

Third Monitoring & Evaluation Report 2009 on the

Protection of Women from Domestic Violence Act, 2005

Lawyers Collective Women's Rights Initiative

In collaboration with

The International Center for Research on Women

Supported by

UN Trust Fund to End Violence against Women



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Staying Alive

Third Monitoring & Evaluation Report 2009

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The Lawyers Collective Women's Rights Initiative (LCWRI)

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

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

International Center for Research on Women (ICRW)

ICRW, founded in 1976, is a private, non-profit organisation headquartered in Washington, DC, with the Asia regional office in New Delhi, India, and field offices in Hyderabad and Mumbai in India and Kampala in Uganda. ICRW's mission is to empower women, advance gender equality and fight poverty in the developing world. To accomplish this, ICRW works with partners to conduct empirical research, build capacity and advocate for evidence-based, practical ways to improve policies and programmes.

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Email: communication@newconceptinfosys.com



FOREWORD

"The day will come when man will recognise woman as his peer, not only at the fireside, but in councils of the nation. Then, and not until then, will there be the perfect comradeship, the ideal union between the sexes that shall result in the highest development of the race."

—Susan B. Anthony Leader of the women's rights movement of the 19th century

You have before you, the Third Monitoring & Evaluation Report 2009 on the implementation of the Protection of Women from Domestic Violence Act, 2005. Many women facing violence have contributed to this Report and inspired LCWRI to continue our tracking of the Law against all odds and we are proud to have kept up this effort.

These past three years have taught LCWRI that whilst it is possible to have a Law on the table, it does not flow from this, that violence against women will automatically end. That is how it should be, but unfortunately, we are far from being a society governed by law alone.

The PWDVA has not yet gained the desired level of social acceptance and women still find themselves waging a lonely battle. One of the most insurmountable barriers faced is delays. At a recent National Conference in Delhi hosted by the Ministry of Law and Justice, the delays of the Law were described as a 'national emergency.' This is undoubtedly the case, however, even national emergencies visit us selectively; the delay affects the vulnerable more than others as they are approaching the court for justice on survival issues.

It appears that Judges are hesitant to grant *ex-parte* orders even when the circumstances so demand and that proceedings are not being completed within a reasonable timeframe. While it is easy to blame this on the lack of sufficient number of Judges, those who deal with domestic violence cases must realise that there are solutions within the given system that they can utilise. Interim orders can be granted to prevent further derogation from a woman's right to residence, frivolous appeals against interim orders need not be entertained and available procedural tools can be used to speed up justice. Women's organisations must now form a part of the mainstream demand for judicial reforms, so as to ensure that women affected by domestic violence can get their voice heard and extricate themselves from the violence they face.

Ultimately, the success of any law must be judged by how infrequently it needs to be invoked, not how often it is used. Today, we measure the success of the PWDVA from the number of cases filed under the Act. These figures tell us that women have become aware of their rights and to that extent, we may call this an indicator of success. However, on the other hand, it is a sad reminder of the fact that violence against women in the 'safe haven' they call home, continues to assume the proportions of an epidemic.

Having a law in place is one thing, but having people imbibe the ethos of the law is quite another matter. There was a time when we said that violence in the home was invisible. With the enactment of the PWDVA, there is no more 'invisibility'. However, as is the case with any battle worth fighting, this victory has given rise to yet another struggle. With the visibility of domestic violence, what has become clear is that discrimination against women has increased. The fight to outlaw discrimination has not yet begun and looms ahead of us. Time and again we are told that women are 'misusing' the Law. When asked what is meant by 'misuse', it is difficult to get a coherent answer, except perhaps that a woman should learn to live with 'trivial' forms of violence within the home and not take these issues to court. Constitutional law still stops at the doorstep of the home it seems. One can only conclude that the intent behind this claim is to dissuade women from using the Law. It seems that as the number of women successfully procuring their rights increases, the louder the cry of 'misuse' becomes. Changing the status quo, making the relationship within marriage more equal, will be by far the most difficult battle ahead.

This year, LCWRI together with ICRW, is presenting a rigorous data set on knowledge about and attitude towards the PWDVA and gender issues among Police, Judiciary and Protection Officers and other key stakeholders — a unique data set that has never been collected and analysed before. Quantitative data on these aspects coupled with qualitative interviewing and observations from other key stakeholders are extremely important to help track the implementation of the Law over the next couple of years, and also inform evidence based programming and interventions. Both our organisations are particularly pleased by this collaboration and the coming together of our respective strengths and perspectives. We believe that through this partnership, we will carry the effort of monitoring the Law beyond court rooms and to the doorsteps of stakeholders such as the Protection Officers, Police, Service Providers and most important of all, to the women themselves for whom this Law was created.

Zero tolerance of violence against women must remain a constitutional goal. Thus, the primary responsibility to stop violence is that of the State. However, since civil society has an equal, if not a greater, stake in ending violence against women, we have kept up our effort at documenting the implementation of the Law. We continue to hope that this is a task which will, in the near future, be undertaken by the State as an effective tool to monitor the implementation of the Law.

"... the constitutional protection of dignity requires us to acknowledge the value and worth of all individuals as members of our society. It recognises a person as a free being who develops his or her body and mind as he or she sees fit. At the root of the dignity is the autonomy of the private will and a person's freedom of choice and of action."

-A. P. Shah C. J. and S. Muralidhar J Naz Foundation v. NCT of Delhi & Ors. WP(C) No.7455/2001

(High Court of Delhi); July 2009

Ms. Indira Jaising

Project Director Lawyers Collective Women's Rights Initiative **Dr. Ravi Verma** Regional Director Asia Regional Office

International Center for Research on Women

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A detailed list of all individuals who have been a part of this process are listed in Annexure 1.

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ABBREVIATIONS AND ACRONYMS

APLSA Andhra Pradesh Legal Services Authority

CAW Cell Crime Against Women Cell

CDPO Child Development Protection Officer

CEDAW Convention on the Elimination of All Forms of Discrimination

Against Women

CJM Chief Judicial Magistrate

CrPC Code of Criminal Procedure 1973

DIR Domestic Incident Report

DPA Dowry Prohibition Act 1961

DPO District Probation Officer

DSW Department of Social Welfare

DWCD Department of Women and Child Development

FIR First Information Report

First M&E Report Staying Alive: The First Monitoring & Evaluation Report 2007

HAMA Hindu Adoption and Maintenance Act, 1956

ICDS Integrated Child Development Services

ICRW International Center for Research on Women

IEC Information, Education and Communication

IGP Inspector General of Police

IO Investigating Officer

IPC Indian Penal Code 1860

JMFC Judicial Magistrate First Class

KAP Knowledge, Attitudes and Practices

KELSA Kerala Legal Services Authority

KII Key Informant Interview

KSSWB Kerala State Social Welfare Board

KSSWD Kerala State Social Welfare Department

LCWRI Lawyers Collective Women's Rights Initiative

LIC Life Insurance Corporation

LSA Legal Services Authority

M&E Monitoring & Evaluation

M&E Report Monitoring & Evaluation Report

MWCD Ministry of Women and Child Development

NCT National Capital Territory

NCW National Commission for Women NGO Non-Governmental Organisation

NIPCCD National Institute of Public Cooperation and Child

Development

NJA National Judicial Academy

NLSA National Legal Services Authority

PAW Cell Prevention of Atrocities against Women Cell

PFG Participatory Focus Group

PFGD Participatory Focus Group Discussion

PO Protection Officer

PPOs POs-cum-Child Marriage Prohibition Officers

PWDVA Protection of Women from Domestic Violence Act, 2005

PWDVR Protection of Women from Domestic Violence Rules, 2006

Second M&E Report Staying Alive: The Second Monitoring & Evaluation Report

2008

SHO Station House Officer

SJA State Judicial Academy

Special Cells Special Cells for Women and Children

SLSA State Legal Services Authority

SP Service Provider

SWC State Women's Commission

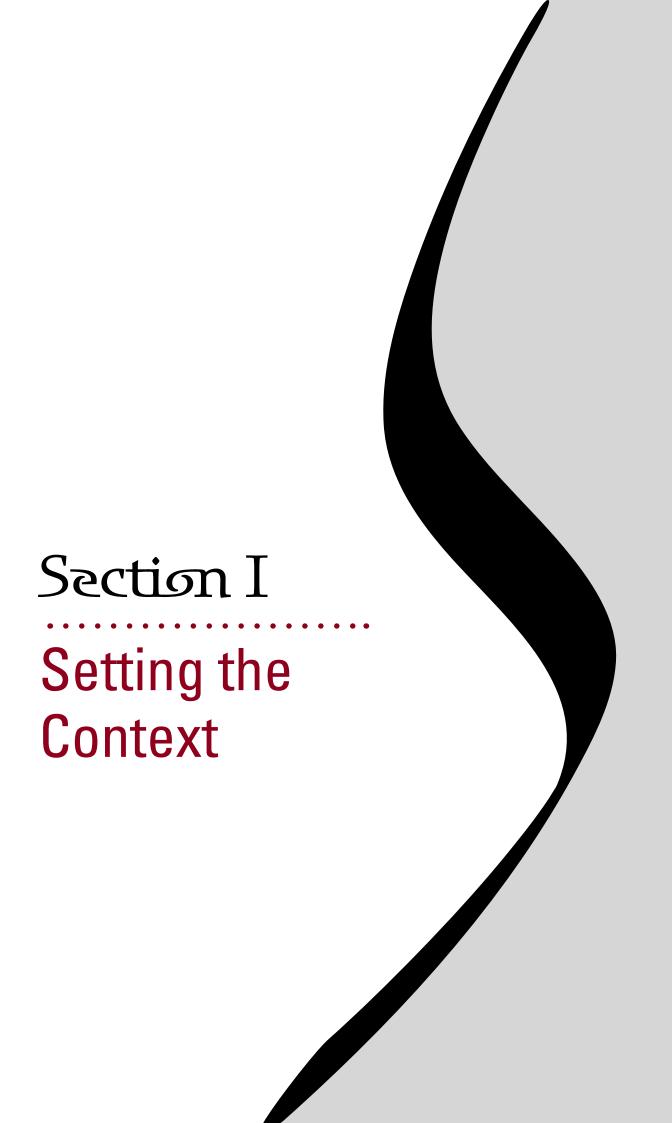
SWD Social Welfare Department

UN United Nations

UNIFEM United Nations Development Fund For Women

UNTF United Nations Trust Fund to End Violence against Women

VAW Violence Against Women



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

Chapter 1

The Rationale

The discussion on the **Protection of Women from Domestic Violence Act, 2005** (**PWDVA**, the **Law** or the **Act**), should be preceded by the context in and the International framework from which the Act came into force.

Violence Against Women (VAW) has been, and still continues to be, one of the most wide ranging yet surprisingly under-recognised Human Rights violations. Taking into consideration the gravity and varying forms of abuse that women are being subjected to, it is apparent that acts of VAW are not isolated events in a particular society or culture but are, in fact, a global phenomenon which circumvent socio-economic structures and educational classes.

It is only in recent years, due to the untiring efforts of the International women's rights movement, that VAW received the attention it deserved. This led to the drafting of various legislations dealing with VAW, such as the Vienna Accord, Beijing Declaration and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

In the year 1993, with the adoption of the **United Nations (UN)** Declaration on Elimination of Violence Against Women, International law defined the concept of VAW for the first time as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." This acknowledgement of VAW in the private sphere has given International focus to domestic violence as an unacceptable human rights violation.

Domestic violence is indeed one of the most hidden and tragic forms of VAW as it takes place in the sanctity of the home, at the hands of someone who is in an intimate relationship with the woman and professes to or ideally should love and care deeply for her.

In the Indian context, as a result of deep-rooted cultural norms and patriarchal values, domestic violence is viewed as a private family matter that should be settled within the home without any need for 'unnecessary' external intervention. It is a burden that women are expected to bear in silence rather than 'shame' the family. This systematic violence, indirectly condoned by existing societal attitudes, values and culture, forces gender inequality and curtails women's freedom.

¹ Art. 1, UN Declaration on Elimination of Violence Against Women- A/RES/48/104, 85th Plenary Meeting, 20 December 1993

Historically, women were viewed as homemakers while men were viewed as breadwinners. Although this is changing, with more and more Indian women educating themselves, engaging in employment and becoming high profile public figures, the change in societal attitudes has been slow. This is evident from the visible public reluctance to recognise women as equal stakeholders. Therefore, influencing societal mindsets is an ongoing struggle for the women's rights movement in this country.

As such, this 'social malaise' needed to be addressed by the enactment of a suitable legislation. It was hoped that, in the long term, this legislation would ameliorate public silence and passive tolerance surrounding the issue of domestic violence and act as an instrument of social change.

Why a Separate Law on Domestic Violence?

Prior to 2005, there was neither a clear legal definition of domestic violence nor any law in India that specifically addressed it. In order to create a framework from within which the concept of domestic violence could easily be recognised to prevent its occurrence, there was a need for a comprehensive description of what constituted domestic violence.

Although remedies were available in the form of civil laws such as those dealing with divorce and criminal laws such as Section 498A **Indian Penal Code**, **1860**² **(IPC)**, which acknowledged cruelty within marriages, these were limited in their approach and did not address the need for immediate relief and support — a prime requirement of women facing domestic violence.

Due to embedded cultural values, even the limited legal remedies available in cases of VAW, such as Section 498A IPC, were restricted to married women. There was no relief available to women in other domestic relationships such as mothers, daughters, women in live-in relationships and others facing domestic violence. It is also important to note that registration of marriage was, and still is, not compulsory and that many marriages were contracted under personal/customary laws. Therefore, prior to the enactment of a specific legislation that dealt with domestic violence, women were often unable to prove existence of marriage and avail necessary remedies.

In India, one of the most commonly occurring problems in cases of domestic violence is the dispossession of the dependent female from the shared household. In a patriarchal society such as ours, usually only male family members are given possession of the premises and it therefore, becomes easier to dispossess the dependent wife, daughter, mother and so on, as the case may be. This is specially so because the Indian matrimonial regime does not confer property rights on a woman upon marriage. Often,

² Sec. 498A, IPC 1860–Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation-For the purpose of this section, "cruelty" means: (a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

the natal family of the dispossessed woman is unwilling or unable to help her. As a result, the woman continues to remain in a violent relationship for fear of becoming homeless. Thus, the non-recognition of a woman's right to reside was a huge lacuna in Indian Law.

It was in this context that LCWRI, together with other women's groups and **Non-Governmental Organisations (NGOs)**, lobbied with the Government for a law on domestic violence. LCWRI played a key role in the drafting of and campaigning for the Law. This resulted in the enactment of the PWDVA on 26 October 2006 and is one of our key achievements to date in our mission to empower women through the law.

Why Gender Specific?

In its preamble, the UN Declaration on the Elimination of Violence Against Women recognises that VAW is a "manifestation of historically unequal power relations between men and women" and a social tool whereby women have been forced to accept a subordinate position to men.³ It is this 'socially imposed' inequality that extends to and is reflected within the home, and makes women particularly vulnerable to violence.

Articles 2 and 5 of the CEDAW require governments to take positive measures to end legal, social and economic inequality. The Indian Constitution makes a unique provision of positive discrimination in favour of women and children in Article 15 (3)⁴ that allows the State to take special measures for women and children, in order to achieve the goal of substantive equality.

It is an accepted fact that in majority of the cases of domestic violence, the victims are women. Thus, the main intention behind the gender-specific nature of the PWDVA is to facilitate a woman's access to justice, in order to correct the historical disadvantage of unequal power relations and bring women onto a level playing field. Therefore, not only was a special legislation required to address the issue of domestic violence, but there was also a clear need for this legislation to be specifically for women.

Key Features of the PWDVA

The International Human Rights regime recognises an individual's right to life and the right to live that life with dignity. This is reflected in various provisions contained in International legislation such as "All human beings are born free and equal in dignity and rights," "Everyone has the right to life, liberty and security of person" and the recognition of "the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings."

³ Preamble to the UN Declaration on the Elimination of Violence Against Women- A/RES/48/104, 85th plenary meeting, 20 December 1993.

⁴ Art. 15 (3), The Constitution of India–"Nothing in this article shall prevent the state from making any special provision for women and children."

⁵ Art.1, Universal Declaration of Human Rights 1948

⁶ Art.3, Universal Declaration of Human Rights 1948

⁷ UN Declaration on Elimination of Violence Against Women- A/RES/48/104, 85th plenary meeting, 20 December 1993.

Indian law also recognises the right to life in Article 21 of the Constitution. Although it appears to be limited in scope, judicial interpretation has given this right positive effect and extended it. For instance, in the landmark judgment of <u>Visakha v. State of Rajasthan</u>,⁸ the court held that sexual harassment in the workplace is a violation of Articles 15, 19 (1) (g) and 21 of the Indian Constitution.⁹

Unfortunately, efforts made by the Indian Constitution to guarantee women an equal status in society have not been able to fully address the extent of indignity suffered by women as a result of domestic violence. The PWDVA therefore, attempts to address this gap in the Indian legal system by unambiguously recognising a woman's right to a violence-free life by classing domestic violence as a Human Rights issue and a deterrent to development.¹⁰

One of the most unique features of the PWDVA is that whilst it is primarily a civil law, an element of criminal law is incorporated within it to ensure more effective implementation. Both civil and criminal laws have their inherent limitations, such as protracted proceedings in the case of civil law and punitive focus in criminal law. The PWDVA seeks to rectify the same. Reliefs granted under the PWDVA are civil in nature, however, upon breach of civil orders by the perpetrator, criminal aspects come into effect, resulting in imprisonment and/or fine.

Definition of Domestic Violence

This Act also goes on to provide, for the first time, a comprehensive definition of domestic violence¹¹ that encapsulates the diverse forms in which it occurs. The drafters of the PWDVA have been very careful to follow internationally accepted legal principles so as to leave no doubt as to its validity. For instance, it incorporates definitions such as "Violence against women shall be understood to encompass...physical, sexual and psychological violence occurring in the family, including... dowry-related violence, marital rape... non-spousal violence..."¹² and "All acts of gender-based physical, psychological and sexual abuse by a family member against women in the family, ranging from simple assaults to aggravated physical battery, kidnapping, threats, intimidation, coercion, stalking, humiliating, verbal abuse, forcible or unlawful entry, arson, destruction of property, sexual violence, marital rape, dowry or bride-price related violence... shall be termed "domestic violence." It is also important to note that in the absence of a legal recognition of marital rape¹⁴ in India, the inclusion of sexual abuse within the definition

⁸ Art. 21, The Constitution of India – "No person shall be deprived of his life or personal liberty except according to procedure established by Law."

⁹ *Visakha v. State of Rajasthan*, AIR 1997 SC 3011

¹⁰ Statement of Objects and Reasons, PWDVA, 2005– "Domestic violence is undoubtedly a human rights issue and serious deterrent to development"

¹¹ Sec. 3, PWDVA, 2005– "...any act, omission or commission or conduct of the Respondent ...in case it...(a) harms or injures or endangers...whether mental or physical...the aggrieved person ...and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or (b)...coerce her or any other person related to her to meet any unlawful demand for any dowry...(c)...threatening the aggrieved person or any persons related to her...(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

¹² Art. 2 (a), UN Declaration on the Elimination of Violence Against Women– A/RES/48/104, 85th plenary meeting, 20 December 1993

¹³ Para. II C (11), UN Framework for Model Legislation on Domestic Violence, E/CN.4/1996/53/Add.2, 2 February 1996

¹⁴ Sec. 375, IPC contains an exception – "Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape."

of domestic violence in the PWDVA has categorised sexual abuse within marriage as a form of violence.

Right to Reside

The PWDVA seeks to address the non-recognition of a woman's right to residence in the shared household. Whilst the right to reside is not a new concept in Indian Law, previously, this right has never been clearly defined. Section 17 of the PWDVA¹⁵ grants this right to the **Aggrieved Person (AP)**. However, it is vital to understand that the right to reside granted to the aggrieved woman does not confer on her a right of ownership over the property. It is merely a procedural safeguard against dispossession.

Relationships in the Nature of Marriage

The recognition of 'relationships in the nature of marriage' as a type of domestic relationship under the PWDVA is also a hitherto unprecedented legal step forward. This provision affords protection against domestic violence to women in live-in relationships, legally void/voidable marriages and common law marriages. Thus, it enables women who are in bigamous or fraudulent marriages, who would otherwise have no remedy, to seek reliefs. Whilst this provision has invited much criticism and controversy, it is important to note that it does not make an invalid marriage valid or provide legal recognition to bigamous marriages. In a recent case where the constitutionality of the PWDVA was challenged on the ground that it jeopardises the rights of the legal wife, the court held that there was no reason why equal treatment could not be meted out to a legal wife, common law wife, or mistress "like treatment to both does not, in any manner, derogate from the sanctity of marriage ..." This provision merely seeks to denounce domestic violence in any quarter. It is not a judgment call on the morality of the choice to cohabit outside of marriage.

Mechanism under the Law

This Law also attempts to provide women facing domestic violence easier access to court. It imposes an obligation on state governments to put in place support structures to help the women by introducing new authorities under the Law such as the **Protection Officer (PO)** as the key implementing agency of this Law. Despite the civil nature of the PWDVA, the Police are also expected to play a very important role under the Act. The Law also puts into place **Service Providers (SPs)** registered under the Act, notified Shelter Homes and Medical Facilities, and Counsellors to conduct counselling on the direction of the court, and Welfare Experts to assist the court.

Single Window Clearance

Not only does the PWDVA hope to provide women easier access to justice, but in recognising the urgent need for reliefs sought, it also ensures speedier access. It puts

¹⁵ Sec. 17 (1), PWDVA, 2005 – "...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..."

¹⁶ Aruna Parmod Shah v. Union of India, WP, (Crl.) 425/2008, High Court of Delhi (Decided on 07.04.2008)

into place a single window clearance system for women facing domestic violence. Previously, a woman had to seek different reliefs from different courts and this was both time consuming as well as dangerous given the threat to life encountered in most cases of domestic violence.

Reliefs

The PWDVA grants a woman a number of reliefs and she is thus, able to avail support as per her requirements.

- Protection Order is an injunctive order granted to prevent domestic violence or the threat of domestic violence.
- Residence Order protects against dispossession from the shared household, prevents any act that impacts upon peaceful occupation of the same and where the need arises, makes provision for alternate accommodation.
- Custody Order is a temporary order granted until such time as the parties' parental rights are resolved in a separate civil proceedings.
- Monetary relief and Compensation Order are both remedies which are financial
 in nature. However, the main difference is that the former is intended to meet
 expenses actually incurred whilst the latter is meant to compensate for injuries
 caused above and beyond actual monetary loss or expenditure such as depression
 suffered as a result of being subject to domestic violence.
- Interim and ex-parte orders can be granted prior to final orders on proof of a prima facie case.

The provision of immediate reliefs allows the woman the much needed violence-free environment to help her make an informed and well thought out decision on how to proceed.

Multi-Agency Coordination

The PWDVA also imposes a duty on key players such as Police, POs, SPs and Magistrates to inform the woman facing domestic violence of her rights upon receipt of Complaint.¹⁷ Thus, she is made aware of her right to make an application for relief under this Act, availability of services of POs and SPs, her right to free legal aid and right to file a complaint separately/simultaneously under Section 498A IPC as the PWDVA exists in addition to and not to the exclusion of other laws.¹⁸

Conclusion

Sadly, violence is a fact of most women's lives, especially within the domestic sphere. The enactment of the PWDVA was indeed a giant step forward for all women in India. However, a Law is only an instrument of social change. It is in the hands of those implementing this tool to do so effectively and in the spirit in which it was envisioned, thereby contributing to its efficacy.

¹⁷ Sec. 5, PWDVA 2005

¹⁸ Sec. 36, PWDVA 2005

MONITORING AND EVALUATING THE IMPLEMENTATION OF THE PWDVA: A SUMMARY OF THE FIRST AND SECOND M&E REPORTS

Chapter 2

Background

A crucial step towards ensuring the success of any new law is through monitoring its implementation. This is essential in order to put in place systems, at the outset, to guard against non-implementation in the coming years. It also helps identify the strengths and limitations of the law and gauge, over a period of time, whether the law serves the purpose for which it was originally created. It must be remembered that no matter how well conceptualised and painstakingly drafted, no legislation is perfect and therefore, the success of a law lies in its ability to prove effective and benefit its users.

The PWDVA is a relatively 'young' legislation and therefore, its progress needs to be monitored closely by sustained tracking of its implementation. Identifying the importance of this exercise at a very early stage, LCWRI undertook to monitor and evaluate the implementation of this Law immediately upon its enactment and has continued to do so, on an annual basis. It is hoped that this practice may be adopted by the Government in time to come and that, in due course, the overarching question as to whether the PWDVA succeeds in ensuring a violence-free environment for women, may be answered.

