equality guaranteed under Article 14 of the Constitution. The Delhi High Court explained the requirements of Article 14 by stating that, “What Article 14 of the Constitution prohibits is ‘class legislation’ and not ‘classification for purpose of legislation’. If the legislature reasonably classifies persons for legislative purposes so as to bring them under a well-defined class, it is not open to challenge on the ground of denial of equal treatment that the law does not apply to other persons. The test of permissible classification is twofold: (i) that the classification must be founded on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (ii) that differentia must have a rational connection to the object sought to be achieved. Article 14 does not insist upon classification which is scientifically perfect or logically complete. A classification would be justified unless it is patently arbitrary. If there is equality and uniformity in each group, the law will not become discriminatory, though due to some fortuitous circumstance arising out of (*sic*) peculiar situation some included in a class get an advantage over others so long as they are not singled out for special treatment. In substance, the differentia required is that it must be real and substantial, bearing some just and reasonable relation to the object of the legislation.”

3. “Common law” marriages refer to individuals who have lived together for a substantial period of time and who represent to the world that they are married. Some of the factors taken into account to determine a common law marriage are whether the parties reside in the same household, have children from the relationship, share names, etc. Such marriages are recognised as valid in law.

right to a violence-free home. In fact, the Delhi High Court went a step further in acknowledging that, while it is the man who, in most cases establishes a “relationship in the nature of marriage”, it is the woman who bears the social stigma of such a relationship. At the same time, the court also clarified that the intention of the provision is not to derogate from the sanctity of marriage as what the Act does is to reiterate the right of every woman to be protected from violence. Hence, this judgment of the Delhi High Court can be considered to be setting a progressive precedent and clarifying the intent of the law, such that it upholds that domestic violence is a violation of the right to equality.

Part II : Substantive Law: Definitions, Coverage and Rights under the Act

Coverage

Ajay Kant & Ors. v. Alka Sharma ⁴ (Decided by: Brij Mohan Gupta, J.)

In this petition, the question before the High Court of Madhya Pradesh was whether women can be made respondents in applications filed under the PWDVA (2005). This case arose in the context of an application filed by a wife against her husband and mother-in-law after she was dispossessed from her matrimonial home, following dowry-related harassment.

The quashing of the lower court proceedings was sought on the grounds that:

- (i) An application can be filed only against male members of the shared household and not against female members such as the mother-in-law.
- (ii) As no report from the Protection Officer was sought and the Magistrate recorded the statement of the aggrieved person without first issuing notice to the respondents, procedural requirements under the Act were not met.

The basis of the first contention was the definition of “respondent” under Section 2(q) of the PWDVA (2005) which states that, ““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”. (Emphasis added)

The High Court upheld the first contention that female relatives cannot be made respondents under the Act and stated that, “thus, it is provided by this definition [Section 2(q)] that an application can be filed by an aggrieved person...claiming relief under the Act only against the adult male person. However, as per the proviso appended to this provision, a 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. For understanding these two parts, i.e., the main part of the Section and the proviso, it is necessary to understand the scheme of the Act.”

The Court went on to distinguish between the terms “application” used in Section 12 and “complaint” used in the proviso to Section 2(q). The Court held that, “Section 12 of the Act provides that an application (not a complaint) for seeking one or more reliefs under the Act can be filed. On perusal of Sections 18 to

4. I (2008) DMC 1 [DMC: Divorce and Matrimonial Cases]

22 of the Act, it appears that the reliefs under these Sections as mentioned hereinabove can be passed on the application under Section 12 of the Act”. The Court interpreted “complaint” with reference to the CrPC, and clarified that, “this word complaint cannot be considered beyond the scope of the main provision of this Section which has been defined in first part of Section 2(q)”. Based on this interpretation, the court held that a proceeding under the Act can only be initiated against an adult male person.

However, the Court rejected the second contention on the ground that procedural irregularities were not sufficient to quash proceedings and that, as per Section 28(2) of the Act, a Magistrate has the power to set his own procedure. In so doing, the Court acknowledges the importance of ensuring speedy and efficacious access to justice, unimpeded by procedural requirements, for a woman in need. This is in accordance with the intention of the Act.

An analysis of the judgment and rationale provided by the Court in upholding the first contention makes it clear that the interpretation of Section 2(q) is actually based on what the Court perceives to be essential for safeguarding women’s interests. Therefore, in arriving at its conclusion, the Court discussed the objective and scheme of the Act in the context of the Indian Constitution and various international instruments that ensure gender justice. Interestingly, in its attempt to provide protection to women, the Court failed to recognise the specific gender-neutral language of the proviso to Section 2(q), which uses the term “relative of husband or male partner”. Thus defined, a relative can be male or female and, consequently, the Act also protects women from violence perpetrated by the female family members of a male respondent. Although the rationale provided by the Court in this case appears to reflect protective attitude towards women, it ignores the specific language of the Act.⁵

*Suresh Khullar v. Vijay Kumar Khullar*⁶ (Decided by: A.K. Sikri and Aruna Suresh, JJ.)

In this case, the parties got married after the husband obtained an *ex-parte* divorce from his first wife. After a few years, the parties filed separate proceedings, the husband for a divorce and the wife for maintenance under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (HAMA). Under Section 18, maintenance can only be claimed by a “Hindu wife”. During the course of the proceedings under HAMA, it came to light that the *ex-parte* divorce granted to the husband for his first marriage had been set aside. The second wife’s petition for maintenance under HAMA was, therefore, dismissed on the grounds that the marriage between the parties was not legally valid as the husband had an earlier subsisting marriage. The dismissal of this petition was appealed before the Delhi High Court by relying upon the provisions of PWDVA (2005).

The Court held that while existing case law under HAMA excluded the granting of maintenance to the second wife where there is a subsisting legally valid first marriage, the trial court had, in this case, failed to recognise the fact that the decree of divorce was in operation on the day that the second marriage was solemnised, making this second marriage legally valid. Referring to the “mischief rule”, the Court stated that if a liberal interpretation is not given in this case, it would amount to giving immunity to the husband for defrauding the appellant-wife. Therefore, the appellant-wife, at least for the purposes of

5. The only exception to this gender-neutral interpretation is the proviso to Section 19(1) which explicitly states that an order directing the respondent to remove himself from the shared household cannot be passed against a woman.

6. AIR 2008 Delhi 1[AIR: All India Reporter]

claiming maintenance under Section 18 of HAMA, is to be treated as legally wedded. In arriving at its decision, the Court also placed reliance upon Sections 2(a), 18, 20 and 26 of the PWDVA (2005).

This judgment marks an important step in recognizing the legitimate entitlements of a woman who has, in good faith, entered into a relationship in the nature of marriage. It must be emphasized that the PWDVA (2005), in including “relationships in the nature of marriage” within its purview, sought to ensure protection to women in similar situations. This judgment of the Delhi High Court reiterates the fact that no woman should be denied the protection of laws when facing domestic violence.

*Narinder Pal Kaur Chawla v. Najeet Singh Chawla*⁷ (Decided by: A.K. Sikri and Aruna Suresh, JJ.)