Monitoring & Evaluation Report 2007

Objective

• This was the first time that a systematic Monitoring & Evaluation (M&E) of the implementation of any law in India was undertaken. Therefore, the main objective of "Staying Alive: The First Monitoring and Evaluation Report 2007 on the Protection of Women from Domestic Violence Act" (First M&E Report) was to put in place systems to monitor and evaluate the implementation of the PWDVA.

Methodology

As there were no prior monitoring systems/precedents in place, templates for collecting quantitative data from the state governments and the courts were devised by LCWRI. In order to access the information, LCWRI approached the **Ministry of Women and Child Development (MWCD), National Commission for Women (NCW)**, Office of the Chief Justice of India, National Crime Record Bureau and partner organisations working at the state level.

Data on infrastructure and court orders gathered from March to September 2007, was collated and analysed to discern broad trends in practice.

- The analysis of infrastructure data helped obtain an understanding of the manner in which the PWDVA was being implemented and interpreted by various states.
- Orders from the Magistrates' Courts were analysed by examining cases filed, procedures adopted and reliefs obtained by women facing domestic violence.

Structure

The First M&E Report consisted of two main sections. The first section dealt with the infrastructure put in place by various state governments and contained quantitative data on the number of POs appointed, the number of SPs, Medical Facilities and Shelter Homes registered under the PWDVA. The second section dealt with cases filed in various courts throughout India and provided an analysis of the kind of orders passed, the categories of women (such as married women, mothers, daughters and so on) who accessed this Law and the court procedures adopted by various states.

Findings

Some of the key findings of the First M&E Report were:

- The PWDVA was used mainly by married women.
- The most commonly granted relief was Maintenance, while Protection Orders and Residence Orders were next in line. In many cases, reliefs were also granted to widows and daughters.
- The need for:
 - o coordination among government departments in order to build a uniform multiagency response system;
 - o adequate infrastructure to be made available to POs;
 - o training of POs; and
 - o adequate budgetary allocations by the Central and State Governments.
- POs were appointed in all states (excluding 5 states). However, none of the appointments made were on a full-time basis, except in **NCT Delhi (Delhi)** and Andhra Pradesh.
- SPs were registered only in five states.
- Medical Facilities and Shelter Homes were notified only in 12 states.

Upon analysis of the findings, LCWRI was able to identify three different 'models' of the implementation of the PWDVA:

- The Private Model: This system relied on the implementation of the PWDVA mainly vis-à-vis privately appointed Lawyers. The model denoted that women had the financial ability to access private Lawyers and were possibly aware of the existence of the PWDVA, either before they approached their Lawyers or once advised of its provisions by their Legal Counsel. In this model, POs were not facilitating women's access to court as no appointments had been made. Further, significant reliance was placed on the Police and the existing machinery of the courts to implement the Law. Examples of states following this model were Rajasthan, Punjab and Haryana.
- The Public Model: This model was a good example of a multi-agency approach where Police, POs, SP and State Legal Aid Service Authorities (SLSA) worked together

to implement the PWDVA and provide coordinated services to facilitate women's access to the legal system. The only state that was following this model was Andhra Pradesh.

- The Mixed Model: This model was a combination of the Private and Public Models.
 In states that followed the Mixed Model, women could use one of the three options:
 - Hire private lawyers if they could afford it
 - Approach the courts through POs
 - Approach the courts directly

The women had the option of choosing the most appropriate course to follow in view of their individual circumstances. However, in Mixed Model states, the lack of general information about the existence of POs and/or their inadequate numbers was a serious handicap to women accessing justice through public channels. This model was followed by most states, including Delhi, West Bengal, Goa and Kerala.

Whilst the First M&E noted these developing models, we felt it was too early to evaluate these models and their levels of success.

Second Monitoring & Evaluation Report 2008

Objective

The objective of "Staying Alive: Second Monitoring & Evaluation Report 2008 on the Protection of Women from Domestic Violence Act 2005" (Second M&E Report) extended beyond that of the First M&E Report. It aimed to study the different approaches adopted by the states in putting in place infrastructure to implement the PWDVA, assess how effective it was in facilitating a multi-agency response by various stakeholders to ensure women's access to court and other services, identify significant changes since the First M&E Report, examine whether the best practices identified in the First M&E Report were still prevalent, and document the jurisprudence that was evolved by the High Courts and Supreme Court with regard to the PWDVA.

Methodology

One of the key objectives of the Second M&E Report was to carry out analysis of the infrastructure put in place by various states, in order to identify and analyse different typologies that had emerged. As in the previous year, a template was developed to enable collection of both quantitative and qualitative data.

The data collection took place from March to August 2008. Information with regard to infrastructure put in place and steps taken by the states for effective implementation of the PWDVA was gathered from nodal departments of each state such as the MWCD, NCW and the Ministry of Law and Justice. In addition, LCWRI conducted field visits to different states to collect qualitative data and in some instances, LCWRI's partners collected and collated the required information on behalf of LCWRI. The purpose of

¹ The term other services includes services rendered by POs, Police, Shelter Homes and Medical Facilities.

these visits was to understand the functioning of the various agencies/stakeholders, gain insights on the practices adopted by them, examine methods of coordination and cull out the best practices.

The 20 states studied in the Second M&E Report were selected based on the following criteria:

- Insufficient or lack of any data on the states regarding the implementation of the PWDVA (as they had not been visited by LCWRI during the First M&E exercise)
- States that showed interesting trends in the previous year. For instance, although
 there were no POs appointed in Rajasthan, it recorded the highest number of cases
 filed, as opposed to states like Maharashtra and Karnataka, where POs had been
 appointed but reported cases were comparatively lower.

Unlike the First M&E Report, there was no substantial analysis of orders. Instead, focus was given to landmark judgments passed by various High Courts and the Supreme Court with the objective of identifying evolving jurisprudence.

Structure

The Second M&E Report comprised three main sections. The first section covered the infrastructure put in place by the various state governments and contained quantitative data on the number of POs appointed and the number of SPs, Medical Facilities and Shelter Homes registered under the PWDVA. The second section provided information on the functioning of POs under the PWDVA and the manner in which they were facilitating women's access to courts. The final section of this Report contained a review of judgments delivered under the PWDVA.

Findings

Some of the key findings of the Second M&E Report were:

- The inadequate budgetary allocation for the implementation of the PWDVA was a cause for concern. Only 13 states had allocated specific budgets for the implementation of the PWDVA; of these states Andhra Pradesh had allocated the highest amount of INR 10 crore.
- POs had been appointed at the district level in all states; 10 states had appointed POs at the sub-district level while Maharashtra had the highest number of appointments (3,687).
- Registration of SPs had taken place in only 18 states and although existing Shelter Homes and Medical Facilities had been notified in most states, no additional infrastructure support was given.
- Efforts to ensure coordination between government departments had been initiated in only two states: Kerala and Uttarakhand.
- The model adopted by Andhra Pradesh continued to be a best practice among states, particularly with regard to the state's investments in the form of budgetary allocations, infrastructure, training, awareness programmes and coordination among

- stakeholders. Correspondingly, each of the state's 24 districts reported a decrease in cases filed under Section 498A of the IPC. The state-wise average decrease in cases filed under Section 498A from 2007 to 2008 was 41.2 percent.
- The three models of implementation of the PWDVA identified in the First M&E Report continued to prevail.

Conclusion

The M&E of the Law, culminating in the compilation of the First and Second M&E Reports was an enriching experience that wielded a wealth of knowledge. It helped identify practices and trends with regard to the implementation of the PWDVA. However, this is an exercise that needs to be undertaken on a yearly basis at least in the initial years of the PWDVA and until uniform interpretation of the Law evolves. Results and findings of each M&E exercise will vary until stakeholders and beneficiaries become more familiar with the Law and necessary clarity on the Law and its functioning is achieved. Therefore, there is a clear need for the process of tracking to continue.

Chapter 3

MONITORING AND EVALUATING THE IMPLEMENTATION OF THE PWDVA: THE OVERALL DESIGN AND METHODOLOGY FOR THE THIRD M&E REPORT

Background and Objectives

The M&E of the Law has a manifold objective. This chapter discusses the specific objectives that guided the Third M&E Report and presents the overall design and methodology adopted.

The main objective of the M&E exercise undertaken by LCWRI is to monitor and document the implementation of the PWDVA within the framework of provisions and processes prescribed under the Act. A central feature of the Law is the involvement of multiple governmental and non-governmental stakeholders, and the centrality of the PO in coordinating the work of these agencies to establish a multi-agency response for women experiencing domestic violence.

As summarised in Chapter 2, court order reviews and quantitative infrastructure assessment have been the primary monitoring methodology used by LCWRI in the past two years. Putting in place an implementation structure is a significant step. However, an effective response demands, at the minimum, that all stakeholders have comprehensive knowledge of the Law. For knowledge to translate into effective practice, it must be coupled with a non-biased and gender-sensitive attitude. Responding to this crucial need, LCWRI has put in place comprehensive **training programmes for POs, Police and Judiciary (Training Interventions or Trainings)** in Delhi and Maharashtra that not only enhance awareness of various provisions under the PWDVA, but also address basic gender attitudes and emphasise the historical disadvantage suffered by women.

This year's M&E Report, which is the third in the series, extends beyond the First and Second M&E Reports. In addition to presenting the court order analysis and infrastructure assessment, it also presents primary data on **Knowledge, Attitudes and Practices (KAP)** of Judiciary, POs and Police on various aspects related to the PWDVA and women and explores how they influence the implementation of the Law. The data is collected from Delhi and Maharashtra, the states where LCWRI has implemented its Trainings. For comparative purposes, data related to Police officials and POs from Rajasthan, which is not a LCWRI focused state, has been included.¹

¹ The KAP data from Police, POs and other key stakeholders in Delhi, Maharashtra and Rajasthan was collected for the first time this year as part of a prospective three year (2009-2011) evaluation study supported by UNTF. Similar data will be gathered in 2010 and 2011 to assess the magnitude and nature of changes in these states over a period of three years. It is important to mention however, that the purpose of this Report is not to evaluate LCWRI's Trainings. This opportunity is used to carry forward and step up the level of monitoring, and understand how Stakeholders enable or disable the implementation of the Law.

More specifically, data related to KAP of the key stakeholders, seeks to answer the following questions:

- What is the existing KAP of primary implementers of the Law and key stakeholders such as Police, Judiciary, POs on issues related to the implementation of the PWDVA? What is their understanding of the key provisions of the Law, such as its coverage, the multi-agency response, key roles and the range of reliefs available to women? What are the attitudes of the key implementers and how do these influence their existing practices? What are the empowering and disempowering elements they face in implementing the Law? What do they think should be done to enhance effectiveness of the Act?
- What are the attitudes of the stakeholders towards gender equality in general, and women, in particular? Do they believe that women have the same rights as men?
- How and to what extent do different stakeholders work together to implement the Law? What are the impeding and facilitative factors for each of the stakeholders to implement the Law?
- Can the current levels of knowledge and attitudes be improved through focused training programmes?
- What are women's experiences in using the Law at different stages (pre-litigation, litigation, and post)? What do women identify as key facilitators and inhibitors in their process of seeking legal remedies? What other support would help them access reliefs under the Law?

Overall Study Design and Methodology

This study uses both qualitative and quantitative methods, and utilises multiple data sources to gauge the extent and nature of knowledge, underlying attitudes and capture the practices followed by different stakeholders. In addition, pre-training and post-training data collected during the Training Interventions of LCWRI in Delhi and Maharashtra, with Police, Judiciary and POs (wherever applicable), have also been presented.

Study Sites

The key focus states for the purpose of this study are **Delhi and Maharashtra** (**Intervention States**), where LCWRI is conducting Trainings and **Rajasthan** (**Comparison State**), where there is no intervention by LCWRI. Rajasthan will provide comparative data to help evaluate the effectiveness of the LCWRI Training Interventions in Delhi and Maharashtra. The purpose of a comparative state in any study is based on its elements of similarity with the main site of study and elements of dissimilarity, which together provide an analogy.

The choice of Rajasthan as a Comparison State is based on features of similarity and dissimilarity with the states of Delhi and Maharashtra. The primary data on Rajasthan gathered in the previous M&E Reports, indicated that the state recorded

² Interactions with women show that their experience of the Law commences when they first approach Police, POs, SPs, Lawyers or any civil society organisation providing legal aid irrespective of whether they go on to file an application under PWDVA, 2005.

the highest number of cases filed under the PWDVA, despite no appointment of POs in the first year. This is unlike Delhi, which was also among the states that recorded a high number of cases, but had independent POs appointed in the first year itself. Further, in terms of appointment of POs, Rajasthan is similar to Maharashtra, in that it has appointed **Department of Women and Child Development (DWCD)** officials as POs and conferred an additional charge on them. Thus, Rajasthan provides some similitude and some difference, needed for a comparative state. Further, feasibility in terms of time, geographical reach, active civil society organisations and existing partner support were some other factors that guided our selection. It is important to note, that while court order reviews were carried out for Delhi, Maharashtra and Gujarat, in the case of Rajasthan this was not possible owing to non-availability of orders within the prescribed research time frame.

In Delhi, Maharashtra and Rajasthan, a number of districts were selected to gather overall data, based on pre-determined criteria. The overarching criterion in the Intervention States was districts where the LCWRI Trainings will be conducted for three years. In Maharashtra, LCWRI conducted Trainings for Police (which included some POs) in seven districts – Mumbai, Thane, Belapur, Sangli, Buldhana, Bhandara and Nagpur. Based on this, three districts were selected for the purpose of the overall study – urban (Mumbai and Thane) and rural (Sangli).

In Delhi, all districts were covered since LCWRI had implemented programmes uniformly across all districts and geographically, Delhi is an easier city to navigate. Two districts in Rajasthan were selected – one primarily urban (that is, Jaipur, which is also the capital) and the other primarily rural (Jodhpur). The selection of Jaipur is similar to Mumbai in Maharashtra. Thus, the study is attempting to include both the rural and urban scenario within its purview.

Data, Methods and Study Participants

Types of data collected at various levels are described below:

• Self-administered quantitative data (from training participants during both pre and post-training phases): In Delhi and Maharashtra, LCWRI organised 10 trainings for Police and POs. One training was organised for Magistrates in Delhi. Further, at the National level, LCWRI organised three multi-stakeholder trainings across the country with the National Institute of Public Cooperation and Child Development (NIPCCD). During each of these trainings, participants filled in pre and post-training questionnaires at the beginning and at the end of the trainings, respectively. Participants were assessed on the basis of their knowledge about and attitude towards the PWDVA, attitude towards domestic violence and women in general, and women accessing the Law in particular, and the stakeholders' role in the implementation of the Law. A comparison of post training data with that of pre-training data provides an idea about the immediate changes that have taken place and can be expected as a result of the training programme.

- **Observations of training sessions:** In addition to the self-administered data from participants, a total of six training sessions were observed to understand the expanse and depth of the intervention, and also to qualitatively assess the attitudes of participants. These observations also informed the quantitative surveys carried out among the larger population of Police and POs.
- Quantitative Surveys of Police and POs:³ Using the systematic random sampling procedure⁴ described below, a representative sample of police and POs were interviewed in Delhi and Rajasthan⁵ to assess their knowledge about and attitude towards the PWDVA, women in general, and women accessing the law, and practices with regard to its implementation.

Sampling Procedure for Survey

Police: A total sample size of 250 Police officers per state was decided upon for the Survey, using standard statistical assumptions and formulae.⁶

In Delhi, the list of all police stations and **Crime Against Women (CAW) Cells** form the sampling frame. From this list, 50 police stations and CAW cells were selected using systematic random sampling. Then from each of the selected police stations, five Police Officers including Duty Officers, **Investigating Officers (IOs)** and **Station House Officers (SHOs)**⁷ were selected randomly from among those who were present in the police stations and willing to participate in the survey. Among IOs, preference was given to the officers who were more likely to be approached for cases of domestic violence, such as female IOs.

In Rajasthan, all the police stations from Jaipur and Jodhpur including the *judgment thanas* formed the sampling frame. Following a procedure similar to Delhi, 250 police officers were selected in Rajasthan for the survey.

All interviews were face-to-face with the selected officers. The interviews followed structured questionnaires.

In Delhi, 17 POs are appointed, while in Jodhpur and Jaipur, 50 are given this additional charge as POs. Since the total number of POs is not a large number, they

³ The Survey with the Police and POs as part of the study was to be conducted in the Intervention States, Delhi and Maharashtra, and the Comparison state, Rajasthan. However, owing to delay in permissions, the Survey was not conducted in Maharashtra this year.

⁴ Systematic Random Sampling Procedure – All sampling units (i.e. Police Stations in this study) are serially numbered. Then, the total number is divided by the number of units to be selected to get the sampling interval. A random number between 1 and the interval is selected to get the serial number of first selected sampling unit. The subsequent units are selected by adding the interval in the previous number. This continues till the desired number of units gets selected.

⁵ Due to delay in securing official permissions in Maharashtra for the survey, baseline surveys with both the Police and POs could not be completed within the time allocated to research. Therefore, the results from Maharashtra, using qualitative and quantitative methods shall be presented in the next M&E report.

⁶ In the absence of any previous quantitative data, assuming that only 30 percent of the Police Officers are aware of their role under PWDVA, 2005 and are providing support to POs for the implementation of the Law, a sample of 125 was thought to be sufficient at 95 percent level of significance and 80 percent power to measure the change of 20 percent point. Further, assuming that only half of the Police Officers may get an opportunity to interact with POs, a total sample size of 250 in each state was finally arrived at.

⁷ Interactions with the Police indicated that IOs, SHOs and Duty Officers were most likely to interact with the woman approaching the police station and are key decision makers in the Police Station.

were all included in the sample, and face-to face interviews were conducted.

- **Key Informant Interviews (KIIs):** Qualitative interviews were carried out with key officials of nodal departments responsible for implementing the Law in all three States (Delhi, Maharashtra and Rajasthan). They included senior Police Officers, registered SPs and NGO representatives. A total of 11 key informants were interviewed in all three States five key Police Officials, two officials from the DWCD and four SPs. By far, through the study period, accessibility to the Judiciary has been the most challenging, making the data available from them minimal. Since the Judiciary is a critical stakeholder in the implementation of the PWDVA, in that they provide meaning to the intent and spirit of the Law, efforts are ongoing to gather their perspectives and will be included in subsequent reports.
- Participatory Focus Groups (PFGs): In order to understand the dynamics of the implementation processes and gather insights into the enablers and constraining factors with regard to the implementation of the PWDVA and also the existence of formal and informal support for women living with domestic violence, Participatory Focus Group Discussions (PFGD) were carried out with women in Delhi and Rajasthan only. The PFGs were not conducted in Maharashtra owing to time constraints. In Delhi, similar PFGs were carried out with POs.8
- Court Order Analysis: In keeping with the focus on three specific states in this year's report, the court order reviews were carried out for Delhi, Maharashtra and an additional state Gujarat.⁹ Orders from Rajasthan could not be included in this year's Report.¹⁰ The court orders passed from 1 April 2008 to 31 March 2009 were included in the study.
- The orders from the states of Delhi and Maharashtra were received from the High Courts of Delhi and Mumbai, respectively, while those of Gujarat were collected and provided by NCW. A total of 72, 602 and 178 orders from Delhi, Maharashtra and Gujarat respectively were included in the analysis. The orders included:
 - Δ interim and final orders passed by Magistrates' Courts during the identified timeline;
 - Δ orders passed by Sessions Courts in appeal during the identified timeline; and Δ applications received by the trial courts.
- Analysis of Infrastructure Data: In the Third M&E Report, the focus on infrastructure, as information was sought in addition to that derived strictly from quantitative data. We hoped to qualify basic infrastructure data by collecting details of the nature of reporting systems, service of notice, role of various stakeholders

⁸ Practical constraints, including time and coordination efforts, required to gather District level DWCD officials, meant that a similar exercise could not be undertaken in time and had to be postponed in Rajasthan and Maharashtra to next year.

⁹ Though Gujarat does not form part of the three-state study, orders from Gujarat were selected because Gujarat reflects the national average in terms of appointment of POs. Existing officers are given the additional charge of POs; independent, contractual POs are also appointed and in addition, there are POs appointed at the District level. Thus, the system of PO appointments in Gujarat represents the varied and differential nature of appointments nationally, which is done on an ad hoc basis.

¹⁰ Although orders were received from Rajasthan, these were for the period 2007 to 2008 and therefore, could not be used for the purpose of the Third M&E Report.

and the nature of training and awareness being provided at state level. To carry out this objective, detailed questionnaires were designed and circulated to all states. LCWRI then convened a **National Meeting of Nodal Departments** (**Pre-Conference Meeting**) in collaboration with NCW on 25 August 2009, where all state representatives were invited and 25 states attended. In this forum, representatives discussed the implementation of the PWDVA in their individual states and provided LCWRI with completed infrastructure questionnaires, previously circulated. The data collected focused on infrastructure, appointment of POs, Medical Facilities, Shelter Homes, notified SPs and coordination between the stakeholders.

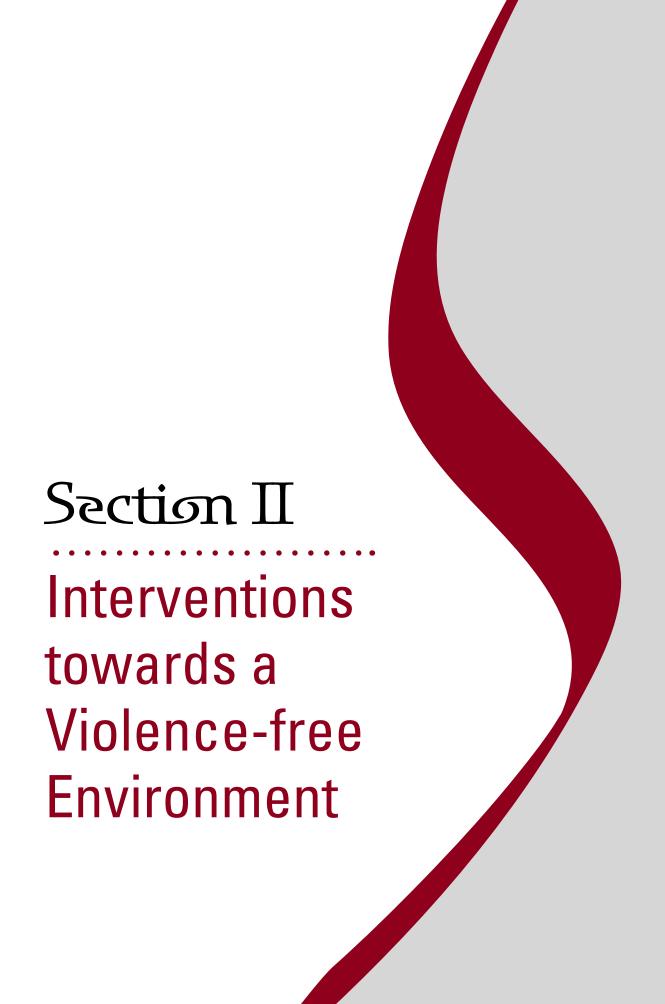
Challenges and Limitations

The data gathering process presented several challenges, some of which have been referred to previously in this chapter and are dealt with in detail below:

- Officials in several of the government departments were approached to obtain necessary permissions for undertaking research, were extremely cooperative. The process of obtaining permissions, nevertheless, was very time consuming. Thus, data collection and analysis of the findings for Maharashtra could not be included in the Third M&E Report and will be presented next year.
- Access to the Judiciary has been most difficult, thus, making the data available from them minimal.
- Even after securing permissions, interviews with Police Officials were fraught with obstacles. Given the nature of their work, officers often had to attend to other responsibilities while being interviewed and sometimes interviews could not be completed at a single stretch as officers had to leave for other duties.
- Conducting PFGDs with women who have accessed the Law is a critical component
 of the study. In Delhi, women were often pursuing their cases in court and thus,
 unable to give time. Further, many who faced negative experiences in court were
 reluctant to share their experiences.
- In the absence of a comprehensive monitoring system at National and state level, collection of infrastructure data and court orders was not an easy task. There is no centralised depository of data on court orders. The process of requesting for and obtaining orders from courts is a major challenge. Due to the unavailability of the court orders in the requisite timeline, data for Rajasthan could not be presented in this Report. The DWCD collects data from POs, but this is limited to what is available or known to POs, and may present only a partial picture.
- The primary data collection focuses on three Indian states, and may have limitations in inferring the overall situation in other states in India. However, given the detailed nature of the study and the fair assumption that all states have sites of commonality and departure with respect to the implementation of the PWDVA, we hope the study will throw strong insights into the PWDVA and its overall implementation.

Conclusion

As the Law becomes more effective in operation and utilisation, the significance of systematic and intensive evaluation of its implementation will become even more critical. It will then be beyond the capacity of any one or even a few organisations, with limited resources, to undertake a nation wide exercise. The three M&E Reports suggest critical indicators and sound methodologies, which can be adopted by state and Central Governments to set-up effective monitoring systems to compile data and undertake periodic assessments. This collaboration will go a long way in our endeavour of making the PWDVA a useful legislation to better the lives of women affected by domestic violence.





INTERVENTIONS BY LAWYERS COLLECTIVE **WOMEN'S RIGHTS INITIATIVE**

Chapter 4

Summary of LCWRI's Interventions

he preparation of an annual M&E Report is a comprehensive initiative that tracks the implementation of the PWDVA in various states, thereby holding them accountable. In doing so, it influences future implementation, through the sharing of best practices, documenting of enablers, and identification of gaps. However, effective implementation of the Law necessitates interventions at multiple levels.

Towards this end, in 2009, with support from the UN Trust Fund to End Violence against Women (UNTF), LCWRI commenced its four-pronged interventions, to realise the vision of the PWDVA and create a violence free environment for women. The LCWRI Interventions will be conducted over a period of three years and include:

- Conducting Trainings for key stakeholders obligated to implement the Act in the Intervention States.
- Conducting multi-stakeholder national trainings in collaboration with NIPCCD.
- Preparing annual M&E Reports to track the implementation of the Law.
- Providing legal aid to women facing violence at home.
- Engaging in advocacy to create awareness of the PWDVA among women and civil society organisations through the distribution of Information, Education and Communication (IEC) materials.

LCWRI has taken a conscious decision to collaborate with the relevant National and/or state level institutions for all its capacity development efforts. These include National agencies such as the National Judicial Academy (NJA), NIPCCD, state level institutions such as the State Judicial Academies (SJAs), state departments such as Police and Social Welfare Departments (SWDs). Such collaborations are critical in order to facilitate a better understanding amongst key stakeholders of the Law, their roles and the importance of a multi-agency coordinated response under the PWDVA. More significantly, they are platforms to advocate for the urgent need to institutionalise regular and sustained training programmes.

It is hoped that the M&E exercise, resulting in the compilation of the annual M&E Report, which is a consultative process involving Central and state governments, stakeholders, practitioners and civil society, will encourage each state to take a proactive role in the accurate and meaningful implementation of the Law. In turn, identifying the best practices adopted by various states will also encourage National agencies to promote these models as a uniform approach to be followed by state agencies. Thus, each state

LCWRI's Interventions

1. Training Interventions

National Level	State Level
• Implementing agencies – nodal departments, Police, LSA, POs, SPs, Shelter Homes etc – 3 zonal trainings per	Police – Delhi: 3 trainings per year Maharashtra: 7 trainings per year
• Judiciary – 1 per year	Judiciary – Delhi: 1 training in year 1 Maharashtra: 1 training in year 2 Tamil Nadu: 1 training in Year 3

2. M&E of the Law at the National Level

Compilation and dissemination of an annual M&E Report

3. Provision of Legal Services and Support

- Provision of free legal advice and representation
- Creation of a Survivors' Group with monthly meetings

4. Advocacy and Dissemination

Publications, IEC materials and regular updates on website

would benefit from the learning and experiences of other states, and it would also serve as an important platform for advocacy of the PWDVA.

LCWRI remains committed to facilitating access to justice for women from all strata of society. In addition, the provision of legal aid for women facing domestic violence will contribute towards identifying loopholes in the practical working of the PWDVA, act as a model for other Lawyers untrained in and unfamiliar with the Legislation, and set judicial precedents that assist in broadening the scope of the Law and aid beneficiaries as a whole.

Given that the Act is still in its natal stage, the need for awareness generation and advocacy cannot be stressed enough. As is evident, each of the above mentioned LCWRI Interventions have awareness generation and/or advocacy as an inherent component. These will result in increased knowledge of the Law, and encourage all stakeholders to commit to its effective implementation.

Whilst each of the above mentioned LCWRI Interventions is equally important, for the purpose of this Report, this chapter discusses the capacity building trainings undertaken in the year 2008-2009. As described in Chapter 3, a key research question is to understand whether, and to what extent, the Trainings influence current levels of knowledge and attitudes among various stakeholders. The findings from these will pave the way for concrete suggestions on the kind of interventions and efforts that will result in a more effective implementation of the Law.

This chapter goes on to examine the capacity building programmes and summarise the key findings.

LCWRI's Interventions

Background

The PWDVA recognises that women facing violence within their homes require various forms of assistance from different sources, and that violence requires a multi-faceted, wide-ranging response which an individual stakeholder may not be able to provide. Therefore, the Act identifies as key implementers, the Judiciary, POs, SPs, Medical Facilities, Shelter Homes, Legal Aid Providers and the Police, who are expected to work together to ensure a coordinated multi-agency response.

Interventions

Judicial Training Programme

This year, the training programme for Magistrates in Delhi was conducted in collaboration with the Delhi SJA. A total of 27 Magistrates, with 8 women Judges from Mahila Courts¹ attended the training in Delhi. The training was held to equip and sensitise the Judiciary on how best to use the Law to meet its intent of providing efficacious reliefs to women facing domestic violence. The participants were Magistrates from Delhi who essentially deal with cases of domestic violence. The focus of this two-day training was not only on substantive and procedural issues but it also provided space for discussion on the practical experiences of the Magistrates, the good practices adopted by them and the problem areas in the Law. The trainings adopted a problem solving approach by dedicating two sessions exclusively to group work exercises that required the participants to identify issues that needed redress and provide their own solutions.

Emphasis was placed on a gender sensitive approach through sessions that examined domestic violence as a Human Rights issue and discussed the impact of violence on women, which required the participants to challenge the traditional understanding of domestic violence. In addition, to facilitate appreciation of the role of POs, representative POs were invited to provide their perspectives and discuss concerns with the Magistrates.

Findings from Judicial Trainings: Pre and Post-Assessment

The findings from the pre and post²-assessment merit a careful and critical consideration, as the PWDVA vests the Judiciary with discretionary power to provide timely relief and justice to the aggrieved women. They need to have a clear understanding of and act on the intent and spirit of the Law. This assessment will also inform and influence the future capacity building interventions of LCWRI, as it would help identify gaps with respect to the Law.

¹ The state of Delhi has nine districts. Each of the districts has its own *Mahila* Court. The *Mahila* courts deal with all matters relating to women, including cases under the PWDVA.

² 'Pre' here refers to data recorded prior to the training and 'Post' refers to data recorded at the end of the training.

As previously mentioned, a total of 27 Magistrates attended the training in Delhi. The overall findings from the data are presented below in percentages (see Annexure 2 for data in percentages and whole numbers).

- Attitudes and Perceptions of Judiciary towards gender equality and domestic violence: The questionnaires distributed record a positive change in the overall attitudes subsequent to the training. For example, the training resulted in a significant increase in the number of Magistrates who acknowledged the presence of sexual violence within marriage. On the other hand, despite the change, a substantial proportion of Magistrates still continued to believe that welfare of the family should come before the rights of the women. The training had a positive effect with regard to the attitude towards domestic violence, however, much needs to be done to make Magistrates more gender sensitive. This is evident from the fact that even after the training, approximately half the Magistrates present still agreed fully or partially to statements such as 'for a successful marriage, sometimes a man needs to discipline his wife', 'too much fuss is made about domestic violence against women' and 'women in live-in relationships invite violence upon themselves by entering into illegitimate relationships.'
- Knowledge of the PWDVA: Confusion persisted among nearly one-third of the Magistrates on certain aspects such as, whether the woman can be a Respondent or not, and whether the right to reside is valid only if the shared household is owned by the husband.
 - Participants remained unsure whether an unmarried sister has a right to residence against her brother. The training was able to positively influence knowledge around the **Domestic Incident Report (DIR)**, with a fewer number believing that it was mandatory to initiate legal proceedings after the training.
 - Confusion on the Home Visit Report persisted, as nearly half of the Magistrates were either unsure or stated that it was the same as a Social Investigation Report (the nature of a Social Investigation Report is unclear, however, Magistrates have been using the expression and directing the POs to conduct the same). However, it was interesting to note that after the training, there was increased understanding of the purpose of the Home Visit; more than 90 percent of the Magistrates reported that home visits can be ordered to ascertain the standard of living of the Respondent as opposed to 74 percent prior to the training.
 - Counselling was an area that did not reflect a promising trend. This needs to be explored further as, often, the burden of settlement or keeping the family together despite the violence, can be imposed on women and *counselling with this underlying notion* can be detrimental for the women and defeat the spirit of the Law. This finding highlights the need for further clarification in the Law on the procedure and method of counselling to be adopted. This finding validates the need to specify that any form of counselling should respect the wishes of the woman and safeguard her interests.
- Key Stakeholders and their Role: The Magistrates were aware that POs were
 the key stakeholders in the implementation of the Law. While they were aware of
 the POs pre-litigation role, they were divided on the role of POs in the enforcement
 of the court order.

Surprisingly, more than one-third of the Magistrates did not understand the role of the Police in situations of breach of a court order, in confiscation of the weapon used by the Respondent and their duty to inform women of their rights under the PWDVA.

The training was successfully able to convey to one-fourth of the participants that there existed a provision of a multi-agency response system.

• Amendments suggested to the PWDVA by the Magistrates: Almost all amendments suggested at the end of the training were similar to the ones suggested at the beginning. However, the exception was with regard to the opinion that the definition of domestic violence needs to be limited; at the start of the training, 60 percent of the participants felt that the definition needed limiting, however, this reduced to 42 percent post training.

Police Training Programme

In a majority of cases, Police remain the first port of call for women affected by domestic violence. The one-day trainings for the Police aimed to enhance their understanding of the provisions of the PWDVA, emphasise the importance of their role under the Law despite it being a civil legislation, and highlight the importance of a multi-agency approach. As in the judicial trainings, a deliberate decision was made to include POs and wherever possible, NGOs in these training programmes to create a platform for communication and encourage coordination between these key stakeholders.

This year, three trainings programmes were organised in Delhi in the Northern, Southern and Central Range in collaboration with the CAW Cell. LCWRI also approached the Delhi SWD to ensure that POs also attended each of these training programmes.

In Maharashtra, seven training programmes were organised in collaboration with the office of the Special Inspector General of Police, **Prevention of Atrocities Against Women (PAW) Cell,** Government of Maharashtra. These training programmes were held in Mumbai, Thane, Belapur, Sangli, Nagpur, Bhandara and Buldhana.

Each training programme in Delhi was attended by Police Officers from the ranks of Inspector and Sub Inspector. In Maharashtra, the participating Police Personnel were chosen by the Police Department, in consultation with LCWRI. Those invited were either Police in charge of their respective stations or from the CAW Cell in Maharashtra. In both states, participants were chosen for their position as heads of Police stations, while Police Personnel from the Women's Cells were selected due to the fact that they deal exclusively with cases of VAW.

The first half of the training focused on increasing awareness about domestic violence and understanding of the PWDVA. There were sessions on the constitutional provisions linked to the role of the Police under the PWDVA, an interactive session on the impact of domestic violence which included the screening of short films and music videos on domestic violence, and a comprehensive overview of the PWDVA highlighting the rationale for the Law and its various provisions. The second half of the day, emphasised the technical aspects of the Law, such as the mechanisms and procedure, the role of the

Police and the importance of coordination with POs and SPs for better implementation of the Law.

For all trainings, pre and post-training questionnaires were circulated, the assessment of which, provided insights into the impact of the training on the knowledge and attitudes of the participants.

Findings from Police Training: Pre and Post-Assessment
The total number of participants was 150 in Delhi and 350 in Maharashtra. (Please see Annexure 3)

- The trainings appear to have had a definite impact on attitudes around the inclusion of women in live-in relationships within the ambit of the PWDVA in both the Intervention States. Significantly, more participants agreed that women in live-in relationships or women committing adultery should be covered/granted reliefs under the PWDVA after the trainings. The positive change (i.e. the increase in those agreeing that woman should be covered/granted reliefs) is more from the category of 'partially agree', which indicates that those who were unsure, undecided or confused prior to the trainings have correctly understood the information imparted to them. At the end of the training, participants felt that beating one's daughter is domestic violence.
- In the Intervention States, the trainings positively influenced attitudes around preserving the woman's rights with a significantly larger number of participants disagreeing with the statement "women before filing a complaint of domestic violence should consider how that would affect their children." However, there were still a fair amount of Police Officers who continued to retain their negative attitude. It was of concern that in Maharashtra, social norms around violence, such as the perception that domestic violence is a family affair, was not impacted by the trainings.
- Both the knowledge and perception of what constitutes domestic violence shows a positive increase after the trainings. There was an increase in the recognition of 'non-life threatening' acts such as ridiculing, refusing to give money, slapping once in a while as forms of domestic violence.
- Confusion persisted with regard to specific definitions and provisions. There was
 a high agreement on all options of examples of APs, even the incorrect ones. The
 confusion with regard to Respondents appeared to be rooted in the uncertainty
 related to whether females can be both APs and Respondents. Other aspects on
 which the Police were not clear were the right to reside, the civil criminal nature of
 the Law and breach of order.

NIPCCD Training Programmes

The Sensitisation Programme for Effective Implementation of the PWDVA conducted in collaboration with NIPCCD spanned over a period of two days. The total number of participants was 123.

These programmes were organised to ensure National coverage and cover all key stakeholders from various states. Three zonal trainings were organised in collaboration with NIPCCD in Bangalore, Lucknow and Guwahati with the aim of enhancing knowledge and building NIPCCD's institutional memory and increasing inter-departmental training programmes. It is expected that the training shall facilitate onward training programmes conducted by NIPCCD nationally and by its Regional Centres in their respective states/jurisdictions.

Participants of the training included senior officers from nodal departments (e.g. the Central and state governments with MWCD and DWCD or SWD acting as the nodal ministry), POs at the district/state level designated by DWCDs, senior Police Personnel designated by the DIG in charge of PAW cell, notified Medical Facilities and Shelter Homes, registered SPs including members of the Central Social Welfare Boards and NGOs, representatives of women's organisations and civil society groups and SLSAs. The content of the trainings was similar to those held with other stakeholders, except for the inclusion of six case studies on the substantive and procedural aspects of the PWDVA for the participants to foster a practical understanding of the Law.

Findings from NIPCCD Training Programmes: Pre and Post-Assessment
Analysis and observation from the pre and post-assessment is produced below:

- On the ambit of domestic violence, there was a reduction in the number of participants who were of the opinion that domestic violence could be resolved through counselling, that live-in relations should not be covered under the Law, and that beating one's daughter did not amount to domestic violence.
- The analysis of the questionnaires also revealed an increase in the opinion that
 the role of nodal departments was to carry out awareness programmes. The
 knowledge that POs, Police, SPs, Legal Aid Lawyers, Medical Facilities and Shelter
 Homes are the stakeholders under the Law increased after the training, and almost
 all participants expressed this opinion.
- Understanding the profiles of key stakeholders is of utmost importance, in light of
 the fact that general perception towards the Police, Medical Facilities and Legal Aid
 Lawyers in the context of their responsibility under the PWDVA remains extremely
 poor. Also, participants needed to be acquainted with the fact that the PO remains
 at the focal point coordinating the mechanisms under the PWDVA, thereby existing
 as the most important stakeholder. The trainings successfully achieved these
 objectives.
- Specific legal concepts under the PWDVA such as the AP, Respondent, definition of domestic violence, reliefs etc. were also clarified. The overall understanding of participants with reference to domestic violence as described in the PWDVA, and acts such as slapping the woman, forcing the daughter to get married against her wishes, calling by name, refusing to give money to the woman, all showed a significant positive increase after the training. Similarly, knowledge of participants with regard to reliefs under the PWDVA substantially increased. Issues of the role of nodal departments and stakeholders such as Legal Service Authority (LSA), Police, SPs, POs were substantially clarified and enhanced the knowledge of participants after the training. Concerns of the responsibility of nodal departments towards budgetary allocations, appointment of POs, trainings

for various stakeholders, registration of SPs were adequately addressed during the trainings.

• It is also worthwhile to note that considerable change took place in the understanding of the critical role of Police in the nature of assistance provided by them. In particular, knowledge was enhanced in the context of understanding the assistance of Police in service of notice, enforcement of orders and Home Visit.

The Member Secretary of the UP SLSA, who attended the Lucknow training, came to understand the provisions regarding legal aid to the AP under the PWDVA. Accordingly, that very day, a circular was issued by him to the effect that a panel of five lawyers, preferably comprising women, should be prepared to give legal aid to the APs under the Act and render all help to SPs and POs. The direction given by the UP State LSA was a direct impact of the Sensitisation Programme. This is indeed a measure of the success of the training programme and reiterates the relevance of such workshops.

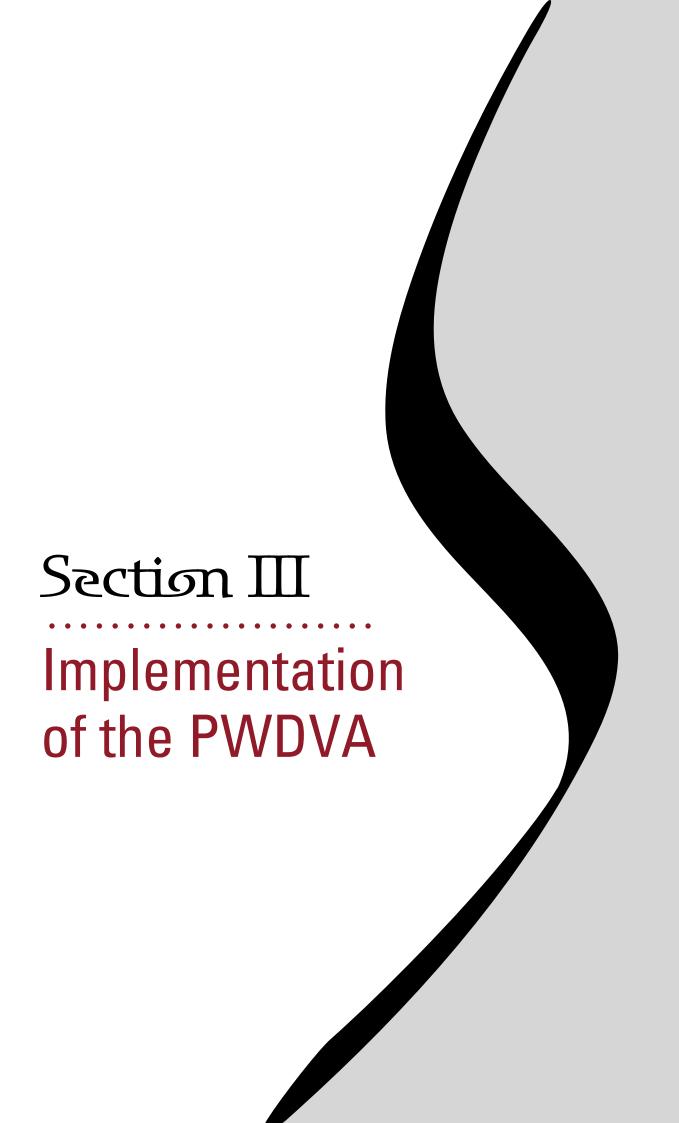
Conclusion

Overall, the trainings are indicative of an immense potential to cause a positive shift in knowledge and attitudes of key stakeholders around issues of gender and violence. There is recognition that the definition of AP includes women outside marital relationships and that the definition of violence includes traditionally perceived 'milder' forms of violence.

However, some attitudes remain stubborn to shift, and have their roots in patriarchy such as, violence being a family affair and giving priority to the welfare of family over that of the woman. These may require a more focused discussion, as a change in such attitudes is not merely a result of increased knowledge. There is a need for careful examination of norms that may be a barrier to a woman's right to a violence free life. Also significant to note is that though the trainings show positive change, those who resist this change are many and such few trainings are clearly insufficient. The State therefore, should include gender and Law in its training curriculum.

Whilst it is obvious that what is recommended is repeated and systematic trainings, conducted on a regular basis through nodal institutions, observations of these trainings point to several issues that must be addressed to make trainings more effective. The importance of an interactive methodology cannot be stressed enough. The assessment points to several critical areas of knowledge that need to be addressed in trainings and the need to extensively discuss perceptions and attitudes.

The Magistrates remain the most critical fraternity to influence, and efforts to sensitise Judicial Officers on the PWDVA must address the question of whether and how much to focus on personal attitudes. On the one hand, Judges are expected to be unbiased representatives of the Law. However, this is not always possible due to individual attitudes, cultural and social bearings and perceptions. Findings suggest that much work remains to be done to positively influence attitudes and therefore, trainings must strike the balance by addressing knowledge of the Law and attitudes.



THE NATIONAL SCENARIO: INFRASTRUCTURE PUT IN PLACE FOR EFFECTIVE IMPLEMENTATION OF THE PWDVA

Chapter 5

Background

As indicated in previous chapters, the PWDVA mandates a system wherein it is the responsibility of nodal departments of each state to put in place the required infrastructure to implement the Act. Issues such as proper administrative support, appointment of experienced officers, intensive training, mass awareness generation, adequate budgetary allocation and regular review of the systems in place will go much further in providing relief to women.

This chapter aims to provide a national picture of the steps taken by each state to facilitate the implementation of the Law. It is hoped that this would enable states to learn from each other's practices and create models for the implementation of the Law to suit their specific requirements.

As discussed in Chapter 3, data was collected via completion and submission of infrastructure questionnaires by state nodal departments at the Pre-Conference Meeting. However, some limitations were faced in this data gathering exercise. For instance, the state's **Department of Social Welfare (DSW)** or DWCD is the only source from where National level data can be obtained. However, this data received is usually only quantitative. As such, they are not ideally placed to provide detailed information related to practice. Further, in most states, it is only the POs who report to the nodal departments and thus, we were unable to obtain comprehensive national data related to practices adopted by other key stakeholders such as SPs, Shelter Homes and Medical Facilities.

It is important to note that the information discussed in this chapter is strictly based on the data provided by state nodal departments.¹

Stakeholders Under the PWDVA

Protection Officers

POs are the key authorities appointed under the PWDVA and their main function is to act as an interface between women experiencing domestic violence and the courts. Additionally, in the post-litigation stage, POs assist the court in the discharge of their functions. Thus, POs function under the control and supervision of the Magistrates,

¹ This data was obtained by the Nodal Departments from POs.

and perform duties assigned by the Magistrates, the government and as prescribed under the Act.²

Nature and Profile of Appointment

The PWDVA has vested state governments with the responsibility to appoint POs.³ The number of POs to be appointed, their experience and training requirements have been left to the discretion of the states. However, guidelines are provided in the Act⁴ stating that POs should have at least three years work experience in the 'social sector,' that appointments should be for a minimum tenure of three years and that POs should be provided with the necessary assistance for the discharge of their functions. Both the Act and the **Protection of Women from Domestic Violence Rules, 2006 (PWDVR)** provide that, preference shall be given to women. The Law further recommends that members of NGOs can also be appointed as POs.⁵

Table 5.1: State-wise Appointment of POs

State	Total Population ⁶	No. of Districts	No. of POs	Level	Nature of Post
Andhra Pradesh	76,210,007	23	104	District, Divisional and Taluk	AddlProject Director, Revenue Officers
Arunachal Pradesh	1,097,968	13	n/a	n/a	n/a
Assam	26,655,528	23	27	District	AddlDSWD
Bihar	82,998,509	37	16	District	Addl. -Directors of Short stay homes
Chandigarh	900,635	1	3	District	AddlCDPO
Chhattisgarh	20,833,803	16	18	District	AddlDowry Prohibition Officers, Child Marriage Prohibition officers and District Officers of the nodal Department
Delhi	13,850,507	9	17	District	Independent on contract
Gujarat	50,671,017	25	26	District	AddlSocial Defence Officers and Dowry Prohibition Officers
Goa	1,347,668	2			
Haryana	21,144,564	19	20	District	Contractual but given one more post of Child Marriage Prohibition Officers
Himachal Pradesh	6,077,900	12	377	Taluk	AddlICDS Supervisors
Jharkhand	26,945,829	18	204	Block	AddlCDPO
Karnataka	52,850,562	27	214	District and Taluk (29 +185)	AddlCDPO

Cont...