As in *Khullar v. Khullar* discussed above, here too Justices Sikri and Suresh deliberated on whether a second wife could claim maintenance under Section 18 HAMA, on the basis that, at the time of her marriage, she was not aware of the existence of the first wife and that a fraud had been committed upon her. The parties had been married and living together for 14 years when the (second) wife was dispossessed from her matrimonial home and became aware of her husband’s first marriage.

Among other rationale, the Bench cited PWDVA (2005)’s formulation of “relationships in the nature of marriage”, to conclude that the legislature had never intended that a woman like the appellant not be treated as a ‘wife’ for the purposes of Section 18 HAMA. However, the Court confined its interpretation to HAMA and opined that, although desirable, the decision to include similar situations within the ambit of Section 125 CrPC⁸ lies with the legislature.

In both its judgements, the Delhi High Court has clearly intended to establish the jurisprudence that women who are not considered to be ‘lawfully wedded’ or who are referred to as ‘second wife’ are entitled to the same legal protection insofar as there is fraud committed or where the nature of the relationship clearly warrants legal entitlements. These judgments strengthen the statutory protection provided to women in a “relationship in the nature of marriage” under the PWDVA (2005) and offer comprehensive guidelines to courts on one of the ways in which the provision is to be interpreted.

Retrospective Effect

*Dennison Paulraj and Ors. v. Mrs. Mayawinola*⁹ (Decided by: M. Jeyapaul, J.)

In this petition before the High Court of Madras, the husband and his family prayed for the quashing of proceedings on an application filed by the wife under PWDVA (2005). In her application, the wife stated that she was forced to leave the matrimonial home following continuous harassment and dowry demands by her husband and in-laws. Although she left the matrimonial home prior to the enactment of PWDVA (2005), she claimed that the threat and harassment continued.

7. AIR 2008 Delhi 7

8. Section 125 CrPC: Order for maintenance of wives, children and parents

9. MANU/TN/0525/2008

The major issue in this case was whether the wife's application was maintainable as the alleged acts of domestic violence took place before the PWDVA (2005) was enacted. The husband and in-laws argued that entertaining this application would amount to giving retrospective effect¹⁰ to the Act, which is not permissible as the Act contains penal sanctions under Section 31.

Rejecting the contention of retrospective operation, the Court concluded that the respondent had suffered part of the abuse after the commencement of the Act in the form of anonymous phone calls threatening violence. Moreover, the court added that, in any case, the issue of penal statutes not being retrospectively applicable does not hold true in the case of PWDVA (2005) as Section 31 penalises the breach of a protection order rather than the act of domestic violence itself. A protection order can be granted only after the Act came into force and, thus, penalties on its breach cannot be said to have retrospective application.

The judgment of the Madras High Court is a commendable example of the gender-sensitive attitude of judiciary and its understanding of the phenomenon of domestic violence. The approach to the issue of retrospective application becomes significant not only for the recognition that part of the cause of action arose after the commencement of the Act and that the penalty provided in the law is for breach of court orders, but also because the Court went on to reiterate that it is, "competent to take cognizance of the act of domestic violence committed even prior to the Act came into force and pass necessary protection orders. The Act can be applied retrospectively to take cognizance of the act of violence alleged to have been committed even prior to the coming into force of the Act."

*Sarvanakumar v. Thenmozhi*¹¹ (Decided by: K. Mohan Ram, J.)

This is a second case that came before the High Court of Madras for determination on the question of maintainability of petition under the PWDVA (2005) on the grounds that the acts alleged in the petition took place before the commencement of the Act. In this case, the wife had filed a petition under the Act alleging continuous dowry harassment and that she had been thrown out of the shared household with her child in 2006.

Once again, the Court held that acts committed prior to the commencement of the PWDVA (2005) can be the basis for filing an application under the Act. It stated that although the alleged acts took place before the PWDVA (2005) came into force, since the wife and child continue to remain dispossessed from the shared household, the act of domestic and economic abuse is still continuing and shall, therefore, attract liability under the Act.

Through this commendable judgment the Court recognized the reality that domestic violence is an ongoing phenomenon and that, while the cause of action may have arisen prior to the enforcement of the Act, the abuse is deemed to continue until the aggrieved person is restored to a position of safety from where she can enjoy her legal entitlements.

10. Retrospective law is one "that looks backwards or contemplates the past, affecting acts or facts that existed before the Act came into effect" (Black's Law Dictionary; 8th Edition). It is an established legal principle that criminal statutes cannot have retrospective application as they create new offences and impose penalties thereon. Giving retrospective operation to a criminal law would mean that at the time that the person committed an act, it was not considered an offence and, hence, no penalties were attached. However, because a new law with retrospective effect has since been enacted which renders that same act an offence, the person will now be penalized *ex post facto*.

11. MANU/TN/9828/2007

Part III : Interpretation of the Right to Reside and “Shared Household” under the Act

*P. Babu Venkatesh & Ors. v. Rani*¹² (Decided by: M. Jeyapaul, J.)

In this case, the husband and his family sought to reverse an order of the Magistrate’s Court on a petition filed by the wife under Section 23(2) of the PWDVA (2005), alleging dispossession from the matrimonial home following continuous cruelty. The Magistrate’s Court had granted a residence order and allowed the police to break open the lock of the “shared household”. The husband and his family contended that the house in question was, in fact, owned not by the husband but, rather, by his mother, in whose name it was registered. Hence, it was not a “shared household” for the purposes of PWDVA (2005) and, therefore, the order of residence passed in favour of the respondent was not maintainable. It was also alleged that because there was a divorce proceeding pending between the parties, the wife was not entitled to any relief under the Act.

Dismissing the afore-mentioned contentions, the High Court of Madras held that the ratio laid down by the Supreme Court in *S.R. Batra v. Taruna Batra*¹³ could not be applied to the instant case as the facts clearly demonstrated that the husband had, with the intention of defeating the rights of the wife, transferred the household into the name of his mother, after the matrimonial dispute arose. In arriving at its conclusion, the Court recognised the fact that, before the wife’s dispossession, both parties resided jointly in the said household. The Court also held that pending divorce proceedings did not affect the granting of relief/s under the PWDVA (2005).

This judgment is significant in light of the clarification it provides on how the judgment of the apex court in *Batra v. Batra* must be interpreted in the specific context of the particular facts and circumstances of any given case. Equally importantly, the judgment provides us with sufficient guidance on the Court’s understanding of domestic violence and the complex vulnerabilities that a woman faces as a consequence of such violence. The judgment appears to locate *mala fide* dispossession from the matrimonial home at the very centre of a woman’s vulnerability and, therefore, distinguishes the facts of the case from that of *Batra v. Batra* by emphasizing the husband’s attempt to defeat his own rights by transferring the house into his mother’s name. The Court clearly recognizes that frequently such methods are used to deny a woman’s lawful claim to residence in the shared household. Hence, there is a need to examine the facts of each case on their own merits and decide whether the ratio laid down in a precedent ought to be made applicable to the particular case. Finally, by dismissing the contention of pending divorce proceedings as a barrier to a woman’s right to claim relief under the PWDVA (2005), the Court both reiterated the object of the law in offering comprehensive protection to all women facing violence in intimate relationships and recognised the fact that strict adherence to procedure can defeat the substance of the law.

12. MANU/TN/0612/2008

13. (2007) 3 SCC 169. The 1st M&E Report contains an analysis of this judgment.

Part IV: Procedures Followed, Mechanisms Established and Enforcement of the Act

*Amar Kumar Mahadevan v. Karthiyayini*¹⁴ (Decided by: K. Mohan Ram, J.)

In this petition before the High Court of Madras to quash ongoing proceedings on an application under the PWDVA (2005) in a lower court, the following issues were raised regarding the necessity of complying with procedures prescribed under the Act:

- (i) That the service of notice is not in accordance with the procedure prescribed under Section 13(1) of the Act namely, that notice was not served by the Protection Officer and private service was permitted. Further, there is no declaration of service by the Protection Officer.
- (ii) That the Magistrate has admitted the application without calling for the report of the Protection Officer as required by the proviso to Section 12(1).

The Court dismissed both contentions at the threshold. It held that the lower court had made every effort at serving the notice to the petitioner and that directing the private service of notice is in consonance with the procedural mandate under Section 28 of the Act and that, therefore, a declaration of service by the Protection Officer is not required. The Court also held that receipt of the Protection Officer's report is not a condition precedent for taking cognizance of an application under Section 12 of the PWDVA (2005).

This judgment reiterates the fact that, in light of the objective and spirit of the PWDVA (2005), procedural technicalities must not be allowed to act as barriers to a woman's access to justice. In fact, the significance of the judgment lies in the fact that before reaching its conclusion and interpreting the procedural provisions of the Act, the Court examined the intention of the legislature and observed that, as a social legislation, the PWDVA (2005) cannot be fettered by the technicalities of procedure and path at the cost of justice, safety and security of the aggrieved woman. The Court held that the purpose of service of notice is to put the respondent on notice and to ensure compliance with the rules of natural justice, which had been fulfilled by the lower court.

*Milan Kumar Singh & Anr. v. State of U.P. & Anr.*¹⁵ (Decided by: R.N. Misra, J.)

In this petition before the High Court of Allahabad, the husband challenged the application filed by his wife under the PWDVA (2005) on the grounds that such an application could not be filed directly before a Magistrate without first approaching the Protection Officer and recording a Domestic Incident Report (DIR). The husband also argued that the application was not in the prescribed format as provided in Form II.

The Court dismissed both contentions on the grounds that the provisions of the Act were not accurately interpreted by the husband. It held that insofar as the PWDVA (2005) is a social legislation, its purpose is to help the aggrieved person and not to impose strict procedural requirements. Section 12(1) provides that, "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

14. MANU/TN/9632/2007

15. 2007 Cri LJ 4742

Act.” The Court held that, “a plain reading of the Section shows that the aggrieved person can file complaint directly to the Magistrate concerned. This is the choice of the aggrieved person that instead of directly approaching the Magistrate...she can approach the Protection Officer and, in case of emergency, the service provider and with their help...the Magistrate concerned. The word ‘or’ used in Section 12(1) of the Act is material, which provides a choice of approach to the aggrieved person...There is no bar in directly approaching the Magistrate for taking cognizance in the matter”. The Court further explained that, “it is for the Magistrate concerned to take help of Protection Officer and service provider after receiving the complaint provided, if he feels it necessary for final disposal of the dispute between the parties”. The DIR is to be recorded only if the Magistrate or the parties require the assistance of the Protection Officer.

In its clarification of the proviso to Section 12(1), the Court sets a good precedent by reiterating that, in view of the purpose of the legislation, procedural rules must not be allowed to defeat substantive rights.

*Neetu Singh v. Sunil Singh*¹⁶ (Decided by: L.C. Bhadoo, J.)

In this appeal before the High Court of Chhattisgarh, the aggrieved woman challenged the order of a family court dismissing her application filed under Section 12 of the PWDVA (2005) in a pending proceeding. The question that arose for determination was whether the family court was correct in dismissing her application, given the statutory mandate provided under Section 26(1) of the Act whereby, “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 this Act”.

The Court upheld the right of an aggrieved person to file an application under the PWDVA (2005) in any pending proceeding, with the caveat that such an application must be filed under Section 26 of the Act, rather than under Section 12 of the Act as was done in the instant case.

This judgment provides clarification with regard to the procedure to be followed in using the law. While addressing an almost routine procedural issue, the Court reiterated the fact that filing an application under Section 26 of the PWDVA (2005) has been provided as an option that may be exercised by the woman in order to facilitate her access to the justice system.

*T. Vineed v. Manju S. Nair*¹⁷ (Decided by: Kurian Joseph and Harun-UI-Rashid, JJ.)

This appeal before the High Court of Kerala deals with the issue of counselling for reconciliation under the PWDVA (2005). The facts in brief are that the parties, who had a child from their marriage, were estranged. The wife initiated proceedings under the PWDVA (2005), while the husband sought enhanced visitation hours with the child, who was in its mother’s custody. The parties had multiple litigations pending between them and the wife had also initiated divorce proceedings on the ground of cruelty.

16. AIR 2008 Chh 1
17. 2008 (1)KLJ 525

In view of the worsening relations between the parties and their dispute over child custody, the Court appointed a conciliator on the very first day of proceedings to see whether an amicable settlement could be reached. Subsequently, the parties agreed on a settlement with regard to child custody and other matters and a mutual consent divorce was decreed as part of the judgment. Following these successful negotiations between the parties, the Court held that the attempt in matrimonial cases must be first to exhaust the option of court-mediated settlement before beginning legal proceedings.

The intentions of the Court to ensure an amicable parting of ways where the matrimonial relationship has completely broken down, to discourage multiplicity of litigation and to protect the interests of children is to be appreciated. At the same time, however, caution must be exercised in taking the view that conciliation is the first and most viable approach that the Court should take before initiating legal proceedings. On the facts of this case, a mutually agreeable settlement through conciliation was an appropriate strategy, but in another case where the issue at hand is domestic violence, an approach prioritizing conciliation could adversely affect the safety and security of the woman facing violence. It must be emphasised that the provision on counselling under the Act has been specifically drafted to ensure that if the aggrieved woman so desires, the Court can refer the parties to counselling for a mediated settlement. However, the Act specifically provides for civil reliefs in the form of protection orders to ensure that the woman's safety is not compromised and that she approaches such negotiations from a position of equality. Hence, where there are allegations of domestic violence, there is a need to exercise some caution before recommending that settlements through conciliation ought to be the standard practice in all matrimonial disputes.

*Maya Devi v. State of NCT of Delhi*¹⁸ (Decided by: V.B. Gupta, J.)

This judgment by the High Court of Delhi held that procedure for appeal under the PWDVA (2005) must first be used before approaching higher courts through writ or appellate jurisdictions. An application seeking a residence order was filed under the Act before a Magistrate's Court. The Magistrate passed an interim order directing the aggrieved person not to be dispossessed from the shared household pending final disposal of the application. This writ petition for quashing the interim order was filed before the High Court under Article 227 of the Constitution.

The Court dismissed the writ petition and held that, "an order passed by the Magistrate under this Act has an alternate relief under the PWDVA itself which has not been availed of by the petitioner in the instant case." The court stated that where a right or liability is created by a statute which gives a specific remedy for enforcing it, the remedy provided by that statute only must be used. A person may approach the higher court under any other provision only after the specific statutory remedy has been exhausted.