² Sec. 9 (2), the PWDVA, 2005

³ Sec. 8, PWDVA, 2005

⁴ Rule 3 (2)- (4), PWDVR, 2006

⁵ Rule 3 (1), PWDVR, 2006

⁶ This information is derived from Census of India 2001

Kerala	31,841,374	14	31	District	Addl. -District Probation Officers + 14 Independent
Madhya Pradesh	60,348,023	45	367	Taluk	AddlCDPO
Maharashtra	96,878,627	35	3892	District , Block and Taluk	AddlTehsildars, Nayab Tehsildars, Block Development Officers, Extension Officers, Community Development Officers, CDPO, Sub- Divisional Officers.
Manipur	2,293,896	9	8	District	Addl. -CDPO and District Programme Officers
Meghalaya	2,318,822	7	7	District	Addl. -District Social Welfare Officers
Mizoram	888,573	8	9	District	Addl. -CDPO, District Social Welfare Officer
Nagaland	1,990,036	8	n/a	n/a	n/a
Orissa	36,804,660	30	30	District	AddlSupervisors of ICDS
Punjab	24,358,999	17	148	Block	AddlCDPO
Rajasthan	56,507,188	32	548	District and Block	Addl. -Deputy Directors, CDPO, Prachetas, Supervisors
Sikkim	540,851	4	4	District	Addl. -Joint Director and Additional Directors, Nutrition Cell
Tamil Nadu	62,405,679	30	31	District	Addl10 District Social Welfare Officers and 21 Independent appointees
Tripura	3,199,203	4	n/a	n/a	n/a
Uttar Pradesh	166,197,921	70	71	District	AddlDPO
Uttarakhand	8,489,349	13	n/a	n/a	n/a
West Bengal	80,176,197	18	39	District	20 Independent, 19 on Addl. . basis (District Social Welfare Officers)

Based on the information provided in Table 5.1, the following observations can be made:

- POs have been appointed in all states although the ratio of POs to women varies from state to state. This may make it difficult for women to access POs in states where the number of POs are proportionately low.
- Majority of appointments of POs appear to be at the district level. It is only in Andhra Pradesh, Karnataka, Jharkhand, Himachal Pradesh, Madhya Pradesh, Maharashtra and Punjab that POs have been appointed at Taluk and/or Block levels. In Bihar, out of 37 districts, POs are appointed in only 16 districts. The level at which appointments are made is important as it affects the accessibility to POs. For instance, when more appointments are made at grassroots level, then women's access reflects an increase.⁷
- In the Second M&E Report, it was only in Delhi and West Bengal that POs were appointed on an independent basis. However, this year Haryana and Tamil Nadu

⁷ Later in the chapter, an attempt is made to see whether there is a correlation between the number of POs appointed and the number of cases being filed under the Law.

have also appointed independent POs. It is interesting to note that in Haryana, the newly appointed POs-cum-Child Marriage Prohibition Officers (PPOs) form part of the Special Cells for Women and Children (Special Cells).

Special Cells in Haryana

Special Cells have been established in police headquarters of each district in Haryana, in coordination with the Department of Home Affairs and Tata Institute of Social Sciences, Mumbai. The appointment of full time PPOs who are a part of these Special Cells began in November 2008. In some districts, PPOs are assisted by two Police Officers and a Clerk-cum-Data Entry Operator. The Department has also appointed a Consultant at each police headquarter to coordinate the work of the PPO, ensure effective implementation of the PWDVA and of the Prohibition of Child Marriages Act 2006. All PPOs in the state have undergone four trainings on the implementation of the PWDVA.

Sou. Ratnabai Jaising Patil & Ors v. the State of Maharashtra

In a recent judgment passed by the Mumbai High Court in the case of <u>Sou. Ratnabai Jaising Patil v. State of Maharashtra</u> (Criminal Appeal No. 359 of 2008), observing that the effective implementation of the PWDVA would reduce the number of cases of cruelty and other forms of atrocities against women, the court issued a list of guidelines.

The Court issued the following directions:

- One of the social workers in each of the 20 Counselling Centres (Special Cell for Women and Children) shall be notified by the Government of Maharashtra as a Protection Officer under the PWDVA, 2005, and the other such social worker shall be registered as Service Provider under the said Act within 4 weeks of the passing of this order.
- The Government of Maharashtra shall establish at the district level in every district of Maharashtra within the jurisdiction of each Police Headquarter, a Counselling Centre (Special Cell) for Women within 12 (twelve) weeks of the passing of this order.
- The Home Department and the Superintendent or Commissioner of Police, Government of Maharashtra shall for its smooth functioning provide necessary infrastructure.
- The Judicial Officer's Training Institute and the Police Training Academy for the State of Maharashtra is directed to introduce in its curriculum topics related to violence against women. The assistance of TISS and Nirmala Niketan should be taken for formulating and conducting such part of the curriculum.
- The Government of Maharashtra shall create more Counselling Centers (Special Cell) for Women and Children at the Taluk level in a phased manner.

The aforementioned Mumbai High Court order (see text box), would translate into both POs and SPs working under the same institutional roof and functioning as the same organisation. This could cause confusion related to the demarcation of duties of the POs, who would be encouraged to counsel the women. However, it remains to be seen whether the above guidelines would function at ground level. It is interesting to note that in a few orders from Maharashtra (detailed in Chapter 9), the court had directed the state government to appoint POs.

The debate on whether POs should be a separate cadre of independent officers or existing officers given additional duties (such as the CDPOs etc.) remains unresolved. At the Pre-Conference Meeting, a number of states expressed their opinions in this regard (Please see Annexure 4). Their observations indicate that while some states have appointed POs on an 'additional' basis and others have an 'independent' cadre, both have their advantages and disadvantages. Merely appointing an independent cadre of POs is, in itself, not a sufficient solution and additional infrastructural support needs to be provided. It is in this context that the independent POs in Delhi are now given an allowance for transport, mobile phone and are allowed to use official letterheads for any communication with the court or the Respondents.

Role of Protection Officers

The duties and functions of POs under the PWDVA can be classed as:8

- Pre-litigation duties: The Law presumes that the PO is one of the first points of contact for a woman affected by domestic violence, and thus, imposes a duty on the PO to facilitate her access to the court, support services and take steps to prevent further domestic violence.
- **Litigation and Post-Litigation duties:** Once the AP files an application under Section 12, the PO functions as an officer of the court and is under its direction.

Submission of Domestic Incident Report

The DIR is a faithful recording of the woman's complaint and has to be filled by the PO or SP, irrespective of whether the woman wants to file an application under Section 12 of the Act. Once the DIR is filled, a copy of the same has to be forwarded by the PO/SP to the Magistrate and the local police station. In case the woman wants to file an application under Section 12 of the Act, then the PO or SP should attach the DIR copy along with the application and forward it to the Magistrate.

The Second M&E Report however, revealed that POs do not record a DIR each time they are approached by women facing domestic violence. Instead, they maintain a register wherein they record details of the AP and the nature of the complaint. It is only when the woman expresses her wish to go to the court, that the DIR is recorded.

The Proviso to Section 12 of the PWDVA which states that the Magistrate *shall* take into consideration a DIR received from the PO or SP has created some confusion. Some Magistrates believe that the DIR is mandatory for every application, irrespective of who files the case. Therefore, applications without DIRs are not being entertained. This is

⁸ Section 9, PWDVA, 2005 and Rules 8 and 10, PWDVR, 2006

the case in Maharashtra, Mizoram and Orissa. However, in Kerala, Punjab, Chandigarh, Haryana and Rajasthan, Magistrates entertain applications without DIRs. It is, however, difficult to decipher what is meant by accepting or entertaining the applications by Magistrates, as they may accept the applications, but not hear the case until the POs fill DIRs. In West Bengal, Tamil Nadu, Himachal Pradesh, Karnataka, Uttar Pradesh, Chhattisgarh, Manipur and Meghalaya, sometimes the Magistrates entertain applications without DIRs. The procedure adopted by the courts, in absence of DIRs, is difficult to determine as no information on the role of POs is given in court orders.

However, as per our experience and the findings from order analysis contained in Chapter 9, it has been seen that most of the Magistrates in Maharashtra entertain applications and pass orders without DIRs.

The data above indicates that the objective and purpose of a DIR, as a documentary record or evidence of domestic violence, and a tool to simplify procedural requirements with regard to access to courts, has, as yet, failed to take root.

Cases dealt with by POs

The table below reflects only the cases that have been dealt with by the POs. These are cases either those filed by the POs themselves or cases in which the Magistrates have directed the POs to perform duties. The figures do not reflect the total number of cases filed in court. This information was received from the nodal departments of states.

Table 5.2: Number of cases filed under the PWDVA, 2005 dealt with by POs

States	No. of POs appointed	No. of Cases Filed under the PWDVA dealt with by POs (April 2008-July 2009)
Andhra Pradesh	104	1984
Bihar	16	454
Chhattisgarh	18	136
Delhi	17	3463
Gujarat	26	804 (January 2008 – June 2009)
Haryana	20	138
Himachal Pradesh	377	660
Karnataka	214	2933
Kerala	31	3190
Madhya Pradesh	367	2072
Maharashtra	3892	400 (April 2006 – March 2008)
Manipur	8	208
Meghalaya	7	12
Orissa	30	69
Punjab	148	249
Rajasthan	548	Not provided
Sikkim	4	8
Tamil Nadu	31	729
Uttar Pradesh	71	3892
West Bengal	39	1462

Observations

- Some of the states with the highest number of cases filed are Andhra Pradesh, Delhi, Karnataka, Madhya Pradesh, Uttar Pradesh, Kerala and West Bengal. This indicates that states which recorded the highest number of cases filed (Delhi, Kerala and Andhra Pradesh) in the First M&E Report continue to be repeated in the third year of the Law. The high number of cases filed by the POs in these states may indicate that women are filing cases through POs or that Magistrates are summoning POs during the proceedings of the cases.
- States which have shown the least number of cases filed are Chhattisgarh, Meghalaya and Sikkim.
- In states such as Maharashtra, Himachal Pradesh and Orissa, despite a large number of POs, very few cases have been filed. This may indicate that women are not aware of the POs and are therefore, filing cases directly through Lawyers, or POs are not able to reach women, and/or local Police/Lawyers/Judiciary are not referring cases to POs.
- It appears that the number of PO appointments bears no direct correlation to the number of cases filed. This, however, needs further study.
- No information was received from a number of states despite persistent requests.
 This non-availability of data from some states reiterates the need to put in place a uniform system to collate and record data on the cases filed under the PWDVA.
- Similarly, there is a need for High Courts to maintain data on the number of cases filed under the PWDVA. For instance, the High Court of Delhi in their annual report printed the number of cases filed under the PWDVA as a separate category.

Service of Notice

Once an application is filed in Court, a notice is issued or served upon the Respondent to appear in Court. The PO is vested with the responsibility of serving notice. Once notice is served, the PO has to make a declaration in Court of the service of notice and this is deemed proof that notice has been served.

There has been a lot of confusion about who is 'responsible' for serving notice. Section 13(1) of the PWDVA specifies that the PO "shall get the notice served" on the Respondent, thereby implying that there is no need for the PO to serve the notice personally. This indicates that the PO may direct any other qualified person to effectively serve notice on their behalf. This interpretation is borne fit by Rule 12(2) (a) of the PWDVR which provides that the PO may direct "any other person" to serve notice on their behalf. Further, Section 28 of the PWDVA allows the Magistrate to set their own procedures in dealing with applications filed under the PWDVA to meet ends of justice that are in addition to the procedures laid down under the **Code of Criminal Procedure 1973 (CrPC)**.

In the First and Second M&E Reports, in most of the cases where POs were appointed, Magistrates insisted that POs serve notice personally. The Courts were issuing directions to the PO to serve notice. Therefore, in states where the PO had an existing infrastructure, the task of serving notice was delegated to their staff. In states where the POs were appointed on an independent basis, they were serving notices

personally. This serving of notice by POs, as reported, is cumbersome and detracts from the time available to attend to other duties.

Practices Adopted

- In a majority of the cases in West Bengal, Tamil Nadu, Gujarat, Haryana, Manipur and Delhi, the POs do not serve the notice themselves; it is primarily served through the Police, Process Server and radiogram.
- In Haryana and Chandigarh, all notices are served by the summons branch of the Police. In Chandigarh, even if the notice is sent to the PO, the PO forwards it to the Police to serve it.
- In Andhra Pradesh and Karnataka, POs have been assigned Home Guards and Messengers solely to serve notice. In Madhya Pradesh, Meghalaya, Uttar Pradesh, Maharashtra, Rajasthan, Orissa, Kerala, Sikkim, Chhattisgarh and Punjab and in most cases in Himachal Pradesh, the POs or the office staff of the POs serve notice.
- The High Courts of Delhi and Andhra Pradesh have issued practice directions related to service of notice. These state that every notice issued by the Magistrate shall contain a clear direction, that in case a PO seeks the assistance of the process serving agency, the Police or the Nazarat branch, the concerned officer-in-charge shall depute personnel to serve notice. It further states, that every notice shall contain a direction stating that in case the PO wants to serve the notice himself, but requires assistance, then the officer-in-charge of the police station in whose jurisdiction the notice is to be effected shall provide adequate security to the PO. However, the Chapter 9 states that most of the Magistrates in Delhi prefer to assign the responsibility to serve notice to the PO rather than the Nazarat branch or the Police.
- The Survey, discussed in Chapter 8, conducted amongst members of the Delhi Police, shows that a majority of the Police Officers interviewed were aware of this particular circular issued by the High Court. However, what is important to know is whether the issuance of this particular circular has effected a change in the practice of serving notice.
- In Himachal Pradesh, the Directorate of Social Justice and Empowerment has issued a circular (please see Annexure 6) stating that the PO may order the Police to serve the notice, and that notice can also be served through the Process Server or through registered post.
- Over a period of three years, the practice of serving notice through the police has gradually emerged. This may be in keeping with the fact that jurisdiction is given to the Magistrate to vest the PO with this responsibility; the PO then performs the function with the aid of the Police.

Enforcement of Orders

Rule 10 (1) (e) of the PWDVR states that the Magistrate shall direct the PO to assist the court in the enforcement of orders. At the time of providing such direction, the court should provide a copy of the order to the PO with instructions with regard to assistance required. As individual sections do not provide a specific enforcement mechanism, Sections 28 (1) of the PWDVA and Rule 6 (5) of the PWDVR provide

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that the enforcement procedures under Section 125 of the CrPC can be used. A copy of the order is to be provided free of cost to the person in whose favour it is passed and may be enforced by a Magistrate in any place where the party against whom the order is to be enforced resides.9

From our past experience, we learnt that due to various issues such as geographical limitations, security and so on, the POs in most cases do require assistance to enforce orders as they find enforcement of orders difficult. In the First and Second M&E Reports, we noted that it is primarily the PO, with the assistance of the Police, who enforces the order. In cases where the court forwards a copy to the SHO directing him to assist the PO in enforcement of the order, the task becomes easier. Similarly, this year we have seen that in some cases (West Bengal, Maharashtra, Delhi, Orissa, Tamil Nadu and Chandigarh), the PO was able to get assistance from the Police at the time of enforcement of orders.

In cases where copies of the orders are not made available to POs once passed by the court, POs are unable to play a role in the enforcement of orders and thus, have no knowledge of the orders passed.

The Survey with POs in Delhi indicates that in most cases of service of notice and enforcement of orders, POs have successfully sought the assistance of Police.

Practices Adopted

- In Andhra Pradesh, at the time of submitting the application and the DIR, the POs make a separate application under Section 19 (7) of the PWDVA for Police assistance at the time of enforcement of order.
- In a recent circular issued by the High Court of Andhra Pradesh on 27 August 2009, there was an observation that because most POs are overworked, they are unable to be present at every hearing of the case. The High Court therefore, issued a direction that states:
 - The District and the Sessions Judge shall fix one day in a week or fortnight to entertain cases filed under the PWDVA so as to enable POs to attend courts and assist the Magistrates.
 - The Judicial officers shall take up cases filed under the PWDVA on that particular day and after completion of the said cases they can take up other cases related to atrocities against women.
 - Copies of orders shall be provided free of cost to the concerned parties.

Breach

Section 31(1) of the PWDVA states that the breach of a Protection Order or an interim Protection Order is an offence, punishable with either imprisonment (that may extend to one year) or a fine (which may extend to INR 20,000) or both. Rule 15 of PWDVR further states that an AP may report the breach of a Protection Order or an Interim Protection Order to a PO in writing and that the report should be signed by her. The PO should

⁹ Jaising I, Basu A and Dutta B., Handbook on law of Domestic Violence, (New Delhi: Lexis Nexis Butterworths) 2009, p. 137

then forward a copy of such a complaint along with a copy of the Protection Order to the concerned Magistrate.¹⁰

However, if the AP desires, then she may also make a complaint of breach directly to the Magistrate or the Police. On receipt of a complaint of breach, the Police should frame charges under Section 31 of the PWDVA or Section 498A of the IPC.

In the First and Second M&E Reports, there was low reporting of breach. This may be due to lack of clarity on the procedure to be adopted in case of breach or because the police had not taken cognisance of the same. It could also be because on breach, a case is directly registered by the Police, and because POs belong to the nodal department, they are not involved or aware of action taken. Hence, it completely falls under the domain of the police. Reports received this year also do not reflect a very positive picture as far as breach is concerned.

- In West Bengal, Karnataka and Sikkim, on receipt of a complaint of breach, in most cases, the police immediately take action as stated under the Law.
- In a majority of the cases in Maharashtra and Delhi, the Police do not take any action when breach is reported.
- In Tamil Nadu, the Police do not take immediate action at the time of breach. When breach is reported, the PO carries out an enquiry and then submits the complaint along with the AP's application, a copy of the order and an enquiry report to the Magistrate. It is only once the Magistrate directs the Police that the action is taken.
- In Chhattisgarh, in cases of breach of orders, counselling is carried out and then a
 First Information Report (FIR) may be registered. We are not clear however, on
 who carries out the counselling or what constitutes the nature of the counselling.
- In Manipur, action is taken by Police on breach of orders, but often the Police only issues warnings to Respondents.

Challenges Faced

It has been three years since the enactment of the PWDVA. With every passing year, there have been new challenges faced in the form of infrastructural issues and jurisprudential interpretation. The Law is evolving and similarly, the governments are learning how best to implement the Law. Few of the main challenges with respect to the functioning of the POs are as follows:

• Infrastructure: In cases where existing officers are delegated the charge of POs, the advantage is that infrastructure, in the form of additional staff to assist them in their work, is already available. However, they face the challenge of being over burdened due to their existing responsibilities. In cases where independent POs have been appointed, they have to personally serve notice, appear in court and carry out enquiry directed by Magistrates. Given that POs have to be in courts, on the field and attend to women, this duality of their roles makes them inaccessible to women approaching their offices. There have been

¹⁰ Lawyers Collective, Ending Domestic Violence through Non-Violence: A Manual for PWDVA Protection Officers , New Delhi, 2009, p. 139

problems such as the lack of budgetary allocations and reimbursements not being paid on time.

- Service of notice: The issue of service of notice is a common problem faced by most POs. They find the duty of service of notice imposed on them a hindrance in completing other tasks assigned to them under the Act. In Uttar Pradesh, Tamil Nadu and West Bengal, the POs have little time to serve notice. Issues related to their security when visiting the houses of Respondents, non-availability of Respondents, difficulty in locating addresses in far flung areas continue to be common challenges. Another issue is that there is no uniform protocol for serving of notice. Serving of notice in other states is a challenge in the absence of coordinating systems or points across states.
- Lack of coordination amongst various stakeholders remains an issue of concern.

Service Providers

Rationale and Background

A woman affected by domestic violence needs a comprehensive support system to address her needs. Services like Shelter Homes, legal services, medical aid and psychological support are crucial in this regard.

In recognition of this fact, the PWDVA created the role of a SP. SPs are civil society organisations registered under the Act that provide local support services to women. The registration of NGOs as SPs under the PWDVA is a recognition of the pioneering role played by NGOs in providing support in various forms to women in distress. Enshrining their services in the Law grants their actions important legitimacy. SPs are accorded the status of public servants under the Act and protected from frivolous prosecutions.¹¹

Nature and Profile of Appointment

Under Section 10 (1) of the PWDVA, to be recognised as SPs under the Act, voluntary associations must follow a two-step registration procedure.

- The voluntary association must already be registered under the Societies Registration Act, 1860 or the Companies Act, 1956 or any other law. Any other law includes trusts under the State Public Trusts.
- The PWDVR elaborates on the registration of SPs.

Any voluntary organisation eligible under Section 10 (1) of the Act, that wishes to register as a SP, shall make an application under the said section.

The table 5.3 lists the number of SPs registered in each state, the services rendered by them, and whether they are funded by their state governments.

¹¹ Section 10 (3), PWDVA states that "no suit, prosecution or other legal proceedings shall lie against any SPs or any member of the SP who is, or who is deemed to be acting or supporting to act under the law, 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."

Table 5.3: State-wise registration of Service Providers

States	No.	Services provided	Whether govt. funded or not
Andhra Pradesh	72	Counselling and shelter	Funded under the Swadhar scheme
Assam	33	-	-
Bihar	Registration in process	-	-
Chandigarh	12	Counselling and shelter	-
Delhi	28	Counselling, shelter, legal aid	Receive funds from the Delhi Social Welfare Advisory Board
Gujarat	Under process	-	-
Haryana	8	Counselling	-
Himachal Pradesh	14	Counselling, awareness, vocational training and legal aid	-
Jharkhand	Under process	-	-
Karnataka	115	-	No govt. funds provided
Kerala	60	Helpline, counselling	Are given honorarium to legal counsellor and extend assistance to women
Madhya Pradesh	47)	Counselling and short stay (Police <i>Paramarash Kendra,</i> <i>Mahila Thana, Mahila desk,</i> <i>Mahila Pariwar Paramarsh</i>)	-
Maharashtra	32	-	-
Manipur	7	Counselling and legal assistance	-
Meghalaya	3	-	-
Mizoram	6	-	-
Orissa	30	-	No state funding
Punjab	4	-	-
Rajasthan	79	-	-
Sikkim	7 (2 under consideration)	Health facility, education	
Tamil Nadu	31	-	-
Uttar Pradesh	95	Shelter and medical facilities	-
West Bengal	57	Counselling, legal aid	Awaiting govt. fund till date

Observations

- Similar to the First and Second M&E Reports, the profile of the SPs registered varies from state to state. However, the predominant trend is to register counselling centres or shelter facilities as SPs.
- Mostly, organisations that are already in receipt of some form of state funding are registered as SPs. In a few states, organisations which run family counselling centres or any other scheme funded by the state government have been registered as SPs. This may be due to the fact that organisations which are running such schemes already have an in-built system of reporting to the government, and the government is already aware of the services provided by them.
- There have also been reports of organisations hesitant to register as SPs due to the lack of financial allocation being made to them.
- In Kerala, SPs are provided with INR 5,000 to appoint Legal Counsellors/Lawyers in their centres in consultation with the LSA. The SPs are also provided INR 10,000

per centre to extend medical assistance and psychiatric help to the victims of violence. INR 27,98,928 has been released to the **Kerala State Social Welfare Board (KSSWB)** to meet the expenses of the above mentioned programme.

• Table 5.3 lists that the nature of service provided by most of the SPs is counselling. However, there is little information on what the nature of counselling is, whether counselling is provided by professionals, what are the circumstances and stages at which counselling is provided, the objective of such counselling and whether counselling is at the request of the woman and respects her wishes, etc. Thus, counselling is an area which requires further examination.

Role of Service Providers

According to Section 10 (2) of the PWDVA, a duly registered SP has the power to record a DIR if the AP so desires and forward a copy thereof to the Magistrate and PO who have jurisdiction in the area where domestic violence has occurred. The SP is expected to get the AP medically examined and forward a copy of the medical report to the PO and the police station within the local limits of the area. It is the duty of the SP to ensure that shelter facilities have been provided to the AP. The Court can also direct SPs to ensure the safety and security of a woman and her children.

However, in most of the states, the issue of lack of clarity on the roles of SPs has been raised. This is possibly because of the variation in the nature of roles performed by SPs in various states.

- In Madhya Pradesh, Maharashtra and Tamil Nadu, the primary role of the SPs is filling DIRs and counselling. As mentioned earlier, the stage at which counselling is given or whether the counselling is done under the direction of Magistrates as the Law mandates, is not known. Madhya Pradesh has registered SPs that provide counselling in Police stations especially the *Mahila* police stations.
- In Uttar Pradesh, the SPs assist in filling DIRs and in enforcement of orders. However, the issue of security, with regard to threats to the members of the SPs while carrying out their duties under the Law, has been raised.
- In Delhi and Manipur, most of the SPs primarily perform the function of referral agencies.

Other than the issue of lack of clarity on the duties or roles of SPs under the Law, another reason why SPs do not carry out all their duties as mentioned under the Act may be the lack of funding or budgetary allocations. The PWDVA does not mandate the state governments to provide funding to SPs to carry out their work as required under the Law.