This judgment comprehensively lays down the procedure with regard to appeals against any order passed under the PWDVA (2005). The High Court has laid down a 'good practice', which ought to be followed by other courts in order to avoid undue hardship to the aggrieved person. If the other party is allowed to approach higher courts without first exhausting the statutory remedies, it will lead to the negation of the rights of the aggrieved person. Thus, this judgment reflects a gender-sensitive attitude of the Court in addressing the issue of domestic violence.

18. MANU/DE/8716/2007

Chapter VI

Conclusions and Recommendations

A recurring theme of the 2nd M&E Report and, indeed, of most stakeholders of the PWDVA (2005) is the need for adequate budgetary allocations and infrastructural investments by the Central and State Governments in order for the Act to be implemented in keeping with its objective and spirit. The rationale for this might seem self-evident to us today, but if we look at legal history, we will see that this was not always so. Traditionally, laws have merely declared rights and made available judicial remedies. This is the colonial model of legal regulation, which is premised on the notion that the law is an instrument of policing the populace: of ‘enforcing law and order’. Under this model, the State saw no obligation to inform people of their rights: it proceeded on the assumption that everyone is aware of their own rights and that ignorance of the law is no excuse for its violation.

This model of law-making must be reversed in a democracy which guarantees its citizens fundamental rights. The duty of the democratic State extends beyond the making of a law to encompass raising awareness about the law and taking steps to ensure access to justice for those in need. In a society like ours, where multiple forms of inequality and deprivation operate simultaneously, it is absurd to expect marginalised groups to be aware of their rights and be able to access and exercise them without some form of state-mandated assistance. Hence, trends in legislation must reflect the proactive role of the State in making rights real and realisable.

As a first step, citizens must be informed of their rights. The PWDVA (2005) is one of the few laws that cast a duty upon the State to spread awareness of the law [Section 11(a)] and to train enforcement agencies on the object of the law. It also casts a duty on the police and on Protection Officers (POs) to inform women of their rights and remedies under this Act [Section 5]. Such information is extremely empowering to women and our observation has been that, once informed of their rights under this Act, women feel more confident in using both its pre- and post-litigation remedies to claim their right to a violence-free home. This gamut of pre- and post-litigation options offered to the aggrieved woman helps explain why many women who consult with a PO or lawyer might choose not to approach the court, but are better equipped to negotiate their rights within the home after such a consultation. In fact, the success of a normative and distributive law like the PWDVA (2005) is not necessarily to be judged by the number of cases filed under the law. What one would expect to see with a new law of this nature is a large number of cases being filed in the first few years of its existence, and then, gradually, a decline in numbers which would reflect the growing social acceptance of the norms that the law upholds.

The PWDVA (2005) considers access to justice to be a crucial part of the right to a violence-free life and has created the post of a PO to facilitate that access to justice. Laws do not have eyes and ears, hands and feet, to make them come alive. They come alive in the hands of judges. However, to reach a judge, one has to have knowledge of one’s rights and the ability to exercise them in a meaningful manner.

By linking women to the court and other support services, POs are envisaged as the critical link between woman and justice. They stand testimony to the fact that putting an end to domestic violence is the concern of the state and the judiciary as much as it is of civil society.

While the Act was being drafted, there was some debate as to whether the institution of POs was required at all. A fear was expressed that POs might generate procedural requirements that could impede a woman's direct access to court. While this is a legitimate concern, it does not take into account prevailing class hierarchies and resource inequalities in the country. By its very nature, a law must cut across class lines and facilitate access to justice for all women. Access to court requires a high degree of awareness of rights, knowledge of law and, frequently, money power to hire legal counsel. However, while women of the upper class can afford such direct access to court through their privately hired lawyers, this is not true for all classes of women. The Act mandates POs so that class status and other such inequalities do not pose a barrier to accessing the court for any woman. Moreover, justice is not merely limited to court access; the Act recognises that the urge to justice is also the urge to rebuild a shattered life and regain a sense of self-dignity. The PO is meant to be the bridge between a woman in need and justice thus expansively understood. As we mentioned in the Introduction to this Report, POs too recognise the special nature of their role when they tell us that the Act enables them to give an aggrieved woman her life back.

Given the significance of POs and the misconceptions surrounding their role, this 2nd M&E Report has tried to map the variations in POs' functioning across the country. Clearly, the success POs will depend on the extent to which the office of the PO is endowed with an adequate budget for infrastructure and training. It will also depend on the extent to which judges are willing to utilize the services of POs as their partners in the justice delivery system which, in turn, depends on the extent to which judges accept the Act's premise that domestic violence requires a multi-agency, multi-disciplinary response system. A law on violence against women is not to be treated as akin to a law on property or a law on breach of contract; rather, it is a law to protect the human body – understood as a complex physical, mental and social entity – against violence and, hence, the norms of its adjudication must vary accordingly.

The 2nd M&E Report has led to the conclusion that while all states have appointed POs (an improvement over the findings of the 1st M&E Report), very few have adequately budgeted for their functioning in terms of providing them with infrastructural support and training. Moreover, most states have not appointed full-time POs, but have given the duty of PO as an additional charge to existing officers: mostly Child Development Programme Officers (CDPOs) under the Integrated Child Development Scheme (ICDS). This puzzling pattern of appointment can perhaps be explained by the tendency of states to assume that issues relating to women must automatically be clubbed together with those relating to children. Or perhaps, to take a more charitable view, we can explain this appointment by the fact that CDPOs are available at the sub-district level. The most likely reason, however, has to do with finances: giving an additional charge to a CDPO saves on the need to create additional posts and, hence, saves government revenue¹. Whatever the reason, both women's and child rights activists have rightly observed that such an additional charge places too many simultaneous demands on CDPOs, thereby denying justice to both women and children. Some states, such as Maharashtra, have, in the interests of a wide distribution of POs, appointed *tehsildars* and revenue officers as POs. However, this

1. As mentioned in Chapter 3, however, the term "appointment" as used in Rule 3 of the PWDVA (2005) is conventionally understood to imply the creation of a *separate* cadre of officers rather than the assigning of additional charges to existing officers.

is even more problematic as revenue officers are not trained in social work skills and not professionally exposed to issues of violence against women. In any case, regardless of the nature of appointment – full-time, part-time, independent-on-contract or additional charge – there is no debate about the urgent need to provide POs proper training and infrastructural support if they are to fulfil their duties as intended by the PWDVA (2005).

We can make a general observation that states which have budgeted purposefully for the proper functioning of POs have been better able to implement the PWDVA (2005). Andhra Pradesh is a prime example of this: with a PWDVA (2005) budget of Rs 10 crores (2007-09), the state has operationalised a coordinated, multi-agency response system involving POs, police, Legal Services Authorities and the judiciary. Andhra Pradesh also vindicates the existence of POs for women who do not have the option of approaching a private lawyer and who would otherwise have been denied access to court. As a model of best practice for two years in a row, Andhra Pradesh also presents compelling evidence of the influence of a civil law like the PWDVA (2005) upon women's usage of criminal law remedies: as discussed in Chapter 3, from 2007 to 2008, there has been a 41.20% reduction in the number of cases filed under Section 498A in the state.

The 2nd M&E Report also shows that POs are carving out pre-litigation roles that, while not always envisaged as such in the Act, nonetheless represent a response to the context-specific needs of women in different parts of the country. Chapter 4 discusses these *ad hoc* practices in detail. The constantly developing role of POs ranges from interacting with an aggrieved woman with the intention of instilling in her a sense of self-confidence and dignity, to mediating between partners, to counselling and, finally, to documenting the violence and assisting the woman in navigating the justice system. Interestingly, these practices seem to reflect a process whereby activist models of intervention, developed over decades of work with victims of domestic violence, have been adopted by the state, in this case in the person of POs. Activist models of engagement have been transformed into activist modes of governance. One may hazard a guess that this is due to the fact that templates for the functioning of POs were developed by civil society and women's groups on the basis of their long experience of working on issues of violence against women. The 2nd M&E Report is an early identification of the evolving pre-litigation roles of POs that might well have policy implications in the future.

As evidenced by the low rate of referrals from the police to POs documented in this Report (see Table 4.1), it appears that, except in Andhra Pradesh, the police have not been proactive in their approach to the new law. This might be due to their relative lack of awareness about the PWDVA (2005) or because of their reluctance to depart from the model of criminal remedies available in such laws as Section 498A of the IPC with whose coercive provisions the police have long familiarity. It is often (and tiresomely) alleged that women misuse the law; perhaps more attention should be paid to the propensity of the law and order organs of the state to misuse the law by prioritising certain laws over others.

The 2nd M&E Report shows a continuation of a trend mapped in the 1st M&E Report: namely, the negligible notification of medial facilities and the slow pace with which the medical profession has acknowledged domestic violence as a public health issue. A law like the PWDVA (2005) is predicated on the consistent and comprehensive training not just of POs, but of all stakeholders: the police, judiciary and medical profession. Such training, geared towards the establishment of a gender-sensitive, coordinated, multi-agency response system, must be a priority in the years ahead if the objectives of the Act are to be fully realised.

Unfortunately, the 2nd M&E Report has not been able to evaluate the functioning of the judiciary. Despite LCWRI's requests to the office of the Chief Justice of India, orders from Magistrates' Courts – where almost all applications under PWDVA (2005) are filed – were not made available for analysis. Although decisions of High Courts and the Supreme Court are available as reported judgments, the effort to computerise orders of the Magistrates' Courts has only just begun and it is hoped that the process will be well underway by the time the 3rd M&E Report is being prepared. This lack of data is symptomatic of a deeper institutional crisis: the under-funding of Magistrates Courts, the lack of legal literature in their libraries and the absence of computerized data means that Magistrates are denied access to the march of new ideas and current trends in jurisprudence. It also means that High Courts and the Supreme Court have no way of monitoring their functioning and may do so only when presented with an appeal of an order from the lower court. Consequently, monitoring is dependent on chance rather than being integrated into the system as a routine and regular process. State Judicial Academies are making some effort to introduce new literature and current trends of jurisprudence to Magistrates. It is, of course, also crucial that Magistrates be provided with adequate training in new laws.

The chronic delays in justice delivery in India are a well-known fact. These delays are not necessarily due to the lack of an adequate number of judges, as is popularly believed, but rather – and more troublingly – because a culture of impunity has set in to the system. A judge may remain absent without any prior notice to the litigant, making repeated visits to the court an unavoidable nightmare. Time truly stands still in an Indian court and all the players have resigned themselves to this situation. This is devastating when the call to justice is being made by the need for anticipatory relief.

Despite all these historic/institutional disadvantages of the legal system, the PWDVA (2005) has proved to be a popular law. Women across the country are using it and data made available by the Registrar General of High Courts in six states indicates a significant increase in the number of cases filed under the new law, as shown in the Table below:

Number of Cases Filed under the PWDVA (2005)¹		
State	Number of Cases Filed	Period of Reporting
Andhra Pradesh	1,625	July 2007 - October 2008
Gujarat	869	July 2007 - August 2008
Himachal Pradesh	202	October 2006 - August 2008
Jharkhand	70	October 2006 - June 2008
Kerala	3,287	October 2006 - October 2008
Maharashtra	2,751	July 2007 - August 2008
Orissa*	64 ²	October 2006 - August 2008
Tamil Nadu*	1,180	October 2006 - July 2008
NCT Delhi*	3,534	October 2006 - August 2008

1. There is no uniformity in the manner in which courts have collated data on the number of cases filed in court, hence the information contained in this Table cannot be compared to data presented in the 1st M&E Report.
2. Number of DIRs filed in court.

* Information provided by the nodal department and not the Registrar General of High Courts.

The primary users of the PWDVA (2005) are married women, another trend that continues from the 1st M&E Report. This might mean that domestic violence is not recognised in a non-marital situation or not seen as a problem capable of legal resolution among siblings or parents and children. In marital relationships, the pattern is familiar: marriage accompanied by dowry, the degradation of the status of the woman to a position of subordination and economic dependency, the demand for male children and, finally, the banishment of the woman to her natal home. It seems the only social security that women in this county enjoy is that of the natal family. The study of patterns of domestic violence based on court records makes a strong case for the right to community property in marriage. A state that privileges the institution of heterosexual marriage and provides a legal procedure for its dissolution – namely, divorce – must also provide for the aftermath of such dissolution – namely, an equitable distribution of post-divorce rights.

An analysis of available data shows that judges have been granting maintenance orders routinely, although not always to the satisfaction of women. The right to reside in the shared household is being interpreted to mean that women have a right to be restored to the shared household or to a portion thereof or to alternative accommodation. Under PWDVA (2005), relief is obtained relatively quickly when compared with the delays in granting orders under Section 125 of the CrPC. Magistrates who normally deal with criminal law have adapted to the granting of civil orders of injunctions. Compensation orders are being claimed and granted. One problem that has been noticed is that while the law provides a timeline for the disposal of applications, it does not provide a timeline for the disposal of an appeal; since many orders are appealed, protocols must be issued to address this problem.

There have been a significant number of High Court judgments many of which reflect a commendable gender-sensitive interpretation of the law. The judgement in *Aruna Pramod Shah v. Union of India* (see Chapter 5) has been cited in written submissions made to the Supreme Court of the Philippines as a persuasive precedent in a similar challenge to their gender-specific law of domestic violence².

As originally drafted, the PWDVA (2005) contained a clause making it mandatory for the State to monitor and evaluate the law³.

2. Memorandum submitted in *Jesus C. Garcia v. The Hon. Rayalant Drilon* (GR No. 179267)

3. The provision proposed by LCWRI read as follows: "Duty of Government to ensure effective implementation of the Act:

- (1) The Government of India and the State Governments shall respectively appoint an eminent person as the National and State Coordinator for the prevention of domestic violence who shall submit annual reports to the Government of India or to the State Government respectively on the incidence of domestic violence in India and the State and on the implementation of this Act which report shall be laid before both houses of Parliament and before the State Legislature, as the case may be.
- (2) The Coordinator for the Prevention of Domestic Violence, appointed under sub-section (1) of this section shall have the powers to perform all or any of the following:
 - (i) Powers to investigate and examine all matters relating to Prevention of Domestic Violence generally;
 - (ii) Make in its annual reports to the Government of India, recommendations for the effective implementation of the provisions of this bill;
 - (iii) Review, from time to time, the existing provisions of the law on domestic violence;
 - (iv) Look into complaints and take *suo-moto* notice of matters relating to domestic violence and the non-implementation of the law on domestic violence;
 - (v) Call for special studies or investigations into specific incidence of domestic violence;
 - (vi) Participate and advise on the planning process for securing a safe environment free of domestic violence;
 - (vii) Evaluate the progress of the development of women under the law on domestic violence."