Medical Facilities and Shelter Homes

Rationale and background

Section 2 (j) of the Act defines "Medical Facility" to mean such facility as may be notified by the state government to be a Medical Facility for the purposes of the Act. Similarly, Section 2 (t) of the Act defines "Shelter Home" to mean shelter homes notified by the state government for the purposes of this Act.

The Act states that if an AP or on her behalf, a PO or a SP requests the person incharge of a Medical Facility or the person in-charge of the Shelter Home to provide any medical aid or shelter to the AP, such person shall provide medical aid or shelter, as requested, to the AP.

A notified Medical Facility cannot refuse medical assistance to an AP on the ground of her not having lodged a DIR prior to making a request for medical assistance or examination. Notified Medical Facilities are also empowered to record a DIR based on the complaint made by the AP. If no DIR has been made, the person in-charge of the medical facility must fill the details in Form I and forward it to the concerned PO. 13

Rule 11 (3) of the PWDVR establishes a procedure by which Shelter Homes can be registered. The first step is for the state government to inspect the Shelter Home and prepare a report. Shelter Home candidates should have adequate security arrangements in place and a good functional telephone.¹⁴

Table 5.4: Nature of Notified Medical Facilities and Shelter Homes

State	Medical facilities and their profile	Shelter homes and their profile	
Andhra Pradesh	All government hospitals providing medical aid	50 shelter homes notified, all run under government scheme	
Assam	Existing government hospitals are providing medical facilities	No new ones notified but existing 5 shelter homes functioning	
Bihar	Not notified till date	18 shelter homes notified, all are private in nature but receive government funding	
Chandigarh	Instructions issued to Director, Health services to provide immediate medical facilities to persons referred by protection officers	1 government shelter home notified	
Chhattisgarh	NIL	No new ones notified, but existing 7 govt homes functioning	
Delhi	24 medical facilities notified	4 all run under the government	
Gujarat	Under process	21 shelter homes notified	
Haryana	All govt hospitals, primary health centres and community health centres have been notified	Three shelter homes run under the Social justice and empowerment department	
Himachal Pradesh	No specific notification but all govt and referral hospitals are appropriate institutions for providing medical aid	1 shelter home run by the department and one Nari Seva Sadan	
Jharkhand	-	4 shelter homes notified	
Karnataka	Notification stating that all govt hospitals have to provide medical aid	115 shelter homes notified	

¹² Rule 17, PWDVR 2006

¹³ Sec. 17, PWDVA 2005

¹⁴ Jaising I, Basu A and Dutta B., Handbook on law of Domestic Violence, (New Delhi: Lexis Nexis Butterworths) 2009, p. 80

Kerala	99 medical centres notified	23 (15 are run under govt fund)
Madhya Pradesh	All medical colleges, district hospitals, primary and community health centres	20 shelter homes notified all are run under government scheme
Maharashtra	No separate notification but all district civil surgeons, hospitals, advised to provide medical assistance to women	81 (20 are govt run and 61 are NGO aided)
Manipur		11 Swadhar homes notified
Meghalaya	2 medical facilities notified	1 shelter home notified
Orissa	30 medical facilities notified	51 govt run shelter homes notified
Punjab	None	4 have been notified
Rajasthan	All district, State, Sub-district, Community health centres have been notified as medical facilities	12 shelter homes have been notified
Sikkim	4 have been notified	2 have been notified
Tamil Nadu	Not notified but all health facilities can be used Primary health centres Taluk hospitals etc.	98 shelter homes have been notified (all run under govt scheme)
Uttar Pradesh	All districts hospitals, community health centres and primary health centres (whether notified or not clear)	12 shelter homes run under government scheme (whether notified or not clear)
West Bengal	All govt hospitals including rural, state general, district and BPHC designated as medical facilities	45 shelter homes run under govt scheme

Observations

- Similar to the First and Second M&E Reports, states have been issuing notifications
 to existing Medical Facilities to provide free medical aid to women facing violence.
 Specific notifications have been issued in Chandigarh, New Delhi, Haryana,
 Karnataka, Kerala, Meghalaya, Orissa and Sikkim. However, most of the state
 governments have stated that all government medical facilities already provide free
 medical aid to people.
- Similar to the Second M&E Report, most of the notified Shelter Homes are the ones running under various schemes of the government. Even in cases where private Shelter Homes have been registered, they are those already in receipt of some form of government funding.
- The nodal department informed us that unlike the POs, the Shelter Homes and the Medical Facilities do not submit any reports to them. Hence, even if the Medical Facilities have attended to cases of domestic violence and have recorded DIRs, the nodal department may not be aware of this. This could be due to the fact that since the Medical Facilities come under the Department of Health, there is a gap in coordinating with the nodal department.

The PWDVA does not contain a specific mention of budgetary allocations to be made to the respective state governments for the implementation of the Law. Though the PWDVA is a central law, the appointment of relevant officers, carrying out regular training and sensitisation, is at the discretion of the state governments.

Allocation of Budget and Infrastructural Investment

Table 5.5: Budgetary allocation and other support services

	Support services available	Budgetary allocation under the PWDVA	
Andhra Pradesh	2 Home Guards, 2 Counsellors	2008-09, INR 1 crore 2009-10, INR 50 lakh	
Bihar	2 Counsellors, 2 Peons and telephone facility	No specific budget allocated	
Chandigarh	1 Assistant and 1 Peon	No specific budget allocated	
NCT Delhi	Getting allowance for mobile and travelling expenses allowed to use official letter heads	INR 50 Lakh	
Gujarat	n/a	2008-09 – INR 60 lakh 2009-10 – INR 50 Lakh	
Haryana	n/a	INR 1 crore	
Himachal Pradesh	n/a	No specific allocation. Money from the general budget of the department is being used.	
Karnataka	Computer Operator, Messenger, travelling allowance etc. Free legal aid services center has been set up in the office of the PO.	2008-09, INR 250 lakh was allocated	
Kerala	n/a	2009-10 – INR 115 Lakh	
Madhya Pradesh	n/a	2008-09 – INR 292 Lakh, 2009-10 – INR 250 Lakh INR 6,70,000 – wall writing and hoarding, INR 18,35,000 – seminar INR 18,35,000 – TA/DA INR 18,35,000 – counselling	
Maharashtra	n/a	INR 23,11,893/-	
Manipur	ICDS staff available	INR 2 Lakh for 2008-09 INR 45,000 for 2009-10	
Meghalaya	n/a	INR 3 Lakh 2009-10	
Mizoram	n/a	INR 3 Lakh allocated	
Orissa	n/a	No specific budget allocated	
Punjab	n/a	INR 1 crore for the year 2009-10	
Rajasthan	n/a	No specific budget but allocation of INR 25 Lakh to assist women under the PWDVA	
Sikkim	n/a	INR 10,000 for appointment, honorarium, publicity and TA/DA	
Tamil Nadu	Junior Assistant cum Typist	INR 18,60,000	
West Bengal	Computer, printer, mobile charges, photocopier and one peon (recruitment in the process)	2008-09 – INR 26,31,000 2009-10 – INR 32,15,000	

The issue of the lack of budget and infrastructural support for the implementation of the Law has been raised in various forums. Due to the fact that most of the duties stated under the Law have been given to existing officials, these officials have been using the existing budget and staff allocated to them to carry out their duties under the Law. It was only by the second year of the implementation of the Law that state governments began allocating specific budgets for the implementation of the PWDVA.

Most who have been given additional charge as POs, work using the current infrastructure available to them. Some states like Delhi, as mentioned earlier, have provided additional infrastructure support to these officers. Similarly, in West Bengal, POs have been given a computer, printer and mobile phone allowance. In Andhra Pradesh, each PO has been given two Home Guards and two Counsellors.

In the Pre-Conference Meeting, it was suggested by the nodal departments of various states that the PWDVA should be implemented through a central scheme so that the centre would make specific budgetary allocation for the implementation of the Law, thereby decreasing the burden on state governments.

Reporting and Coordination amongst Stakeholders

The PWDVA does not mandate periodic reporting by stakeholders to state governments or state nodal departments. Periodic monitoring of stakeholders by the nodal department (such as the SWD or the WCD) is crucial to the functioning of the Law.

Reporting by Protection Officers and Other Stakeholders

As far as reporting by the POs under the Law is concerned, it is in the form of monthly meetings and submission of quarterly reports to the nodal department. The periodic reports also reflect the number of cases dealt with by the POs.

The Central Government has forwarded a format (please see Annexure 6) to all the state governments based on which each PO is expected to report to the nodal department. The nodal department in turn has to report to the MWCD.

However, the format, based on which reports are submitted, poses several problems:

- The format focuses mainly on quantitative data.
- The format fails to provide qualitative data, such as the stage at which each case has reached, reliefs sought and granted, problems encountered and whether resolved, the role played by the PO and other stakeholders.
- The format does not reflect the time limit within which the interim and the final orders are granted.
- Given that in most states, the POs are not aware of the total number of cases filed within their jurisdiction, the statistics provided by them would reflect only the cases filed by them and those that they are aware of, thus, giving an incomplete picture of the total number of cases filed in states.

Since POs fall under the SWD, they have to submit the reports to the concerned officer at the nodal department. However, in our findings, we have found that a similar reporting practice is not followed with respect to other stakeholders (such as SPs, Shelter Homes and Medical Facilities). Hence, there might be no official data on the number of women who are provided services by other stakeholders and the kind of services that were provided to them.

Delhi Scheme: The Second M&E Report discussed a scheme proposed by the Delhi SWD under which, in addition to the independent POs, a Chief Protection Officer would be appointed. It stated that the Chief Protection Officer would be provided with assistants such as a Stenographer, Statistical Officer, Peon and Lower Divisional Clerk. The duty of the Chief Protection Officer would be to monitor the working of the POs, collect reports on a quarterly basis, make efforts to coordinate amongst various stakeholders and carry out training and awareness programmes. It has been a year since the scheme has been proposed, however it has not yet been sanctioned.

Multi-Coordination

The PWDVA recognises that women affected by domestic violence need social and emotional support in addition to legal services. Therefore, the Law provides room for various stakeholders. However, for the multi-agency support system to function, the stakeholders cannot function in isolation and need to coordinate among themselves.

Under Section 11 of the PWDVA, it is the duty of the Central and the state governments to take all measures to ensure that effective coordination between the services provided by the concerned ministries and departments (those 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.

According to the First M&E Report, it was only Andhra Pradesh which had taken positive initiatives to facilitate coordination. By the Second M&E Report, Kerala and Uttarakhand had appointed Coordination Committees. The details of the functioning of the Coordination Committees have been discussed in Chapter 6.

This year, we received reports of Coordination Committees being set up in a number of other states. In most of the states, these Coordination Committees are formed at district level so as to encourage and facilitate coordination at lower levels. While the primary function of some of these committees is to coordinate functioning between various departments, some also collect state-wide data about the cases filed under the PWDVA and submit recommendations for effective implementation of the Law.

• In Maharashtra, committees at state level, sub-divisional level and district level have been formed. At the state level, the members are the Ministers and the Chief Secretary of Rural Development, Law, Finance, Health, WCD, Urban Development and Planning. At the district level, the members are the Collector, Superintendent of Police, Civil Surgeon, District Health Officer, all sub-divisional officers of the DWCD

and members of the LSA. The committees also include members of the *Mahila* Mandal and members of the Bar Council. At the sub-divisional level, the members are all sub-divisional officers, all Tehsildars, all Block Development Officers, Nayab Tehsildars, Medical Officers, members of the Bar Council and representatives of three NGOs.

- The function of the State Level Committee is to:
 - Collect state-wide data about cases filed under the PWDVA
 - o Take stock and review the minutes of the district committees
 - Review the action taken for wide publicity
 - o Issue necessary guidelines after taking review of these difficulties.
- The function of the District Level Committee is to:
 - Hold tri-monthly meetings
 - Collect information about the cases filed under the PWDVA
 - Create awareness about the Law
 - Submit difficulties faced at the time of implementing the Law so that appropriate steps can be taken.
- The Sub-Divisional Committee:
 - o Takes review of the domestic violence incidents
 - Reviews the services made available to the AP
 - Makes efforts to create awareness on the Law
 - o Takes appropriate steps to facilitate coordination amongst various stakeholders.

Practices with respect to the Coordination Committees in some of the states are as follows:

- In Madhya Pradesh, there is a Coordination Committee formed at the district level. The
 members of the committee are the Collector, Superintendent of Police, District Law
 Officer, District Chief Medical Officer, District Programme Officer and District PO. The
 function of the members is to coordinate and monitor the implementation of the Law.
- In Rajasthan, Coordination Committees referred to as the *Mahila Sahayata Samiti* have been formed at the district and divisional level. The members of the Committee are the District Collector, CJM/Judge of the Family Court, Superintendent of Police, 2 Social Activists, 2 Advocates and Deputy Directors, ICDS.
- In Himachal Pradesh, the review of the functioning of the PWDVA is undertaken by the state Women's Council under the chairmanship of the Chief Minister of the state.
- In Karnataka, the Coordination Committee is formed at the state level. The
 members of the Committee are the secretary of the Home Department, Law and
 Parliamentary Affairs, SLSA, **State Women's Commission (SWC)** and Health and
 Family Welfare. The duty of this Committee is to coordinate functioning of the
 various departments and give wide publicity to the Law.

There seems to be a growing trend with regard to Coordination Committees formed with the objective to monitor the implementation of the Law. There is however, a crucial need for the nodal department to ensure that the objective behind the formation

of these Committees is attained. The mandate, duty and power of the members of such committees need to be outlined.

Training and Awareness

It is the duty of the Central and the state governments to ensure that provisions of this Act are given wide publicity through public media including television, radio and the print media, at regular intervals.¹⁵ It is also their duty to ensure that officers of the Central and state governments including Police Officers and the members of the Judicial Services are given periodic sensitisation and awareness training on the issues addressed by this Act.

State governments have taken initiatives to create awareness under the Law, some of which are listed below:

- In Bihar, advertisements about the Law were published in all important newspapers of the state.
- In West Bengal, the POs and SPs have received training on the Law. The Police Officers in all the Police stations in Kolkata have been trained. Awareness on the Law has been created through hoardings, pamphlets and radio programmes.
- In Madhya Pradesh, awareness is being carried out through hoardings, distribution of pamphlets, awareness campaigns, electronic media and radio programmes. Till date, 31 trainings have been carried out; these trainings were given to Protection Officers, Counsellors, Judges, Police Officers and Medical Officers.
- In Uttar Pradesh, awareness generation has been undertaken through pamphlets, hoardings, awareness campaigns and electronic media.
- In Sikkim, awareness has been brought about through hoardings, radio programmes, pamphlets, electronic media and campaigns.
- In Maharashtra, awareness has been created by the nodal departments through radio messages, hoardings, pamphlets, electronic media etc.
- In Tamil Nadu, awareness on the Law has been created in all districts by the SWC. The nodal department and the LSA also have carried out various workshops and awareness campaigns on the PWDVA.

The infrastructural support visualised under the PWDVA is gradually being put in place. In the past 3 years, we have seen that states have taken initiatives at various levels to facilitate the effective implementation of the Law. While few states have successfully put in place required infrastructure, others have tried to build on the existing structure. Simultaneously, there is also a need to develop indicators and regularly review the infrastructure provided to see whether the nature of staff, budget, profile and so on is sufficient to meet the requirements.

However, to ensure that the stakeholders under the Law are functioning, there is an urgent need to have a uniform reporting procedure for all stakeholders.

¹⁵ Section 11, PWDVA, 2005

IMPLEMENTATION OF THE PWDVA: REVISITING TRENDS

Chapter 6

Introduction

The First and Second M&E Reports identified emerging trends and highlighted best practices with regard to the implementation of the PWDVA in states, and specifically in Andhra Pradesh and Kerala. This year, Andhra Pradesh and Kerala were revisited to see if the identified practices are still continuing and the new developments within the states. This chapter documents the findings of this visit to Andhra Pradesh and Kerala.

Case study 1 - Andhra Pradesh

Background

Since the PWDVA came into force, Andhra Pradesh has taken a lead role in its active implementation. Within the first year of the enactment of the Law:

- Twenty three POs (i.e. Project Directors given the additional duty of working as POs) were appointed and there were 72 SPs registered in the state.
- The Andhra Pradesh Legal Services Authority (APLSA) issued a circular directing the district legal services to organise legal awareness training programmes.
- The state IGP- issued a circular setting out in detail all the duties of the Police under the PWDVA to all police stations in the state. This was a crucial step in light of the fact that there exists a general misconception amongst the Police that they have no role to play under the PWDVA, as it is a civil law.
- Andhra Pradesh had recorded the third highest number of cases filed within the first year of the enactment of the Law.

In the second year of the implementation of the PWDVA:

- There was a significant increase in the number of POs in Andhra Pradesh, with a
 total of 104 POs (who were either Project Directors or Revenue Officers holding
 the additional duty of PO). Each was provided with a support team comprising
 of Data Entry Operator, two Messengers from the Home Department and two
 Counsellors (one was a social work Graduate and the other an Advocate).
- INR 10 crore was sanctioned by the Andhra Pradesh Government for the effective implementation of the PWDVA.
- Due to the measures taken by the state such as, issuance of circulars and provision
 of trainings, the Police had become the primary referring agents and were referring
 women to the POs. The POs, in turn, informed women of their rights under the
 PWDVA and for every case filed, maintained a record in the DIR.

- The Home Guards/SHOs assisted the POs at the time of serving notice and of implementing orders.
- The APLSA provided free legal aid to women whenever approached.
- The Andhra Pradesh Police headquarters collated data on the number of filings done under Section 498A¹ of the IPC and the decrease in filings led to the assumption that in Andhra Pradesh more women sought reliefs under the PWDVA as opposed to filing criminal cases.

Objective

As reflected above, in the first year of the implementation of the PWDVA, Andhra Pradesh had put in place a multi- agency coordination system and been classed as a "Public Model" state. Thus, the main rationale for selecting Andhra Pradesh for a case study is to see, three years on from the implementation of the PWDVA, the extent to which this Public Model is functional and whether there is a continuation of the state's proactive implementation of the Act.

Methodology

The method adopted to study Andhra Pradesh, entailed examining in detail the role being played by each stakeholder and observing the extent to which coordination between these key players is taking place. To this end, broad questions were identified to observe the existing practices and draw trends therein:

- What is the role performed by POs in Andhra Pradesh?
- Is the state Police assisting the POs in carrying out their duties under the PWDVA?
- What is role of the APLSA?
- What are the steps undertaken by the state nodal department in facilitating a multi agency response?

A four day field visit was made in order to seek answers to the above. During the course of the study, meetings were held and in-depth interviews were conducted with representatives of various stakeholder bodies such as the Police, WCD and APLSA.

It is important to note, that it is the information and opinions provided by these representatives that are presented in this case study, based on which conclusions are drawn.

Limitation in Methodology

The field visit was restricted to the two districts of Rangareddy and Hyderabad of Andhra Pradesh, due to practical constraints and geographical limitations. There is a possibility that <u>all</u> the practices observed in these two districts may not necessarily be an exact reflection of the practices prevalent all over the state. However, previous interactions and experience in Andhra Pradesh have shown that basic practices such as appointments of POs, infrastructure support and so on are uniform in the entire state.

¹ The statistics for 2007-2008 showed that in 24 districts there was a decrease in the number of cases being filed under Section 498A

What is the Role performed by POs in Andhra Pradesh?

The Structure

As in the previous year, Project Directors continue to hold the additional duty of POs assisted by an Extension Officer, Data Entry Operator, two Counsellors (a Social Worker an Advocate) and two Home Guards. This team that functions as the 'PO's Office' maintains the contact details of SPs and all police stations in their jurisdiction.

Pre-litigation Practices

In a majority of cases women approach the POs directly. The POs felt that this was due to the fact that the state government conducted many awareness workshops and campaigns with regard to the PWDVA, and the general public was aware of the existence of the PO.

The POs were of the view that many of the women who approach them want to be counselled, and wish to resolve the matter, rather than take it to court. However, the POs ensure that they maintain a register to record details such as name, address and the complaint of each of these women. The first thing POs do when approached by a woman is to listen to her. If it is a complaint such as "my husband comes very late" or "my husband does not take me out" and the PO thinks it can be settled through counselling, then she is referred to the in-house Counsellor in the PO's office.

However, counselling is carried out only if the woman agrees. There is individual counselling as well as joint counselling of the parties. In case a compromise is arrived at then the office of the PO follows up with the parties for a period of about six months. In most cases, it is the husband and wife who are counselled and it is only in cases where the necessity arises that in-laws are also called for counselling. About 60 percent of domestic violence cases are thus resolved through counselling. In case of failure of counselling, the PO fills a DIR, based on what the woman says. In most cases, copies of the DIRs are forwarded to the area Police station.

It is important to note that the PO takes a decision on whether to address the domestic violence through counselling or to fill a DIR, based on the description provided by the woman. This as highlighted earlier, is not the role of the PO as prescribed under the Act.

Litigation Practices

At the time of filling the DIR and making a court application, a member of the staff from the PO's Office accompanies the woman. In cases where the woman approaches the court directly, the court summons the PO and asks the PO to fill and file the DIR. However, in both instances, the Magistrate insists that an Advocate represents the woman.² This is a new practice that is developing in Andhra Pradesh and to this extent, there is a departure from the Public Model. In these circumstances there is not much of a role that the PO can play, other than when directed by the Magistrate to perform any duty prescribed under the Act.

² This is a deviation from the Law as under the PWDVA it is not mandatory to have an Advocate.

At the time of submission of the DIR and application, the PO also files an application³ requesting Police assistance in the enforcement of the order. With regard to notice, the High Court of Andhra Pradesh has issued specific directions regarding Police assistance to be provided to the POs at the time of service of notice (Please see Annexure 5). However, as per the information provided by the Home Guards interviewed, in practice, notice is often served by the Home Guards attached to the POs as it is usually upon court direction that Police assist in the service of notice. One of the POs interviewed was aware of a proposal in the pipelines to appoint Home Guards to serve notice, but was unsure as to whether or not this proposal had materialised. In case of outstation notice, it is served through registered post.

The court generally gives the Respondent three opportunities to appear in court and upon respondent's failure to do so, a non-bailable warrant is issued.

In the past, POs had to attend each date of hearing and this proved to be a practical challenge. This issue was brought to the attention of the court by the nodal department and as a result POs are now exempt from attending every hearing. However, they are expected to attend at the time of reporting of service of notice and as and when summoned by the court.

Regardless of whether or not the woman approaches the court directly or via the PO, if the court is not clear about the facts of the case and what the woman claims, the PO is directed by the court to carry out an inquiry, prepare and submit a report based on the findings. This happens at any stage of the proceedings. However, in practice, most of the inquiries are ordered prior to the passing of an order and inquiry reports are most often asked for when passing Custody or Maintenance Orders.

Interim orders are generally received within a month of filing. Maintenance Orders are granted readily, however it appears that courts are more hesitant to grant Compensation Orders. Once reliefs are granted under the PWDVA, in most cases, appeals are filed and a stay is imposed on the order. This practice applies to all reliefs and is not limited to one type of relief. This is of concern as it has the effect of defeating the purpose of granting immediate reliefs under the PWDVA.

At present, POs are not receiving updates from the courts. In cases where interim orders are being passed, it is the applicant who informs the POs of progress being made in the case.

Post-litigation Practices

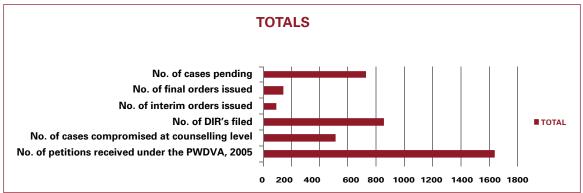
When a final order is passed then the court posts a copy of the order to the PO. In cases where Respondents are from different states, the PO sends copies of orders through registered post. There is no follow up on whether the order has been enforced or not. This challenge is not limited to Andhra Pradesh alone, but is a problem in a majority of states. It highlights the urgent need for inter-state coordination amongst Police to ensure enforcement of court directed orders.

³ An application under Section 19(7) of the PWDVA 2005 is filed.

Role of Protection Officers: Other Practices

Information provided by the DWCD of Andhra Pradesh is set out below in Figure 6.1 (Please see Annexure 8 for detailed information).