This clause was subsequently dropped, putting the entire burden of monitoring and evaluation on civil society. Chapter 2 discusses some of the challenges of this task. While this is not an impossible task for civil society organizations (CSOs), the state is surely bound to provide us with the necessary information by way of data, but unfortunately, no such channels of information have been put in place. The Right to Information Act (2005) is no substitute for the State's proactive disclosure of comprehensive and current data that CSOs can then analyse. Monitoring and evaluation are important tools by which citizens can demand accountability from the state and legal system and developing a robust system of PWDVA (2005) data collection should be another priority area for the state in the years ahead.

It is our hope that this 2nd M&E Report has thrown light on emerging practices and trends as well as raised questions and challenges that will require resolution in the years to come as the march of the law acquires a rhythm which is in tune with our Constitutional goals.

The 2nd M&E Report has also made several recommendations for the better implementation of the PWDVA (2005) which are collated and presented below:

Recommendations for the Central and State Governments

- *Budgetary allocations:* As we hope to have made indisputably clear, the successful implementation of the PWDVA (2005) will depend upon the allocation of adequate budgetary provisions by the Central and State governments. Budgets will have to be separately allocated under heads like creation of infrastructure, trainings, public awareness, etc. This Report observes that there is no uniformity in the manner in which budgets already sanctioned are allocated; the Central and State governments ought to consider the fact that certain issues like the creation of infrastructure or support for the POs might, at this stage, require greater emphasis.
- *Building a better coordinated, multi-agency response system:* It must, however, be acknowledged that nodal agencies operate under certain constraints and, until such time as adequate budgetary allocations are made, an optimal use of existing infrastructure and resources will have to be made in implementing the law. Effective implementation of the Act also involves coordination between the nodal agency and the criminal justice system, particularly the police and legal service authorities.
- *Monitoring and evaluation of the PWDVA (2005) as a policy measure:* Regular monitoring and evaluation of the implementation of the Act is crucial towards ensuring accountability and the optimum use of available resources. Central and State governments must develop a comprehensive and consistent method for collecting and maintaining primary data on the implementation of the law in different parts of the country. Such a pool of data is crucial for problem-solving and suggesting reforms in the law.
- *Creation of protocols and guidelines:* In order to evolve a uniform understanding and implementation of the law, it is essential to create protocols and guidelines for different stakeholders that will provide clarity to each agency on its particular role under the law. In fact, the protocols and guidelines issued may form the basis of conducting trainings of the implementing agencies as well.

- *Action plans and coordination committees:* Section 11(c) of the PWDVA (2005) charges Central and State governments with the duty to ensure effective coordination between different departments. Initiatives to establish coordination and monitoring committees in states like Kerala and Uttarakhand, as discussed in Chapter 3, are an encouraging step in this direction. Action plans may be created by the nodal agency charged with the responsibility of implementing the Act in every state to maintain a common vision and presenting a common action plan for the future. This action plan will indicate the overall vision and goals of the state in implementing the PWDVA (2005) and may be created in consultation with different implementing agencies and Service Providers. Creating an action plan ensures that all the stakeholders are aware of the larger goal and activities to be undertaken by each agency. This avoids duplication of existing initiatives and agencies working at cross purposes with each other.
- *Protection Officers – Appointment and administrative machinery:* In order to realise the full potential of the PO's office, states must sanction full-time appointments of POs, with appropriate infrastructure and personnel at their disposal. Additionally, the following measures should be undertaken to enable smooth functioning:
 - (i) In view of the range of a PO's duties, it is advisable that candidates with some background in law and/or social work be given preference.
 - (ii) However, it must also be acknowledged that POs, irrespective of their background, will need some time to get used to legal provisions and court procedures. Hence, it is recommended that services of lawyers attached to the Legal Services Authority be enlisted for the PO, as is currently done in Karnataka.
 - (iii) Nodal agencies must provide POs with a comprehensive list of all services and schemes that may be of assistance to the aggrieved woman.
 - (iv) Protocols detailing the reporting requirements of POs must be prepared by nodal agencies and POs be trained to comply with the same.
 - (v) Moreover, the functioning of POs can be made more systematic through the creation, in each state, of an overall coordinator's position to provide administrative and programmatic supervision. This coordinator may also be vested with monitoring and problem-solving powers in addition to providing centralized administrative support.
- *Strengthening other infrastructure:* Where Service Providers have already been registered, it must be examined whether they are adequate to meet existing needs; the information provided in the 2nd M&E Report indicates that medical facilities and shelter homes are yet to be notified. Yet another component that must be strengthened is the delivery of legal services delivery to women in need.

Recommendations for the Judiciary

- *Collection and maintenance of case data:* The nodal agencies of state governments are not in a position to have access to data relating to cases filed and relief/s granted under the PWDVA (2005). Any evaluation of the effectiveness of the law is incomplete without an analysis of the response of the courts. Hence, it is essential that a regular and systematic exercise of data collection of cases under the Act is conducted by the judiciary, through the office of the Chief Justice of Supreme Court of India or any other agency identified for the purpose. The information collected through this exercise may be maintained in a clearinghouse through which it will be accessible to the public and other implementing agencies.
- *Creation of protocols for the judiciary:* The data collection exercise will also lead to an identification of judicial issues that require clarity as well as the detailing of legal procedures. In fact, the available information on the approach of the courts already indicates grey areas, regarding both substantive and procedural law, which require the creation of protocols and guidelines, to be issued by the Supreme Court and High Courts.
- *Keeping POs aware of the status of proceedings:* POs must receive regular feedback from the courts on the status of the proceedings and, particularly, on any orders that are passed.
- *Speedy disposal of cases:* The courts must ensure that the statutory requirement of speedy disposal of cases is met by maintaining the stipulated timelines.

Annexure

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Annexure

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असाधारण
EXTRAORDINARY

भाग II — खण्ड 1
PART II — Section 1

प्राधिकार से प्रकाशित

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इस भाग में बिना पूरा संकलन दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 14th September, 2005/Bhadra 23, 1927 (Saka)

The following Act of Parliament received the assent of the President on the 13th September, 2005, and is hereby published for general information:—

**THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE
ACT, 2005**

No. 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.

Enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Protection of Women from Domestic Violence Act, 2005.

Short title,
extent and
commencement.

(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. In this Act, unless the context otherwise requires,—

Definitions.

(a) "aggrieved person" means 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;

(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;

(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 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;

2 of 1974.

(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. For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it —

Definition of domestic violence.

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

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.

Information to Protection Officer and exclusion of liability of informant.

4. (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).

Duties of police officers, service providers and Magistrate.

5. 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 services of service providers;

(c) of the availability of services of the Protection Officers;

(d) of her right to free legal services under the Legal Services Authorities Act, 1987;

(e) of her right to file a complaint under section 498A of the Indian Penal Code, wherever relevant:

39 of 1987.

45 of 1860.

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.

Duties of shelter homes.

6. 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.

Duties of medical facilities.

7. 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.

Appointment of Protection Officers.

8. (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 as 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.

Duties and functions of Protection Officers.

9. (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 of 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;

39 of 1987.

(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 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 to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

2 of 1974.

(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;

(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.

21 of 1860.

1 of 1956.

10. (1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 or a company registered under the Companies Act, 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.

Service providers.

(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 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.

(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 or discharge of functions under this Act towards the prevention of the commission of domestic violence.

11. The Central Government and every State Government, shall take all measures to ensure that—

Duties of Government.

(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

Application
to Magistrate.

12. (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 for 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 acts 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, or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

5 of 1908.

(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.

Service of
notice.

13. (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 as 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.

Counselling.

14. (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 counselling 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 a period not exceeding two months.

15. In any proceeding under this Act, the Magistrate may secure the 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.

Assistance of welfare expert.

16. If the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under this Act *in camera*.

Proceedings to be held *in camera*.

17. (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.

Right to reside in a shared household.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

18. 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—

Protection orders.

- (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. (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—

Residence orders.

- (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 and shall be dealt with accordingly.

2 of 1974.

(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.

Monetary
reliefs.

20. (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 not limited to,—

(a) the loss of earnings;

(b) the medical expenses;

(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 or any other law for the time being in force.

2 of 1974.

(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 circumstances 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 of 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. 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 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:

Custody orders.

Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

22. 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 acts of domestic violence committed by that respondent.

Compensation orders.

23. (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

Power to grant interim and *ex parte* orders.

(2) If the Magistrate is satisfied that an application *prima facie* discloses 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. The Magistrate shall, in all cases where he has passed any order under 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 within the local limits of the jurisdiction of the court and if any service provider has registered a domestic incident report, to that service provider.

Court to give copies of order free of cost.

25. (1) A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.

Duration and alteration of orders.

(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances 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. (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 this Act.

Relief in other suits and legal proceedings.

(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 proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

Jurisdiction. 27. (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.

Procedure. 28. (1) Save as otherwise provided in this Act, all proceedings under sections 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.

Appeal. 29. 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

Protection Officers and members of service providers to be public servants. 30. 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 orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Penalty for breach of protection order by respondent. 31. (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 had 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), the Magistrate may also frame charges under section 498A of the Indian Penal Code or any other provision of that Code or the Dowry Prohibition Act, 1961, as the case may be, if the facts disclose the commission of an offence under those provisions.

45 of 1860.

28 of 1961.

Cognizance and proof. 32. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

2 of 1974.

(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. 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. Penalty for not discharging duty by Protection Officer.
34. 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 or an officer authorised by it in this behalf. Cognizance of offence committed by Protection Officer.
35. 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 any rule or order made thereunder. Protection of action taken in good faith.
36. The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force. Act not in derogation of any other law.
37. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act. Power of Central Government to make rules.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or 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-section (1) of section 10;
 - (h) the form in which an application under sub-section (1) of section 12 seeking reliefs 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 notices 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 counselling 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 not 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.

BRAHM AVTAR AGRAWAL,
Addl. Secretary to the Govt. of India.

Annexure

In The High Court of Delhi

WP (CrI) 425/2008

Appellants: Aruna Parmod Shah

Vs.

Respondent: Union of India (UOI)

Honible Judges:

Vikramajit Sen and P.K. Bhasin, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: P. Sureshan, Adv.

For Respondents/Defendant: Sewa Ram, Adv.

Subject: Constitution

Acts/Rules/Orders:

Protection of Women from Domestic Violence Act, 2005 - Sections 2, 17 and 18; Hindu Marriage Act; Indian Penal Code - Section 498A; Constitution of India - Articles 14, 15 and 21

Cases Referred:

State of A.P. v. Nallamilli Rami Reddi (2001) 7 SCC 708; Basheer v. State of Kerala (2004) 3 SCC 609

Disposition:

Petition dismissed

JUDGMENT

Vikramajit Sen, J.

CrI. M.As. 4172-73/2008

1. Allowed, subject to all just exceptions.

WP(CrI.) 425/2008 & CrI. M.A. 4171/2008

2. This Petition was originally listed before a Single Judge of this Court. The Petition contains two prayers - (a) for declaring the Protection of Women from Domestic Violence Act, 2005 (for short

‘Act) as ultra virus the Constitution of India and (b) to quash the proceedings before the Metropolitan Magistrate, New Delhi. Very briefly stated, the Petitioner admits that a Ring Ceremony had been performed between him and Respondent No. 2, but no marriage had been celebrated. Respondent No. 2 however appears to have taken the stance that their marriage was duly solemnized.

3. Learned Counsel for the Petitioner has assailed the virus of the Act on the ground that inasmuch as it provides protection only to women and not to men, the statute offends Article 14 of the Constitution of India. It is beyond cavil that legislation must be presumed to be legally sound and proper, and therefore the burden of proving that it is unconstitutional rests heavily on the Petitioner who asserts so. It has been laid down that if it is evident that a statute is predicated on an intelligible differentia between persons falling within the protection of the provision viz-a-viz those falling outside, and this classification/differentia bears a reasonable nexus to the object sought to be achieved by the legislation, it would not infract or impinge upon the equality doctrine articulated and enshrined in Article 14 of the Constitution. We can do no better than to reproduce the following paragraph from *State of A.P. v. Nallamilli Rami Reddi* MANU/SC/0507/2001 which has also been relied upon in *Basheer v. State of Kerala* MANU/SC/0117/2004:
4. What Article 14 of the Constitution prohibits is ‘class legislation’ and not ‘classification for purpose of legislation’. If the legislature reasonably classifies persons for legislative purposes so as to bring them under a well-defined class, it is not open to challenge on the ground of denial of equal treatment that the law does not apply to other persons. The test of permissible classification is twofold: (i) that the classification must be founded on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (ii) that differentia must have a rational connection to the object sought to be achieved. Article 14 does not insist upon classification, which is scientifically perfect or logically complete. A classification would be justified unless it is patently arbitrary. If there is equality and uniformity in each group, the law will not become discriminatory, though due to some fortuitous circumstance arising out of (sic) peculiar situation some included in a class get an advantage over others so long as they are not singled out for special treatment. In substance, the differentia required is that it must be real and substantial, bearing some just and reasonable relation to the object of the legislation.
5. Domestic violence is a worldwide phenomenon and has been discussed in International fora, including the Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995). The United Nations Committee Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) has recommended that States should act to protect women against violence of any kind, especially that occurring within the family. There is a perception, not unfounded or unjustified, that the lot and fate of women in India is an abjectly dismal one, which requires bringing into place, on an urgent basis, protective and ameliorative measures against exploitation of women. The argument that the Act is ultra virus the Constitution of India because it accords protection only to women and not to men is, therefore, wholly devoid of any merit. We do not rule out the possibility of a man becoming the victim of domestic violence, but such cases would be few and far between, thus not requiring or justifying the protection of Parliament.
6. Learned Counsel for the Petitioner has drawn attention to the definition of “domestic relationship” contained in Section 2(f) of the Act. He has strenuously objected to the placing of married persons

on the same platform as those in a relationship in the nature of marriage. We find no reason why equal treatment should not be accorded to wife as well as woman who has been living with a man as his common-law wife or even as a mistress. Like treatment to both does not, in any manner, derogate from the sanctity of marriage since an assumption can fairly be drawn that a “live-in relationship” is invariably initiated and perpetuated by the male. Once again, we do not rule out the exception but such cases would be rare to find, thus obviating the need of Parliament to provide protection to the male victim. The Court should also not be impervious to social stigma which always sticks to women and not to the men, even though both partake of a relationship which is only in the nature of marriage.