Figure 6.1: Statistics on the Number of Cases Registered under the PWDVA from January – August 09



Based on the information provided, the following conclusions and assumptions can be drawn:

- In all districts, counselling is being carried out before cases are sent to court. It is not clear who conducts the counselling and under what circumstances it is carried out. Therefore, it is hoped that counselling is conducted upon a request being made by the aggrieved woman. The table shows a disparity in figures of the number of women approaching the PO, the number of women being counselled and the number of DIRs filled. This may be due to the fact that in many cases women approach the PO directly and just want them to record the complaint and do not want to take any further action.
- In Andhra Pradesh, as in most other states in DIRs are being filled only in cases where women decide to file legal proceedings. This may mean that most POs are under a misconception that filling a DIR initiates legal proceedings.
- In most districts interim orders are not being granted easily, whilst in 11 districts
 no interim orders have been granted. This is of concern as it supplements the
 assumption discussed above under litigation practices, that the courts are not
 sufficiently addressing the need for immediate relief under the PWDVA.

Are State Police Assisting Protection Officers in Carrying out their Duties?

Interviews with Police officials highlighted that knowledge and understanding of the PWDVA and of the role of Police and other stakeholders is not uniform even within the Police. Whilst some were clearly sensitised and aware of the Law, others did not appear to have an accurate grasp of its exact provisions.

In cases where the woman facing domestic violence first approaches the Police, then, depending on her wishes, suitable action is taken. If the woman does not want to take any legal action against the perpetrator, she is referred to the women's cell. If there are elements of Section 498A of the IPC (dowry related) in her complaint then a criminal

case is registered and/or she is referred to the PO. It was observed that it was the Police who were making a majority of referrals to the POs, which is an indication of the working of the multi-agency system or referral system.

With regard to enforcement, if a Protection Order is granted then the PO forwards it to the Police. In case a Residence Order is granted then, in theory, the PO can seek help from the Police in order to enforce the order. However, as discussed previously, in practice, this does not really happen. As indicated by the POs interviewed, Police assistance was mainly required in cases of retrieving *stridhan* and child custody. In cases where *stridhan* needs to be retrieved, the PO forwards a copy of the order to the Police station, as the courts do not generally forward any copy of orders directly to the police station.

In Andhra Pradesh, there have not been many cases of breach reported, and therefore, Police involvement in this regard is minimal. This is also the case in a number of other states. The reason may be that there is a lack of understanding at a national level of what are the follow up mechanisms in case of breach of orders. It must be noted that there have been a few cases of non-payment of maintenance where the POs have filed for contempt of court. However, to date, there has been no progress made in these cases. In other cases of breach various practices are being followed. For instance:

- the PO informs the Advocate of the breach and the Advocate files an application under Section 31 of the PWDVA
- in cases when the woman goes directly to the police station to report breach, a First Information Report (FIR) is filed
- whenever the woman approaches the PO, the PO files an application in court informing of the breach and the court issues summons to the Respondent.

Despite the provisions of the PWDVA, there is no immediate arrest in any of these cases.

As in the previous years, the Police department in Andhra Pradesh is maintaining statistics of the cases filed under the PWDVA (Please see Figure 6.1). Additionally, over the past two years they have undertaken an ongoing comparative study on the number of cases filed under Section 498A of the IPC, as set out in Table 6.1.

Based on the updated statistics of a comparison between the number of cases filed under Section 498A in 2007, 2008 and 2009, set out below in Table 6.1, the following assumption and conclusions can be drawn:

 Over a period of three years there has been a marked decrease in the number of cases filed under Section 498A in about 15 districts. This is a very important trend that we are tracking in this year's M&E Report. We hope that a positive conclusion can be drawn from this trend; that since the implementation of the PWDVA women have preferred to file for civil reliefs provided under the Act, such as, Protection Orders, Maintenance, Residence Orders and so on. If this is the case, then it takes us back full circle to the true spirit and vision of the PWDVA, and validates the LCWRI campaign for a civil law. This will, however, require a more in depth comparison of the kind of cases filed under Section 498A with the cases filed under the PWDVA. Further, there is also a need to look into data on women who have filed cases under both laws.

Table 6.1: Cases filed under Section 498A of the Indian Penal Code in the year 2007, 2008 and 2009 till August

(as provided by Andhra Pradesh Police, Crime Investigation Department)

Districts	Cases filed under Section 498 in the year 2007	Cases filed under Section 498A in the year 2008	Cases filed under Section 498A in the year 2009 (Till August)
Mahaboobnagar	203	209	215
Adilabad	268	296	287
Kurnool	165	227	162
Ananthapur	189	132	81
Nizamabad	401	284	232
Prakasham	206	192	152
Nalgonda	418	349	247
Khammam	219	325	187
Guntur	493	445	396
West Godavari	477	612	426
East Godavari	491	494	248
Srikakulam	327	267	143
Warangal	585	497	529
Rangareddy	896	884	707
Karimnagar	618	559	427
Cuddapah	205	244	73
Nellore	177	168	117
Krishna	782	706	394
Vizianagaram	251	207	187
Medak	250	269	227
Chittoor	379	258	235
Hyderabad	1138	951	900
Visakhapatnam	641	579	346
Total	9779	9154	6198

What is the Role of the APSLSA?

Whenever a woman affected by domestic violence in Andhra Pradesh requires legal aid, she is referred to the APSLSA where an Advocate is appointed to represent her. This process of appointment usually takes about a week. The Advocate is paid all the typing charges and a fee of INR 750. Currently, the APSLSA has about 30-40 advocates on a rotational basis with approximately 3-5 years of litigating experience.

At present, there is no allocation of lawyers to deal specifically with the issue of domestic violence, and there has not as yet been a focused and comprehensive orientation for these legal aid lawyers on the PWDVA. The APSLSA has legal services offices set

up at District and at Mandal level. However, with regard to reporting, once a case is assigned to an Advocate, regular updates/interim reports are not sent to the APSLSA until such time as when the case gets disposed of.

What are the steps undertaken by the state nodal department to facilitate a multi agency response?

In the past year, Andhra Pradesh has made several commendable efforts to further facilitate multi-agency coordination:

- The issue of access to the PO has been an area of concern. Therefore, in order to address the issue of limited access, we were informed that the state WCD is planning to appoint POs at mandal and taluka levels.⁴
- A circular, comprehensively listing the opinions of Magistrates with regard to sections under the PWDVA and also containing specific directions was issued by the Office of the Additional Director General of Police on 16 October 2008. This same circular was issued to all the Project Officers by the nodal department on 2nd November 2008. Inter alia, some of the directions contained are:
 - The PO should set out a detailed list of stridhan in Form II
 - Sections 18-22 of the PWDVA should be read together, a violation of any order should be considered to be a cognisable offence and resistance to enforcement should be understood as breach.
 - With regard to service of notice to Respondents staying abroad, notice served through e-mail will suffice and a print out of the same is adequate proof of notice.
 - The PO should file a requisition before court under Section 19(7) of the PWDVA to issue directions to the officer at the Police station to assist the PO.
 - The sole testimony of the AP under Section 32(2) of the PWDVA is adequate and that there is no need to examine the PO.
- Monthly 'Crime Meetings' are held and attended by the Inspector and the Sub-Inspector of the District. The PO also attends these meetings and provides updates on the case filed under the PWDVA.

Suggestions and Observations from Stakeholders

Some of the important suggestions and comments made by the representatives during the course of the field visit are listed below:

- There is a need for appointment of independent POs with suitable qualifications and experience. They should be given proper induction and training regarding the PWDVA and their role under it.
- Form II should be amended so as to include Section 19(7)⁵ and 19(8).⁶

⁴ There are Panchayat Raj institutions at mandal and talukas levels in Andhra Pradesh.

⁵ Section 19 (7), PWDVA- "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 order"

⁶ Section 19 (8), PWDVA- "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 in entitled to.

- There is a need for specific provisions relating to execution of orders and follow up as currently no one is aware of what happens once an order is passed.
- Sections on breach need to be made clearer and the Act should specify what the Magistrate should do in cases of contempt.
- A time limit should be provided within which appeals should be disposed of.
- Some procedure or direction clearly stating that orders given by lower courts should not be stayed until the higher courts give their verdict, is needed.

Conclusions: Emerging trends

Based on our field visit and the information received the following broad trends have been identified:

- The nature of staff support provided to the POs such as Home Guards and Counsellors has enhanced the quality of service provided by the POs. During the litigation stage the POs are performing their roles as directed by the court but are not expected to attend every date of hearing. However, it is evident that even at the pre-litigation stage the PO's office (allocated Counsellors) is carrying out counselling.
- The fact that the majority of the referrals made to POs are by the Police shows that the Police are aware of the PWDVA and the role of the POs under it. However, issues such as assistance being provided to POs at the time of carrying out the enquiry, enforcement and breach of orders reflect a gap in their understanding of their role under the Law and the need for them to take the initiative.
- Efforts are being made by the heads of various stakeholder groups/nodal departments to facilitate multi-agency coordination. Innovative methods have been developed and directions have been issued to facilitate coordination. However, it may still be a long way to go for effective coordination at all levels amongst the various stakeholders.
- Decline in cases filed under Section 498A of the IPC may be a positive trend, as this
 may imply that the PWDVA is being used widely. However, the factors resulting in
 decline of cases under Section 498A it require further study.

Case Study 2: Kerala

Background

Like most other states, Kerala follows a Mixed Model⁷ which provides women the option to choose the most appropriate course to follow in view of their individual circumstances.

The First and Second M&E Reports highlighted that:

- Subsequent to the enactment of the PWDVA, the KSSWD appointed 31 existing District Probation Officers as POs. This was preferred as Probation Officers already had some background knowledge of law.
- INR 1 crore was earmarked for PO appointments and infrastructure in Kerala. Each PO was provided with one staff member.

⁷ Please refer to Chapter 2 for brief description of 'Mixed Model.'

- 58 SPs had been appointed in Kerala (comprising 22 NGOs, nine Helpline Centres and 27 Family Counselling Centres). NGOs notified as SPs were given INR 5,000 per month to appoint a Legal Counsellor and INR 10,040 to provide other assistance. At the same time, Shelter Homes were provided with a budget to offer medical help. 27 shelter homes (15 government and 12 private) operating under *Abala Mandirams* were notified as shelter homes.
- State level and district level Coordination Committees were appointed with representation from different departments to monitor the implementation of the Law. This effort was lauded as an extremely positive step in facilitating a state backed coordination, a best practice that could be emulated in other states.

Objective

As discussed above, in Kerala, a unique initiative was undertaken in 2008 by the state government by way of appointment of state and district level Coordination Committees to build linkages between the different agencies involved in the implementation of the Law. The unavailability of comprehensive data did not permit an evaluation of the functioning of these committees in last year's M&E Report. It was hoped that a clearer picture of their effectiveness would emerge in the Third M&E Report. The secondary aspect of this case study is to see how the PWDVA is being implemented in the state; whether there is an evolution of practices, how the existing system is functioning and whether new trends are emerging. Therefore, this year, Kerala was revisited and a field study conducted in the month of July 2009.

Methodology

In keeping with the objective of this case study, the following issues were considered:

- What is the Role and Function of the Coordination Committee?
- What is the role of the POs?
- What is the role of SPs?
- What is the role played by Shelter Homes, Medical Facilities and Police?
- How are cases of domestic violence being dealt with by courts?⁸
- What are the other mechanisms being used for implementation of the PWDVA?

In order to understand the issues discussed above, a three day field visit to Thiruvananthapuram, Kerala was undertaken. A number of meetings were held with representatives of various stakeholder groups such as SWD, SWC, KSSWB, Superintendent and Deputy Superintendent of Police, POs, DPOs, SPs, Counsellors, Advocates, and NGOs.

As in the previous case study, <u>all information was provided by the representatives interviewed and it is based on this information and the observations made during the field visit, that conclusions are drawn therein.</u>

⁸ We were unable to interview any members of the Judiciary during the Kerala case study and as such the manner in which cases are being handled at court is discussed in light of the information received from Lawyers.

What is the Role and Function of the Coordination Committees?

The pioneering initiative of the KSSWD to create state and district level **Coordination and Monitoring Committees (Committees or Coordination Committee)**, serves the objective of Section 11 of the PWDVA. This section speaks of a concerted responsibility on the state government to take all measures to ensure effective coordination between the services provided by the concerned departments to address matters relating to domestic violence and calls for a periodic review of the same. A circular was issued to this effect. (Please see Annexure 9)

A detailed breakdown of the structure of these Coordination Committees is set out below:

State Level Coordination Committee

The Committees are mandated to meet once in three months (state level) and once in a month (district level), to review the progress of the implementation of the PWDVA.

1.	Minister of Social Welfare	Chairperson
2.	Chairperson, Women's Commission	Member
3.	Chairperson, Kerala State Women Development Corporation	Member
4.	Chairperson, Kerala State Social Welfare Board	Member
5.	The Secretary, Law Department	Member
6.	The Principal Secretary, Home Department	Member
7.	The Principal Secretary, Local Self Govt. Department	Member
8.	The Secretary, Health & Family Welfare Department	Member
9.	The Executive Director, Kudumbasree	Member
10.	The Secretary, Social Welfare Department	Convenor
11.	Three representatives of women's organisations to be nominated by the Government	Member
12.	The Director, Public Relations Department	Member

District Level Coordination Committee

1.	District Collector	Chairman
2.	District Police Superintendent	Member
3.	District Medical Officer (Health)	Member
4.	District Women's Welfare Officer	Member
5.	Kudumbasree District Mission Officer	Member
6.	District Social Welfare Officer	Member
7.	Chairperson of the <i>Jagratha Samithi</i> at Dist. Level	Member
8.	Superintendent of Shelter Home run by Government	Member
9.	Three representatives of women's organisations to be Nominated by Government	Member
10.	District Probation Officer	Member & Convenor
11.	District Panchayat President	Member
12.	Mayor of Corporation	Member
13.	Women MLA from the District	Member

⁹Vide GO (Rt) No. 340/2007/SWD dated 29.06.2007.

Limitations and Challenges

Obtaining details and information regarding the Committees and their functioning proved to be an uphill task for the field researchers, as there seems to be a general lack of knowledge with regard to the same. It was of much concern that some of the members of the Committees, when approached, were unaware of the fact that they even belonged to such Committees.

Despite the mandated regular meetings, we were informed that the last meeting of the state level Coordination Committee was held in the month of January 2009, and to date, 10 as far as we are aware, no further meetings have been held. We were unable to obtain information as to who convened these meetings or the exact date, agenda, minutes and report of the meeting etc. As such, there is no available data to assess whether or not the state level Committee has played a role in monitoring and implementing the PWDVA. Despite making numerous inquiries, we were also unable to obtain any information regarding the District level Coordination Committee.

The major challenge faced with regard to the effective functioning of these Committees seems to be the manner in which they are constituted. As the Committees are made up of extremely high profile government officials, it may be the case that they are unable to meet on a regular basis owing to their other commitments. This defeats the purpose for which the Committees were formed.

These Committees are nevertheless a promising initiative and an excellent endeavour, to network and connect the various departments together to effectively implement the PWDVA. It has great potential if carried out effectively. To this end, in the context of the inability of the members to meet on a regular basis, the state government of Kerala needs to re-evaluate this initiative and consider how best to proceed. Perhaps, one practical way of facilitating the functioning of the Committees would be to allow suitable representatives/deputed officers to attend meetings on behalf of committee members whenever they are unable to attend so that regular meetings can take place.

What is the Role of the PO?

The Structure

Kerala has 14 districts and presently there are 31 POs spread out across the districts. In Kerala, DPOs have been given the additional charge of POs. Initially Grade I Probation Officers were declared POs, later the Government also gave this responsibility to the Grade II Probation Officers. Of the 31 POs in Kerala, 9 are women and 22 are men.

A proposal to appoint an independent cadre of POs has been approved by the Finance Department and 14 posts have been created. Therefore, it is anticipated that soon, Kerala shall also have independent POs. A proposal to have 14 Clerks-cum-Process Servers for these 14 POs is also in the pipeline.

¹⁰ As on the date of publication of this Third M&E Report.

Practice

With regard to referrals, we were advised that usually cases are referred to POs by the Court, Police, SPs, Shelter Homes and Lawyers. The SWC also directs a substantial number of women affected by domestic violence to the POs. Sometimes the woman approaches the PO directly. Between January and March 2009, out of an estimated 704 complaints of domestic violence, DIRs have been filled by POs in 332 cases.

Pre-litigation

POs usually fill Forms I¹¹ and II¹² and file the application at court. If the woman needs legal aid, she is sent to the court complex where the office of the legal aid service is situated. On all occasions, the PO first assess the situation of the woman and then does the needful. However, they felt that the lack of infrastructure was a major constraint in provision of effective services to women.

In Kerala, assistance from SPs is usually sought in the pre litigation stage. POs do not counsel; they maintain a list of counsellors in their office, copies of which have also been forwarded to the courts.

Litigation & Post-Litigation

Sometimes the courts ask the POs to verify facts in a manner similar to an Advocate's Commission.

The POs acknowledged that the most difficult part in the implementation of the PWDVA is the service of notice. In Kerala, the practice of service of notice usually rests with the POs. However, like in other states, the absence of budget, vehicles, support staff, etc. make it difficult for them to serve notice within the requisite time frame. Furthermore, the lack of a coordinated effort between the Police and the POs with regard to service of notice enhances the burden on the PO.

Residence and Maintenance Orders are the most commonly sought and obtained orders. However, the execution of a Maintenance Order is difficult due to resistance/non-compliance from the Respondent. Police assistance is usually sought by the POs at the stage of execution of orders, in restoring the women to her shared household, recovering *stridhan* etc.

What is the Role of SPs?

Leading NGOs (82) in Kerala, including Family Counselling Centres, have been registered as SPs. Between January and March 2009, 58 registrations have taken place. In the same period, there have been 41 DIRs filed through SPs.

Women are directed to the Family Counselling Centres for counselling and mediation. If settlement does not take place, then the woman is referred to the Legal Counsellor

¹¹ Form I [Domestic Incidence Report under section 9(b) and 37 (2) (c) of the PWDVA

¹² Form II [Prescribed Format for Application under Section 12 of the PWDVA]

so that the she is informed of the legal remedies available to her. Preliminary interaction with some SPs revealed that they do not fill the DIR but refer the matter to the POs who complete the same.

SPs report to the KSSWB. There is a Selection Committee that identifies the suitable SPs. Selection of SPs is strictly on the basis of their past records as well as their work experience in the relevant field. There are periodic reviews of the work of the SPs by way of a personal inspection by a Welfare Officer who submits an Inspection Report (based on a pre-designed format) and makes a recommendation regarding the continuation or discontinuation of the organisation as a SP under the PWDVA. The same report is also sent to the Central Social Welfare Board.

Legal Counsel

A programme of providing free legal counselling has been launched by the KSSWD in collaboration with the KSSWB.

The KSSWD has appointed Legal Counsellors to assist SPs. Accordingly, each SP has a Legal Counsellor attached to their office. The objective is to be able to accurately advise the woman of the reliefs to which she is entitled under the Act. The Legal Counsellor is available for consultation at the office of the SP three days a week for three hours. Legal Counsellors are paid INR 5000/- per month. They forward monthly work diaries duly countersigned by the head of the Service Providing Centres to KELSA and KSSWB.

Thus, as discussed above, at the pre litigation stage when counselling fails to have any effect, the woman is referred to the Legal Counsellor. The woman is thereafter given information about the legal remedies available to her, and if she so wishes, she is advised to proceed to file an application under the PWDVA. She is then referred to the PO or the Legal Aid Service, as the situation demands. It is important to note that the role of the Legal Counsellor is to provide legal advice to the woman and not to litigate on her behalf in court.

It has been recommended by the KSSWB that SPs should maintain a permanent signboard, listing information about the services provided, to be displayed at the entrance of their premises. The same signboard will be used to set out information regarding the timing and availability of the Legal Counsellor and the provision of free legal advice to women.

Legal Counsellors

Each SP has been provided with a Legal Counsellor for assistance. The Legal Counsellor is available for consultation at the office of the SP three days a week for three hours per day. The Legal Counsellor gives information to the woman about the legal remedies available to her, and if she so wishes, she is asked to file an application under PWDVA. The Legal Counsellor also tells the woman how to fill a DIR and directs her to the PO or KELSA, as required. He/She constantly provides her legal aid with the help of KELSA. Providing a Legal Counsellor to an SP ensures effective coordination between the SP and the Legal Counsellor; more importantly it helps the woman to make an informed choice about the legal remedies available to her.

Clinical Psychologists

SPs are also assisted by Clinical Psychologists. INR 10,144 per month has been allocated to each SP to meet expenses related to the service provided by Clinical Psychologists.

What is the role played by Shelter Homes, Medical Facilities and Police?

Shelter Homes and Medical Facilities

Between January and March 2009, 24 Shelter Homes and 84 Medical Facilities have been notified. In the same period, 9 women were given shelter by Shelter Homes and 88 APs have been provided with medical facilities. However, we were informed that surprisingly, very few women wished to live in Shelter Homes between the period of filing the application for a Residence Order and the grant of the order. This is however in keeping with general trends noted nationwide about the unwillingness to seek refuge in a Shelter Home before a Residence Order is granted by the court. It may be assumed that given the precarious situation of being abused in intimate relationships, women perhaps feel unsafe or uncomfortable in new surroundings. It could also be a result of inadequate facilities at the Shelter Homes.

Police

Reported cases on crimes against women are on the increase in Kerala, from a total of 9381 cases in 2007 to 9,706 cases in 2008 and 3156 cases in 2009.¹³

In Kerala, Police officers have been provided with some training on the PWDVA. Usually all domestic violence cases are referred to the Women's Cells attached to Police Stations. There are altogether 17 Women's Cells housed in Police Stations manned by trained Social Workers whose salaries are paid by the KSSWB.

We were informed that amicable settlement of disputes by counselling of husband and wife is what is mostly sought to be achieved at the Police Stations. Sometimes, the Women's Cell refers domestic violence cases to the POs; however, such occurrence is extremely low as officers revealed that the primary focus of the Women's Cell in complaints of domestic violence was to ameliorate the violence by counselling the woman, so as to reunite families and not bring legal action upon the husband and his family. This practice is similar to the findings presented in Chapter 8 of this Report. This finding also indicates that Police fail to recognise that domestic violence is not the same as disagreement or dispute between the man and the woman, but a Human Rights violation.

As discussed previously, Police also assist the POs at the stage of the execution of orders and during Home Visits.

How are Domestic Violence Cases being dealt with by the Courts?

Lawyers interviewed stated that in most cases Residence and Maintenance Orders are easily obtained. Obtaining Interim orders is also comparatively easy in direct contrast to

¹³ The total cases reported are only up to April 2009.

Compensation Orders, which the Court appears reluctant to grant.

There appears to be a lack of clarity with regard to certain provisions of the PWDVA, as there have been reported instances of the courts allowing applications to be filed by the mother-in-law against the daughter-in-law. It was also observed that usually domestic violence cases are not being disposed of in the PWDVA mandated timeframe (60 days).

The KSSWD also provided us with information relating to the courts as set out in Table 6.2.

Table 6.2 Some available data [January –March 2009]

Number of DIR forwarded to Magistrates:	378
Number of applications heard by Magistrate:	624
Number of applications disposed by Magistrates:	203
Number of cases in which <i>ex-parte</i> order granted by Magistrate:	17
Number of cases in which interim order granted by Magistrate:	284
Number of Protection Orders granted by Magistrate:	130
Number of Residence Orders granted by Magistrate:	52
Number of Custody Orders granted by Magistrate:	6
Number of Compensation Orders granted by Magistrate:	59
Number of cases in which Monitory Relief granted by Magistrate:	85
Number of cases where the judgment has gone against the women:	0
Number of cases of breach of Protection Order or Interim Protection Order brought up before the Magistrate:	10

Source: Kerala State Social Welfare Department

Other Mechanisms used for the implementation of the PWDVA Setting up of Vigilance Committees (Jagratha Samithis)

Apart from regular mechanisms in place under the PWDVA such as the PO, SP, Police, Shelter Homes and the like, Kerala has been making good use of existing mechanisms in the state that cater to women's access to justice to fill up gaps of delay and coordination. One such existing mechanism is the Vigilance Committee (Jagratha Samithi or Committees) set up at the gram panchayat level by the **State Women's Commission (SWC)** to facilitate its reach. These Committees comprise the Chairperson of gram panchayat, ICDS Supervisor as the Convener, elected members, local doctors, Lawyers, POs, NGO representatives etc. They refer matters to Lok Adalats. The Committees meet once every month and hear cases. They can take up suo motu cases as well.

The Jagratha Samithis are evolving as an alternate mechanism which decides matters under the PWDVA at Taluka and Gram Panchayat level. Thus, enabling women to access justice locally. Some organisations in Kerala like Sakhi are attempting to strengthen the Jagratha Samithis through capacity building programmes so that the committees are fully equipped to take up domestic violence cases independently.