7. Learned Counsel for the Petitioner has also assailed Section 18 but we are unable to appreciate any reason for the challenge to this Section. The third paragraph of the Statement of Objects and Reasons of the subject statute records that - “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”. Parliament was at the same time fully alive to the reality that Section 498-A of the Indian Penal Code, dealing with the malaise of dowry demand and attendant cruelty meted out to women, does not and cannot address the pressing need to provide protective measures against the consequences and repercussions of the pernicious prevalent practice of the demand of dowry. Section 18 postulates the passing of protective and ameliorative orders of civil Courts, calculated to preserve the status quo for the benefit of women. This is, in fact, one of the most significant features of the statute. A woman who is facing the brunt of harassment in a domestic relationship is more concerned with being rendered destitute rather than punishment being handed down to the perpetrator of the harassment. In this connection, the preceding Section 17 is legally path-breaking since it introduces the right of every woman in a domestic relationship to reside in the shared household, whether or not she has any right, title or beneficial interest in the same. Equity should come to the aid of a woman who has been living in joint property of the man since it was always open to the other members of family to object to and resist such a move. Family consent, even willy nilly, should work in favor of the woman concerned. Beyond stating that this Section 18 is ultra virus the Constitution of India no worthwhile reasons or arguments have been put forward by learned Counsel for the Petitioner in discharge of the burden of proving the unconstitutionality of the statute.
8. Learned Counsel for the Petitioner has contended that the provisions of the Act jeopardise and/or diminish the rights of legally wedded women inasmuch as wives’ rights may stand diluted in accommodating the rights of the women who is in a relationship in the nature of marriage with the husband. Reference has been made to the Hindu Marriage Act. It seems to us that it is not unconstitutional for Parliament to provide for protection to a woman in a relationship akin to marriage. Along with and juxtaposed to the protection given to wives and legitimate children. In unfortunate and uncomfortable situations such as these, if the protection given to unwedded women results in the diminution of funds available for complete maintenance of the legally wedded wives and the legitimate children, such diminution would not render the statute unconstitutional. The bread-winner husband or man, as the case may be, may suffer ill-health or insolvency etc. and in such cases the wife would be bereft of finances. These are the vicissitudes of marriage against which legal insurance and insulation is not possible.

9. After hearing learned Counsel for the petitioner at great length we had suggested to him that it would be in the interest of justice of the petitioner to address and concentrate upon prayer (b) relating to the quashing of the proceedings before the Metropolitan Magistrate. He has, however, insisted that the Act is ultra virus the Constitution, thereby needlessly wasting public time on an issue in respect of which no arguments of substance have been articulated. The challenge to the virus of the Protection of Women from Domestic Violence Act is misconceived and devoid of merit. The challenge is dismissed with costs of Rupees Three Thousand to be paid by the Petitioner to Legal Aid for Women, Children, SC, ST and Poor, Delhi High Court, New Delhi to be deposited within two weeks from today.
10. We direct the Petition to be placed before the Hon'ble Single Judge as per Roster, so far as Prayer (b) is concerned, on 21.4.2008.

METRO

Women assault court officer in their house

Parmesh Tokas went to serve a court summon related to a harassment case; two women arrested

Naziya Alvi
New Delhi, September 7

THEY ARE called protection officers. But on Saturday evening, protection officer Parmesh Tokas couldn't protect herself.

Five women of a family locked her in a room and assaulted her when Tokas, a court-appointed officer, had gone to a house in Kishan Garh to serve a summon.

Protection Officers are social workers appointed by the courts, in cases of domestic violence, to assist them in filing inquiry reports.

The police have arrested two women on charges of assaulting a government employee on duty.

Tokas, an officer from the Southwest district, was discharged from the hospital early this morning. She had received serious injuries all over her body.

Talking to *Hindustan Times*, Tokas said being abused by family members of the accused or getting threatening calls is common for them.

But this is probably the first case of physical assault. There are a total of 15 female protection officers across Delhi.

She said in the past she and several of her female colleagues have written to the authorities concerned about their problems.

But they have not got any respite so far, she added.

As per the FIR registered at Vasant Kunj

police station, five females family members of the accused — mother, two sisters and two others, beat her up with sticks until the police came to her rescue.

The accused women also tried to attack the pregnant daughter-in-law who had dared to file the complaint.

She, however, managed to escape and informed the police. The daughter-in-law is now admitted in a nearby hospital.

Police have arrested Khajani Deivi, mother in the accused, and a relative Satwanti. They were produced before the Duty

Magistrate on Sunday.

A case of assault and use of criminal force to deter a public servant from discharging of duty has been registered against them.

Tokas went to serve summons to accused Dharmender for a case hearing on September 10.

When Tokas reached their Kishan Garh house and asked for Dharmender, his mother Khajani invited her in.

She then offered Parmesh water and asked her to sit in a bedroom that was in the extreme corner of the house.

"When I refused, the mother-in-law along with another woman pushed me inside a room. They then locked the room and started beating me up. Three more women relatives joined soon," said Tokas.

naziya.alvi@hindustantimes.com

The mother-in-law along with another woman pushed me inside a room. They then locked the room and started beating me. Three more women joined them.

PARMESH TOKAS, protection officer who was assaulted

Annexure

Order Form

Protection Officer's Manual

The success of the Protection of Women from Domestic Violence Act (PWDVA 2005) depends to a large extent on the understanding, spirit and attitude with which the law is implemented. The *Protection Officer's Manual* is intended to provide guidance to the implementing agencies on an interpretation and implementation that is most consistent with the spirit and objective of the law. While the *Manual* can be used by Protection Officers and Service Providers who are charged with the duty of implementation, it will also be relevant to the police, medical service providers, shelter homes and other civil society groups working on domestic violence as well as women seeking recourse to the law.

The *Protection Officer's Manual* draws on experiences across the country and recommends certain best practices which can be used by the authorities to ensure that the law is effectively implemented. At the same time, it also provides step-by-step guidance on what the implementing agencies ought to do when dealing with aggrieved women, perpetrators of violence, their relatives, and when trying to ensure coordination with the court and other stakeholders. The emphasis of this document is to assist in building a coordinated response to domestic violence. The idea is to strengthen the hands of implementing authorities and instil a proactive, pro-woman, human rights perspective in the enforcement of the PWDVA 2005.

To order a copy of the *Protection Officer's Manual*, contact LCWRI at:

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