The composition of the *Jagratha Samithis* is also reflective of a coordination system envisaged by the PWDVA. Our interactions with Thiruvananthapuram based Lawyers and NGOs revealed that these Committees have been successfully dealing with and disposing of domestic violence cases and thereby providing speedy and effective relief

Trainings and Awareness Campaigns by the State

to the women facing domestic violence.

The KSSWD has allocated INR 60 lakhs for training under the Gender Awareness Programme which is being conducted in collaboration with the Institute of Management in Governance. Till date, approximately 45 trainings of stakeholders especially POs, Police and NGOs have been conducted. Training and awareness campaigns of the PWDVA are being clubbed together with the Gender Awareness Programme.

On 15 August 2009, a workshop on the implementation of the PWDVA by Judicial Officers, POs, SPs, and Police was organised by the KSSWD. It is hoped that the same will be repeated on an annual basis. This workshop took place in all the districts with a participant number of approximately 200 per district. Each district had a High Court Judge and a Minister as part of the workshop.

Information regarding trainings and awareness campaigns obtained from the KSSWD are listed below:

- Printing of 'Sthreeyum Niyamavum': The Book contains various laws relating to women including the PWDVA and the PWDVR, names of POs, Shelter Homes, SPs etc
- Telecasts through Doordarshan: Telecasting video spots, short films related to the PWDVA at prime time.
- Broadcasting through All India Radio: Broadcasting audio spots, documentaries related to the PWDVA in All India Radio
- Training provided to stakeholders through three regional centres of Institute of Management in Governance.
- Conducting a one day seminar for the effective implementation of Vanitha Nayam on Women's Day.
- Organising training programmes through the *Mahila Samakhya Society*: Objective of programme is provision of gender education to teachers and adolescent girls.
- Organising a one day workshop for heads of Shelter Home/ Service Providing Centres held at Thiruvananthapuram on 18 February 2009.

Concluding Observations and Suggestions

Our field visit to Trivandrum provided us with a general picture of practices followed and evolving trends in Kerala.

 While the Coordination Committee is an excellent initiative to foster multi agency coordination, the state government needs to reassess its performance and practical difficulties need to be surmounted so as to achieve the purpose of the Committee being set up in the first place. It was also observed that most stakeholders and



even Committee members themselves are unaware of the existence of this Committee. It is therefore reiterated that wide dissemination of knowledge is done with reference to the existence of coordination committee so that perhaps the elected NGO members can take a leading role in convening these meetings on a regular basis. As discussed previously, it is strongly suggested that representatives/ deputed officers attend meetings in the absence of the appointed members to ensure continuity of this promising initiative.

- Appointment of a Legal Counsellor for each SP is an interesting trend that is evolving in Kerala. A Legal Counsellor can advise a woman of the legal recourse available to her under the PWDVA. This is may be good practice because, a Legal Counsellor would be better equipped to help the woman make an informed choice should she want to avail of the remedy under the PWDVA most suited for her. However, we also emphasise that this practice perhaps needs to be perfected to the extent that the woman approaches the various agencies in a coordinated fashion to seek justice and does not end up in running from pillar to post to seek relief.
- Strengthening the *Jagratha Samithis* to take up issues pertaining to domestic violence may also be a very effective strategy as this would ensure that the victim gets justice in a relatively speedy manner. However, this trend will require further study before a comment can be made on its effectiveness.



Barriers and Facilitators Towards the Implementation of the PWDVA

KEY STAKEHOLDER: THE PROTECTION OFFICER

Chapter 7

The PWDVA places the PO at the core of its intent, to provide a woman experiencing violence with access to justice and necessary support. As discussed in Chapter 5, the PO, the key coordinator under the Act, is the link between the court and the woman. A quantitative survey with the POs in Delhi and Rajasthan was conducted to understand the implementation of the Law.

This chapter describes the findings from the survey conducted with the POs in Delhi and the 2 selected Districts of Rajasthan. Findings on the 3 major domains, perceptions and attitudes, knowledge and practices, related to the implementation of the PWDVA, are discussed. This Chapter also includes survey data presented both in terms of number¹ and percentages and qualitative data gathered from select KIIs and PFGDs with POs in Delhi² and women in Delhi and Rajasthan relevant to our analysis.

Delhi Scenario

Delhi was one of the first states to appoint POs. It currently has 17 Independent POs functioning on a contractual basis at District level, all women, aged between 25-35 years, with post graduate degrees (masters), over half of them having specialised in Social Work and working in the capacity of POs for the past 2 years. Prior to their appointment as POs, they were associated with organisations working on development issues. The survey attempted to cover all the POs in Delhi; however, of the 17, only 15 were interviewed, as 2 POs were on extended medical leave.

Rajasthan Scenario

As opposed to Delhi, the appointment of POs in Rajasthan was made in early 2008, subsequent to an order passed by the High Court, in response to a Public Interest Litigation, demanding a response from the state government as to why no POs had been appointed to date. As a result, the DWCD of Rajasthan issued notifications in February 2008 and April 2008, stating that the existing district and block level officials of the DWCD would take on additional charge as POs. Thus, the Project Directors, CDPOs under ICDS programme and Prachetas were appointed as POs in Rajasthan. In the two sites of this study, districts of Jaipur and Jodhpur, there are currently 50 POs and all of them were interviewed for the survey. The majority of POs are over 40

¹ The data for Delhi is presented both in terms of number and percentages given that the total sample size (n) was 15

² Due to the nature of their post, it was not possible to gather the POs in Rajasthan for a common discussion. The feasibility of such an exercise will be reviewed for data collection in the following year.

years of age, 36 of them are females and 14 are males, 33 of them have post graduate degrees and 11 are graduates. A high percent over 80 percent, of POs in Rajasthan and Delhi reported that they had received training on the PWDVA.

It must be noted, that litigation under the PWDVA in Rajasthan has largely been Lawyer driven, as recorded in the Second M&E Report. Further, information received from civil society groups in Rajasthan indicates that this trend continues even today.

Perceptions and Attitudes Towards Gender and Violence³

Table 7.1: Attitudes of POs towards Gender Equality and Violence

	Delhi (n=15)			Ra	ajasthan (n	=50)
	Agree	Partially agree	Disagree	Agree	Partially agree	Disagree
Statements	% (n)	% (n)	% (n)	%	%	%
Women deserve to be beaten in certain situations	6.7 (1)	6.7 (1)	86.7 13)	0	6	94
Domestic violence is a family affair	53.3 (8)	13.3 (2)	33.3 (5)	96		6
Domestic violence can be best resolved by counselling the woman	53.3 (8)	20 (3)	26.7 (4)	92	6	2
Women before filing a complaint of domestic violence should consider how that would affect their children	26.7 (4)	26.7 (4)	46.7 (7)	82	10	8
Mother-in-law and daughter-in-law must learn to stay together to make life easy for the man	53.3 (8)	20 (3)	26.7 (4)	70	20	10
Primary role of the woman in the family should be to take care of her children and other family members	26.7 (4)	46.7 (7)	26.7 (4)	44	36	20
Primary role of the man in the family should be to earn for the family	33.3 (5)	40 (6)	26.7 (4)	22	48	30

The PO is often referred to as the "friend of the woman," and is seen as *the* individual who will hear, support and guide the woman in seeking remedies under the Act to stop violence. Given that statistics constantly point to the fact that a small proportion of women facing domestic violence actually seek external help,⁴ the response they get is extremely important to examine. Therefore, the attitudes and perceptions of the POs, who women are likely to approach for help and support, must be examined critically. The responses of POs helped identify and understand what could be the barriers in women's access to courts, and whether the institution of the PO created under the Act is empowering (as envisaged under the Law) or disempowering for women.

³ These are findings from survey interviews held with each of the POs, and reflect their personal views.

⁴ According to National Family Health Survey 3 (2005-06) nearly 40 percent women currently married between the age of 15-49 report experiencing spousal violence. Of these, 66 percent never told anyone about the violence and only 3 percent ever sought help from external agencies. An earlier study (INCLEAN-ICRW, 2000. The IndiaSafe Study) reported that nearly 50 percent women reported experiencing some form of violence, and of these women, nearly 60 percent of them continued staying with the abuser because of the perception that violence within marriage is normal.

In our study, we found that the understanding of many of POs on gender equality, domestic violence, and the situation of women living with domestic violence is a cause for concern. In Delhi, while half the POs exhibited positive attitudes and empathy towards women, attitudes of others were disturbing. The situation is yet more dismal in Rajasthan. For example, over half the POs in Delhi and over 90 percent in Rajasthan agreed to the statement, "Before filing a complaint of domestic violence, a woman should consider how it would affect her children". Thus indicating that the woman should put her family's interest before her own. More alarming was the finding that 2 of the POs in Delhi and a similar number in Rajasthan endorsed the view that "Women deserve to be beaten in certain situations." In Rajasthan, over 90 percent of the POs felt that domestic violence is a family affair and that it can be best resolved by counselling women. In Delhi, nearly 75 percent expressed a similar opinion. Over 70 percent of the POs in both states endorsed the traditional view that a man's primary role is that of provider, and a woman's that of caregiver. (See Table 7.1)

Table 7.2: Perception of POs on when to lodge a complaint and under which law – PWDVA or Section 498A or in both (all figures in percent)

Act of violence	D	elhi (n=15)	Rajasthan (n=50)			
	PWDVA	Sec 498A	None	PWDVA	Sec 498A	None
Slapping the woman once in a while	93.3 (14)	6.7 (1)	0	78	10	12
Threatening to throw the woman out of the shared household once	86.7 (13)	0	13.3 (2)	82	10	10
The husband forcing the wife to have sexual intercourse with him	92.9 (13)	7.1(1)*		50	50	2
Ridiculing the woman by calling her names	92.9 (13)		7.1(1)*	96	0	4
Refusing to give the woman money for running the house	93.3 (14)	6.7 (1)	0	96	2	2
Banging her head against the wall repeatedly	93.3 (14)	13.3(2)	0	54	42	4

Note - Percentage will not add up to 100 due to multi response

The Law confers on the PO the responsibility of giving information to the AP on her rights and remedies under the PWDVA. It also necessitates that her complaints of domestic violence are recorded by filling out the DIR. Understanding what qualifies as domestic violence coupled with a gender-sensitive approach is a pre-requisite for POs to perform their duty.

Table 7.2 given above records findings on the perception of POs as to when a complaint should be lodged and under which law (i.e. the PWDVA/Section 498A IPC/both). It is heartening to note, that most of the POs perceive acts of verbal, emotional and sexual abuse as acts of domestic violence that justify lodging a compliant. Further, they identified that these would fall within the purview of the PWDVA. Only a few POs felt that some forms of violence do not justify any complaint. For instance, of the 15 POs

^{*} One PO did not respond.

in Delhi, 2 felt that threatening to throw the woman out of the household was not a justification for lodging a complaint, even though the PWDVA specifically guarantees the Right to Residence. Further, 1 of the POs in Delhi felt that ridiculing does not call for any complaint to be registered. In Rajasthan, 2 forms of violence, namely, slapping once in a while and threatening to throw the woman out of the shared household, were felt to be acts not justifying any complaint by 10 percent of the POs. The perceived severity of the act appeared to determine whether the complaint should be registered under Section 498A or the PWDVA. Thus, acts like banging the head repeatedly, forced sexual relations within marriage were considered acts requiring redress under criminal law. It may be likely that the lack of knowledge about which acts of domestic violence fall under the remit of the PWDVA contribute to this. This is further examined in the discussion pertaining to Table 7.6.

Perceptions and Attitude towards the PWDVA

A few statements were used to gauge the POs' attitude towards the PWDVA. Over 80 percent POs in both the states had a positive attitude towards the Law, and reported that they did not believe that "the PWDVA is a tool designed to harass men and their relatives". Most POs felt that irrespective of marital status or the lawful or unlawful nature of the relationship, all women deserved protection under the Act. Unfortunately, there were 20 percent (2) POs in Delhi who felt that women in unlawful relationships should not be covered by the PWDVA. A similar percent (18 percent) in Rajasthan felt that women in live-in relationships should not be covered by the Law. Of concern is that some POs are unsure and "somewhat agree" that women in such relationships should be excluded from the Law. However, most POs appeared to have understood the object of the Act and imbibed the spirit of the legislation. (See Table 7.3)

Delhi (n=15) Rajasthan (n=50) Some what Disagree Agree | Some what | Disagree Agree agree agree Statements % % % % (n) % (n) % (n) A woman who has on illicit affair 60 (9) 20(3) 20(3) 94 4 2 with someone should be granted relief under the PWDVA 100 Women in live-in relationship should 00 00 60 22 18 be covered under the PWDVA (15)The PWDVA, 2005 is a tool designed 6.7(1) 6.7(1) 86.7(13) 4 14 82 to harass men and his relatives

Table 7.3: Attitudes towards the PWDVA

Knowledge of the Provisions Under the PWDVA

In addition to the attitudes and perceptions of POs, knowledge of the Law is one of the crucial factors in its successful implementation. Gaps in knowledge at the level of the POs can be critical as they inform and guide the woman towards litigation. This section describes the findings of the extent of knowledge of the POs with respect to key definitions and concepts of the Law.

Definition of Aggrieved Person: Who can file under the PWDVA?

The knowledge that the PWDVA includes women who are married is universal; however, there seems to be some confusion arising when both the AP and Respondent are female. In the options given below, 27 percent of POs in Delhi and 40 percent in Rajasthan assume that a daughter can file against her mother, and a mother-in-law against her daughter—in-law (20 percent in Delhi and 60 percent in Rajasthan). Surprisingly, 47 percent of the POs in Delhi and 34 percent in Rajasthan wrongly assume that a female domestic worker can file under this Law against her employer. This possibly reveals gaps in their knowledge on the definition of the AP. (See Figure 7.1)

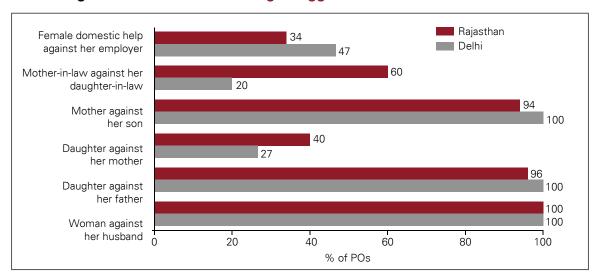


Figure 7.1: POs understanding of Aggrieved Person under the Law*

Definition of the Respondent under the PWDVA

A similar pattern of response can be seen regarding who can be made a Respondent under the Law. 27 and 40 percent of POs in Delhi and Rajasthan respectively, wrongly assume that "any adult female relatives of husband or male partner" cannot be made a Respondent. Thus, as in the case of AP, there is no clarity on whether a female can be made a Respondent, suggesting that further clarification is required on the definition of Respondents (See Table 7.4). As Chapter 9 on Order Analysis indicates, the issue of whether the term 'Respondent' includes female Respondents, is something on which even the court has adopted a contrary view, despite the clarifying proviso in the definition of 'Respondent'. Perhaps, it is this stance taken by the courts that may be contributing to the confusion of the POs.

· ·						
Respondent under the PWDVA	Delhi	Delhi (n=15)		Rajasthan (n=50)		
	Yes % (n)	No % (n)	Yes %	No %		
An adult male member in a domestic relationship	100 (15)	00	98	2		
Adult female relatives of husband/male partner	73.3 (11)	26.7 (4)	60	40		
Adult male relatives of the husband/male partner	93.3 (14)	6.7(1)	22	78		

Table 7.4: Knowledge of POs on who can be a Respondent under the PWDVA

Acts defined as Domestic Violence under the Law

The PWDVA gives a comprehensive definition of domestic violence, including all forms of violence such as physical, sexual, verbal and emotional and economic abuse. In the survey, a list of specific acts of violence was given and POs were asked to indicate whether they fall under the PWDVA or not. In Delhi, the POs seemed to have a clear and comprehensive understanding of violence. On the other hand, in Rajasthan, the reporting on the definition of domestic violence varied. Acts under emotional and economic abuse such as *name calling* and *preventing the woman from taking up a job or leaving the house* had a lower agreement rate with 88, 76 and 62 percent, respectively. Of most concern was the fact that approximately half the POs in Rajasthan did not think that forced sexual relationship within marriage was defined as violence under the Law. (See Table 7.5)

Table 7.5: Percent of POs reporting that the Given Acts are Defined as Domestic Violence under the Law

Acts of domestic violence	Delhi (n=15)	Rajasthan (n=50)
Slapping the woman	100	96
Forced sexual relationship within a marriage	100	54
Forcefully marrying the daughter to someone against her wishes	100	92
Name calling	100	88
Refusing to give money to the woman	93.3	82
Preventing the woman from taking up a job	100	76
Preventing the woman from leaving the house	100	62

Nonetheless, the above finding is encouraging to extent that it points to the significant contribution made by the Act in recognition of non-physical and non-life threatening acts of violence. Thus, indicating the potential of social legislations such as the PWDVA in influencing social norms.

During the PFGDs conducted in Delhi, the POs shared their views on forms of violence for which women usually come to them with complaints and which they considered most common and severe. The POs had a comprehensive understanding of domestic violence, its different forms, and acts that come within each form of domestic violence. Their understanding was reiterated by their observation that often, most forms of violence co-occur. They perceived all forms to be equally common and all of them to be severe. They recognised that sometimes, physical violence may or may not be as severe, but emotional, sexual and economic violence must always be regarded as more severe, as they degrade a woman and "she feels so helpless and as if there is nothing left for her." "She becomes so quiet, her whole sense of self is destroyed". Another PO felt that, "many of these forms cannot be shown or proved, and yet they can make the woman's life hell- so they must always be treated very seriously."

Provision of Reliefs under the Law

To further assess the knowledge of POs, a list of reliefs that can be sought under the Act was presented, which included correct options, as well as 2 commonly held incorrect options – the division of property and divorce. In Delhi, the POs knowledge of the reliefs under the Law was good, except for the division of property and divorce having one agreement each. In Rajasthan, 36 percent and 16 percent of POs respectively thought that the division of property and divorce were reliefs under the Law.

Surprisingly, 2 POs in Delhi seemed to be unaware of a Compensation Order as a relief provided under the Law. POs in Rajasthan displayed a more average understanding of reliefs. While most of them knew that a Protection Order could be sought as a relief under the Act, they were less sure of other reliefs. The other provisions had a slightly lower percentage of agreement. (See Figure 7.2)

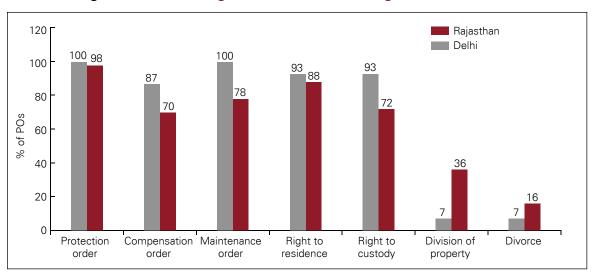


Figure 7.2: Knowledge of POs on reliefs sought under the Law

Findings on the knowledge with regard to the right to reside, are again surprising to some extent (See table 7.6). Less than half (45 percent) have understood this right. In Rajasthan, 46 percent believe that the right to residence gives a woman a right of ownership over the shared household. In Delhi, over 50 percent of the POs believe that a woman in a domestic relationship has a right to reside in the shared household only if the shared household is owned by the husband. It is likely that the general ambiguity around the nature of ownership of any property, and specifically women's rights within that, could be contributing to this confusion. Further, property ownership is a complicated issue and judgments under the PWDVA have given varying interpretations to this, as discussed further in Chapter 9. Nevertheless, these findings stress the urgent need for focused trainings to clarify confusions that may persist regarding the Law.

Table 7.6: Meaning of Right to Residence

Right to Residence means	Delhi (n=15)	Rajasthan (n=50)		
	Yes	Yes		
A wife has an ownership right over the shared household	0	46		
A wife in a domestic relationship has the right to reside in the shared household only if the shared household is owned by the husband	53.3(8)	10		
A wife in a domestic relationship has the right to reside in the shared household whether or not she has any right, title or beneficial interest in the same	46.7 (7)	44		

Knowledge of other Provisions and Procedures under the Act

Questions around the provisions and procedures of the PWDVA were asked to gauge the knowledge of the POs. Unfortunately, on many of these, the knowledge of the POs was not complete. For example, to the question, "Who can serve notice under the PWDVA?", less than half the POs in Delhi (7) knew that it can be served by any person directed by the PO. 20 percent POs were not aware that notice can be served by the PO with the help of Police and only 1 was aware that notice could be served by registered post. In Rajasthan, 30 percent did not think that the PO can serve notice, and 14 percent of the POs knew that notice can be served by any person directed by the PO.

Interestingly, 73 percent POs in Delhi and only 20 percent of POs in Rajasthan were aware that under the PWDVA, a PO is an officer of the court. The duties of the PO, as defined under the Act, indicate that this is a correct assumption. However, in practice, the credibility given by the Judges to the POs varies and many are reluctant to accept them beyond their administrative role. As discussed further in Chapter 9, this is an area that requires attention and has serious implications for the effective implementation of the Act.

Upon direction by the Magistrate, the PO is required to conduct a Home Visit to make enquiries regarding the shared household, the incidents of violence or to ascertain facts related to salary and assets. All except 1 PO in Delhi and all the POs in Rajasthan were aware that *the purpose of the home visit* was to make preliminary enquiries about violence, but 40 percent in Delhi and 22 percent in Rajasthan also believed that it was to get the PO's opinion on the case.

In response to Who can fill a DIR?, 60 percent (9 out of 15) in Delhi, and 38 percent in Rajasthan were not aware that a SP can also fill a DIR, though all knew that it was the PO's responsibility. In Delhi, 4 POs mistakenly believed that Police can fill a DIR, and 20 percent in Rajasthan believed this to be true. Over 50 percent of POs in Delhi responded that the aggrieved woman can also fill in the DIR. Several detailed questions were asked regarding the DIR and the findings on these are presented in Table 7.7.

Table 7.7: Information about the DIR

	Delhi (N=15)			Rajasthan (N=50)		
	True % (n)	False % (n)	Don't Know % (n)	True % (n)	False % (n)	Don't Know % (n)
All DIRs have to be sent to Magistrates as per the PWDVA	100 (15)	0	0	100	0	0
All DIRs have to be sent to the local Police station as per the PWDVA	80 (12)	13.3 (2)	6.7 (1)	68	30	2
The role of the DIR is to initiate legal proceedings	80 (12)	13.3 (2)	6.7 (1)	98	2	
The role of the DIR is to record the history of violence	100 (15)	0	0	82	18	
Every time, a woman approaches the PO, a DIR has to be filled out	00	100 (15)	0	22	76	
The DIR is mandatory to accept application under Section 12 of the PWDVA	73.3 (11)	20 (3)	6.7 (1)	86	2	
The DIR and the Home Visit Report are same	00	100 (15)	0	12	78	

Findings also indicate that some of the POs are not aware of specific procedures outlined in the Act with respect to DIRs. 30 percent of the POs in Rajasthan and 2 POs in Delhi were not aware that copies of the DIRs should be forwarded to the local Police station. 80 percent POs in Delhi and 98 percent responded incorrectly, that the role of the DIR is to initiate legal proceedings. This erroneous perception is likely to influence the practice of recording the DIR by POs, as is described in the following sections of this chapter.

Further, it indicates that the objective of the DIR and its purpose under the Act is an issue that needs attention and clarification. This issue is touched upon later in this Chapter as well as previously in Chapters 5 and 6 of this Report. Similarly, the data that POs fill the DIR only once the woman is sure that she wants to make an application under Section 12 of the Act, which may not be the case at their first meeting, defeats the purpose of the DIR which is to record the history of the domestic violence. Further, it is of concern that all the POs in Delhi and over 75 percent in Rajasthan do not believe that a DIR has to be filled every time the woman approaches them. 12 percent of POs erroneously believe that the DIR and Home Visit Report are the same. The fact that these two reports are being used interchangeably is highlighted by order analysis findings as well.

Objective of Counselling

Counselling *i*s an area, where there is considerable misconception and misinformation. As 80 percent in Delhi and well over 90 percent in Rajasthan believed that the objective of counselling under the PWDVA was to 'save families from breaking down' and 'to strike a compromise', the desired option of 'getting an assurance from the Respondent that the act of violence will not be repeated' had much lower agreement – 50 percent in Delhi and 60 percent in Rajasthan. As per the Act, counselling can only be undertaken upon direct order by the court. The Act does not vest the responsibility of counselling with the PO. However, the majority of POs believed that counselling should be

suggested before the court is approached (56 percent in Rajasthan and 90 percent in Delhi). Over 80 percent in Rajasthan and over 70 percent in Delhi believed that it should be done before the DIR is filled, possibly because of their perception that the DIR initiates legal proceedings. This also ties in with the perception that "Counselling the woman is the PO's duty under the PWDVA," which is agreed to by 7 POs i.e. 47 percent in Delhi and as much as 88 percent of POs in Rajasthan.

It appears that all stakeholders approached by the woman proceed to 'counsel' her but the content and intent of this is not fully explored or understood. The following section describes how many women who approach POs ask them to "advise her husband and family to stop violence," and this clearly points to the need for pre-litigation support or counselling prior to filing their case in court. Thus, although the PO can refer the women to a Counsellor, and the Act provides details on their appointment and procedures to be followed, it is not surprising that many POs go beyond giving advice as mandated under Section 5 of the Act and take on the role of talking to the woman and probably her family. As described in the initial section, there were a few POs from Delhi who agreed to notions such as "There are times when a woman deserves to be beaten" (2), or that "Before filing a complaint, women should consider how it would affect their children" (8). If such attitudes guide the counselling, it is indeed a matter of great concern and is a serious barrier to a woman's path to justice.

Counselling as a professional skill or area of technical expertise seems to be neither completely understood nor is its true meaning and purpose fully appreciated. The PO is neither trained as a counsellor, nor is she 'neutral' as defined under Rule 8 of the Act. While women facing violence should be offered counselling in the form of support towards building their confidence, one is not sure whether that is the intention of the counselling being undertaken by the stakeholders and it is an area of concern as it cannot always be ascertained whether it is respectful of the woman's wishes, and with the aim of creating a violence-free environment for her. Steps are needed to fulfill this need expressed by women at the pre-litigation stage and specific direction should be incorporated in the Law.

Table 7.8 below gives the findings from Delhi and Rajasthan on some of the other knowledge statements, including those pertaining to the role of the PO. Only 2 POs in Delhi, but 78 percent in Rajasthan continue to believe that the PO must be present for all court hearings. All POs in Rajasthan and a majority in Delhi agree that POs have to be examined by the Magistrate on facts stated in the DIR. Again this could be the reason why POs are reluctant to record the DIR.

Table 7.8: Knowledge of different provisions of the Act

	Delhi (N=15)			Rajasthan (N=50)		
	True	False	Don't Know	True	False	Don't Know
The PO should forward a copy of the medical report to the local Police station	80 (12)	6.7 (1)	13.3 (2)	88	6	6
The Police have no role to play under the PWDVA	6.7(1)	93.3 (14)		18	82	
POs should be present in all daily hearings	13.3 (2)	86.7 (13)		78	18	4

(contd.)

Magistrates may take suo moto action if the DIR discloses commission of a serious offence as per the PWDVA	86.7 (13)	6.7 (1)	6.7 (1)	94	2	4
POs have to be examined by the Magistrates on facts stated in the DIR	86.7 (13)	(2)		100		
Counselling the woman is the PO's duty under the PWDVA	46.7 (7)	53.3 (8)		88	10	2
Breach of order may be reported to local Police as an FIR as per the PWDVA	80 (12)	20 (3)		80	18	2
Breach of order is cognisable and non-bailable under the PWDVA	93.3 (14)	6.7 (1)		88	10	2

About 20 percent of the POs in both states do not know that the breach of order can be reported to the local Police station. To the question – when can Police register an FIR under the PWDVA?" only 1 PO in Delhi responded 'No' to the option of "at the time of breach of order" while the number disagreeing in Rajasthan was the same (Table 7.11). Thus, in Rajasthan, there is more pronounced confusion around breach of orders and the subsequent criminal action to be taken by the Police. To the same question, 20 percent POs in both states reported that a FIR can be registered under PWDVA when a woman approaches Police for the first time; while 40 percent in Delhi and 88 percent in Rajasthan stated that a FIR can be recorded when the violence is severe. However, none of these conditions demand registration of FIR under the PWDVA. It is only at the time of the breach of an order, that Police are supposed to register an FIR and arrest the offenders. It is likely that the response to this question is being influenced, by the lack of clarity around the civil-criminal nature of the PWDVA, the general perception that severe acts of violence justify lodging of a criminal complaint and the option to file a criminal complaint available under Section 498A.

Action to be taken when a breach of order is reported and with regard to the role of the Police, are areas that need further discussion and clarity.

Table 7.9: Registration of FIR under the PWDVA

When can the Police register FIR under the PWDVA?	Delhi (N=15)	Rajasthan (N=50)	
	Yes % (n)	Yes %	
When the woman approaches Police for the first time	20.0 (3)	20	
When the violence is severe	40.0 (6)	88	
At the time of the breach of order	93.3 (14)	18	

Implementation of the Law

Receiving Complaints of Domestic Violence

All POs in Delhi reported that they have been approached by women between the ages of 16 and 45 years for help under the PWDVA, in the last year. Over 90 percent of the POs (14) reported that women were referred to them by the Police. 80 percent reported that they came through notified NGOs, followed by references from the LSA. 60 percent reported that the women came on their own. 86 percent (13 of the 15)

POs also reported that they had received information of violence from a third party. In such cases, 30 percent (4) approached the woman and filled a DIR, while 15 percent asked the third party to bring the woman to them. One of them reported the matter to the Police, while one investigated the matter herself. This data reflects the awareness levels of women with regard to the existence of the POs in Delhi. It appears to be the case that women, as well as other stakeholders, namely the Police and SPs are aware of the POs and are approaching them for necessary action under the PWDVA. It also indicates some extent of coordination taking place between the stakeholders, especially the Police who refer women to POs.

In Rajasthan, 78 percent of POs reported that they were approached by women in the past year. The age range of women approaching them is from 18 to 45 years. Most of them reported that the women approached them on their own (69 percent), followed by referrals from LSA (18 percent) and SPs (13 percent). Of the POs approached by women, nearly half said that they also receive information of domestic violence from third parties, and in such cases, 76 percent of them said that they usually approach the woman and fill the DIR. 45 percent of them ask the third party to send the women to the PO while 20 percent report the matter to the Police.

All POs in Delhi reported getting cases referred by court and all but one also reported filing cases in court. Half of the POs in Rajasthan reported that they have been referred cases by the court, while none of them reported having filed any case themselves in the past year. While we know that most cases in Rajasthan continue to be filed through Lawyers, this data also raises a critical question – if 69 percent POs in Rajasthan are being approached by women with complaints of violence, and none of the POs report that they have filed any case, then what is the nature of response that they have provided to the women? The data below, on the assistance sought and given by POs to the women, as reported by the POs, provides some trends and discussion. However, there is a need to undertake a more careful and detailed examination of the help sought and given by the POs in the prelitigation phase and also if the case does not reach courts then there is a need to find out the reasons.

Forms of Violence reported by Women to Protection Officers

Over 90 percent of POs in Delhi said that women approached them with complaints of being beaten and being subject to economic abuse. Slapping, name calling and forced sexual relations within marriage were the common forms of violence for which more than 50 percent POs reported that women approached them. In Rajasthan, being beaten was again the complaint for which most POs were approached for help. 69 percent POs reported this, followed by 67 percent for slapping, 41 percent for scolding and 35 for refusing to give money. The pattern reported is similar, with the exception of sexual violence, which was reported as being much higher in Delhi. This could be on account of the socio-cultural milieu of the state, the kind of POs and the comfort levels of women in reporting this specific form of violence.

⁵ Note that these percentages are not reflective of the number of women or number of complaints that the POs have received. These reflect the number of POs who report having received complaints for the various forms of violence.

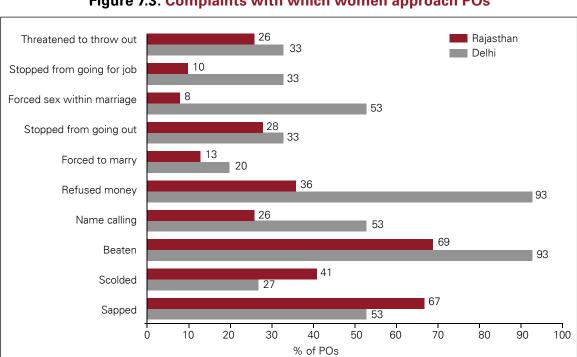


Figure 7.3: Complaints with which women approach POs

Expanding on the complaints of violence that they receive, the POs in Delhi mentioned during the PFGDs that among women experiencing emotional violence, the most commonly reported examples were emotional blackmail and aspersions cast on the woman's character. They felt that verbal and emotional abuse usually co-occur as what is said has a profound impact on the woman psychologically.

"A husband will say that if you don't get money from your parents, I will tell in front of the children that you have relations with your brother, neighbour ... and then he will also use abusive words. It is so terrible, the saddest part is that often the husband has extramarital affairs himself, but the woman will never say all this to him," – PO, Delhi.

"However, though verbal abuse is extremely common, and happens with almost any form of violence, the Magistrates are least likely to consider it. Most are often dismissive of this, saying that the woman must also have counter argued. It is also true that neither we nor the women are able to say all the abusive language in the court as it is so filthy. But we had hoped that the Magistrates would understand and empathise," – PO, Delhi.

The filling of the DIR in a prescribed format is done with the intention to cover the varied nature of violence suffered by women. The DIR recognises that the woman would often not be able to narrate or articulate the violence suffered either because the nature of violence is embarrassing or she is not sure whether it qualifies as violence. The mapping of judicial attitudes in Chapter 10 contains a further discussion on this issue, and also holds up examples wherein courts have shown sensitivity to the nature of domestic violence.

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In Delhi, most POs felt that economic violence is on the rise, for example, not giving money for expenses, retaining the wife's ATM card, keeping her salary are all common acts of economic violence. They expressed that women often do not recognise this as a form of domestic violence, until it is accompanied by other forms of violence, or till it becomes a pattern and "then it is too late."

The POs were aware of the fact that often women were unable to approach them. They were also aware that, they were being overburdened with multiple responsibilities and handicapped by the lack of adequate support and infrastructure which made matters worse. "We are hardly at our office, and we don't have official mobile phones. If we attend court everyday and serve notices all the time, when are we in office for women to approach us? We feel very bad, but there is nothing we can do. One person cannot be everywhere." They also feel that the District office of the DWCD, where they are seated is often inaccessible to women – neither is the address or location of this office commonly known, nor is it geographically easy to locate.

They appreciated and empathised with women in situations of violence and demonstrated a commitment to help the women to the best of their abilities. However, they spoke very strongly about basic barriers that prevented them from doing so, highlighting the concerns raised by LCWRI in its previous reports about the lack of infrastructure as an impediment for POs to fulfill their duties.

"We have been given a chair in the District office. But we are on contract and not officers, so everyone treats us like that. We have to borrow stationery, and request the cleaners to clean the place where we sit. There is no room. When the women come, where do we listen to them?" – PO, Delhi

"When women come, they need privacy. I also need some quiet and confidential space so that she can talk to me openly. How can she talk with everyone hovering about?" – PO, Delhi

"Sometimes, women begin to cry when they tell their story. It is so embarrassing for both of us. Everyone listens in. A separate room is the most basic infrastructure we need." – PO, Delhi

"Often the woman's relatives also come with her. She may not be comfortable sharing everything in front of them. It becomes very difficult to manage. How can we expect a woman to tell her complaints openly – especially if they include sexual violence? Often women can't say everything, but we understand." – PO, Delhi

The POs questioned the commitment or sensitivity of the state government towards this Act, and women facing violence in general, questioning how they can be so unmoved or blind to the need for basic infrastructural requirements of POs, essential to fulfill their duties.

Filling the Domestic Incident Report

80 percent of the POs in Delhi reported that they do a preliminary enquiry before filling the DIR, while 78 percent in Rajasthan reported this. The actual practice with respect to the DIR is divergent from what is outlined in the Law. The filling of the DIR is postponed till the aggrieved woman decides that she has to go for litigation, and this may be after some POs have tried to 'resolve or settle' the case at their end. During the PFGD with the POs in Delhi, POs elaborated on this, saying:

"No, I don't fill in the DIR immediately. First I listen to her and ask her if she really wants to go to court. Only then I fill out the DIR."

"After listening to the woman, if I get the feeling that there is scope for compromise, then I call the husband first. I don't fill the DIR immediately."

"These small things keep on happening in marriage, especially in the first few years. No fight happens with only one person. A little adjustment is necessary".

It is thus, evident that in practice, the DIR is perceived to be a tool of litigation and not a pre-litigation device. Concurrent with the knowledge reported above in Table 7.9, 80 percent POs in Delhi perceived that the role of the DIR is to initiate legal proceedings and that the same percentage report taking some action in the form of enquiry etc. before filling in the DIR. None of the POs in Delhi and 76 percent of the POs in Rajasthan reported that they do not fill a DIR every time the woman approaches them.

Responses around practices adopted with regard to DIRs indicate that 87 percent of the POs in Delhi always forward a copy of the DIR to court, the rest send the DIR only with the application. The percentage of POs forwarding the DIR copy to the Police is lower, with 33 percent reporting it. 20 percent report that they <u>never</u> forward a copy to the Police while another 15 percent responded with "depends on the situation". In Rajasthan, 44 percent reported that they always forward a copy to the court, 16 percent reported that they <u>never</u> forward a copy to the court, and 14 percent say that they forward a copy, only with the application. Over 50 percent reported that they never forward a copy to the Police.

Assistance sought by women from Protection Officer

In response to what type of help was sought by women, giving protection (from domestic violence) was the most commonly reported in both states at over 70 percent. In Delhi, the percentage of women wanting the PO to advise the Respondents to stop violence was much lower at 47 percent, as compared to Rajasthan with 72 percent. Significantly, taking the case to court was much lower in Rajasthan at 15 percent compared to 33 percent in Delhi and approaching a PO for lodging a complaint showed a similar pattern. This could also be since, in Rajasthan, cases are still more likely to reach the court directly through Lawyers, and are only subsequently sent to the PO. Table 7.10: shows assistance sought by the woman from the POs.

Table 7.10: Assistance sought by the women from POs

Assistance Frequently sought from the PO, as Reported by POs	Delhi (N=15) % (n)	Rajasthan (N=50) %
Advise husband and other family members to stop violence	46.7 (7)	71.8
Lodge a complaint	60.0 (9)	30.8
Give protection	73.3 (11)	74.4
Arrange a safe shelter	60.0 (9)	56.4
Refer her to medical facility	26.7 (4)	10.3
To take her case to court	33.3 (5)	15.4
Refer her for legal help	40.0 (6)	15.4

During the survey, POs were asked to share the actions taken by them *as first point of contact* as a response to the help sought by women. The numbers who reported talking to the perpetrators to stop violence were more in Rajasthan (64) than in Delhi (27 percent). Though the percentage of POs who inform the woman about her rights under the PWDVA is similar in both states, the recording of DIRs was higher in Delhi. Recording of the information in the register was also reported higher in Delhi (53 as opposed to 33 percent). Finally, the filling of applications was almost double in Delhi. (See Table 7.11)

Table 7.11: Action taken by POs at the First Instance

Action taken at the first instance	Delhi (N=15) % (n)	Rajasthan (N=50) (%)	
Advise her husband and other family members to stop violence	26.7 (4)	64.1	
Make the woman aware of her rights under the PWDVA	73.3 (11)	71.8	
Make the woman aware of her rights Under 498 A IPC	20.0 (3)	56.4	
Record information in a register	53.3 (8)	33.3	
Fill the domestic violence report	86.7 (13)	61.5	
Fill application on her behalf	40.0 (6)	20.5	
Refer her to Police	13.3 (2)		
Counsel her to go back home	00	17.9	
Advise the woman to lodge a criminal complaint	26.7 (4)	7.7	
Don't know	13.3 (2)	0	

In two separate PFGDs with women who had accessed the Law in Jaipur, only 4 women out of 27 spoke of interactions with POs. 2 of them were directed by the court to visit the PO to fill the DIR. Another woman said that she did not find the PO to be at all helpful. Another woman said she had a good interaction with the PO as her story was heard to in a sympathetic manner. However, after that she has had no further contact with the PO. Since most of the women in litigation have their own Lawyers, they do not depend on the POs.

The representatives from the NGOs and SPs said that they have been trying unsuccessfully to establish contact at the outset with the POs, when women approach them for help. They say, "The job of a PO is such that a woman cannot approach them at night or on holidays as well. These officers will never entertain calls, even for emergency help." "Since this is an add-on responsibility, they do not treat it as priority. They say that they have their other responsibilities that they have been doing all these years, and they have to fulfill those first." These groups feel that independent POs for which this is a primary duty should be appointed. A dedicated resource allocation under this Act is a must. "Right now, everything under this Act is an additional duty- POs have an additional duty, Counsellors under Family Counselling Centres have been given this additional duty, Short stay homes have been notified as shelter homes. No one has been given any extra budget for this work. Why should people do it?"

Interaction with Police

In Delhi, all the POs reported approaching the Police for assistance. The assistance was sought for a variety of reasons (as detailed in Figure 7.4 below) and in most cases was received. Interestingly, it was only in the 3 cases (20 percent) where POs asked for assistance with regard to arrest following breach of court order that the assistance was not forthcoming.

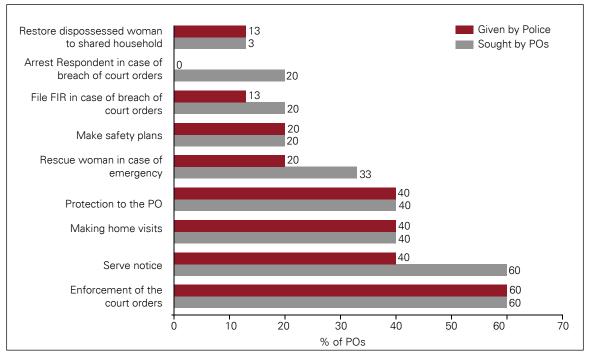


Figure 7.4: PO sought and received help from Police

In Rajasthan, only (9) 18 percent of the POs had approached the Police for any assistance. This was reported for service of notice (2), rescuing woman in case of emergency (7), recording a DIR (5), restoring the woman to the shared household (4), recording an FIR in case of breach (3). In most of the cases, they reported having received the help they had sought, except for 1 PO reporting that they did not get help for recording FIR in case of breach, and another for restoration of the woman to the Shared Household.

Breach of Court Order

86.7 percent (13) POs in Delhi mentioned that they had received reports of breach of court order. In such cases, the action taken by them is given in the Table 7.12 below. Most of them (11) reported the Breach to the court, 5 investigated the case, while 4 reported the breach to the Police.

% Ν 84.6 11 Reported the breach to Court 4 Reported the breach to Police 30.8 Referred woman to Police Station 23.1 3 Investigated the case 38.5 5 23.1 3 Gave warning to Respondent

Table 7.12: Action taken in case of Breach (Delhi)

In Rajasthan, 4 POs had received report of breach, 3 POs had reported the matter to the court, Police station and also warned Respondent, while 2 said that they investigated the case. This data indicates not only the need for a mechanism for enforcement of orders under the Act, but also a way to bridge the gap in the knowledge of POs and the method to be adopted in case of breach.

Interaction with the courts

The interactions of the POs in Delhi with the courts depend solely on their relationship with the Magistrate. If the Magistrate understands the Act and passes an order, they are also sensitive to the constraints and limitations of the PO. On the other hand, if the Magistrate is dismissive of the Act, they are likely to never pass an order, and are also insensitive towards the PO. In such cases, the POs feel harassed, unsupported and unable to cope with the burden, and feel that they are being taken to task instead of the Respondents.

67% POs in Delhi and 90 percent in Rajasthan stated that they do not received copies of all court orders. In Delhi, this is a matter of great concern for the POs because as they then may often not know the progress of the case. One reason for this could be when the court directs the orders to be served directly through its Nazareth branch or order enforcement through the Police. 86.7 percent of the POs in Delhi reported that the court had given directives to the Police to provide assistance under the PWDVA. This was largely in the nature of enforcement of orders such as custody of child, maintenance or re-instating the women in the Shared Household.

In Delhi, the service of notice remains an issue of great concern to the POs, given that each has to cover a large geographic area, and has no support for transport. 10 POs reported that in 10 percent or less cases, notice was served within 3 days. Only, 3 POs have reported that in more than 70 percent of cases, notice was served within the stipulated time. The grant of an *ex-parte* order to the AP is a rarity. Only in 1 to 3 percent of the cases, *ex-parte* orders were passed at the first hearing in Delhi. Further, 11 POs reported that in less than 10 percent cases, interim/*ex-parte* orders were passed within

a month and in less than 5 percent cases, final order was passed within 60 days.

In Rajasthan, only 5-6 POs could respond to these questions. Mostly in less than 10 percent of cases, notice was served within 3 days and *ex-parte* orders granted at the first hearing. Three of the POs reported that interim/*ex-parte* orders were passed within a month and final orders within 60 days in 2 to 3 percent cases, while 2 said that it was done in 20 to 30 percent cases.

Amendments

Four out of the 15 POs felt that amendments should be made to the role of the PO, and all suggested that they should not be made responsible for service of notice. On the other hand, 14 POs suggested that amendments should be made to the Law. The 2 suggestions given were to limit the definition of domestic violence, 6 and increase the scope of Police involvement. In Rajasthan, half the POs felt that there should be some amendment to the Law. 32 percent felt that the scope of Police involvement should increase and an equal number felt that the breach of Protection Order should not be punishable. Lawyers involved in the PWDVA litigation in Jaipur felt that the responsibility of both service of notice and enforcement should rest with the Police, since they are the most visible law enforcement authority. 'If need be, a special Police protection force should be asked for.' To make the Law effective for women, they felt that several loopholes inherent in the Law need to be addressed. Firstly, accountability of Judges should be fixed by including the PWDVA cases in the recording system. Secondly, the burden of compliance should be shifted onto the Respondent. Thirdly, very clear and precise practice and procedural directions should be laid out for Magistrates instead of giving them wide discretionary powers. Lastly, if the cadre of POs is to stay and be effective, there must be independent POs with requisite background appointed.

Conclusion

Overall, in comparison to Rajasthan, the POs in Delhi were better informed about the Act, and had a more sensitive attitude towards women facing violence. Many of them appeared to have a better understanding of gender equality, violence and its 'ideal' resolution. Unfortunately, there were still substantial numbers in both states that harboured negative attitudes that could be serious impediments to the effective implementation of the Law. By demonstrating a preference for placing the welfare of the family before the rights of the woman, they consider "counselling the woman" an ideal resolution for violence. If most of these officers view that the woman should ideally not approach external agencies for help to resolve domestic violence, since she should be mindful of the impact on her family, they are unlikely to be supportive of the woman or be empathetic towards her situation, or willing to enforce the Law effectively.

The differences in the findings with regard to the POs in both states could be attributed to several factors. An overarching factor could be that each state has a different social

⁶ Details of the manner and specific ways in which the amendment should be made were beyond the scope of the survey. These are areas that need further exploration through qualitative tools.

and cultural makeup. The other could be that the nature and experience of POs is different in both states. The POs in Delhi have been appointed earlier and have had more experience in handling cases under the PWDVA. Additionally, they are independent appointees and work as POs on a full-time basis. Another aspect that needs to be considered is the background or orientation of the POs. The POs appointed in Delhi have a background in social work, and are likely to have some prior orientation on gender issues. On the other hand, officers who have been oriented under the ICDS programme are used to seeing women primarily as 'mothers', vested with the responsibility of welfare of the family and children, and are unlikely to see the woman as a person with individual rights. This lends strength to the argument for appointment of POs who have some background on gender-related issues. However, the data also cautions that this may not be sufficient, and states must take the responsibility for a thorough and sustained orientation of POs. It also highlights the critical need for intense perspective building along with imparting information.

It must be recognised and appreciated that violence is an issue that has its roots in deeply embedded values and norms. Thus, sporadic or one-off efforts at training are unlikely to shift these values. The lack of a sharp feminist analysis of gender relations and power may also be underlying the finding that a large proportion of POs (again more in Rajasthan than in Delhi) do not appreciate the rationale behind enacting a gender specific legislation. The Law has built in the provision for POs, as it recognises the need to appoint individuals who provide the initial, supportive response to the women, and facilitate her access and journey to the courts.

Another aspect, likely to influence the POs' attitude, towards what they consider as the best resolution for women from violence, is the experience in the courts. Poorly implemented laws are often the strongest deterrent to women's access. POs in Delhi who displayed a good understanding of the Law, women's situation and a sound perspective on violence, shared their growing disappointment with regard to the judicial system. They mentioned how "sometimes we wonder whether we do the 'right thing (for the woman) by encouraging her to go to court because she does not get the relief that she wanted, and instead feels victimised for having spoken out." "Many women say that they hoped they would get some relief, but instead they get nothing. We feel terrible when they say that nothing has changed, this Law is just like any other law." Immediate and intense efforts to improve implementation and strengthen the processes of justice must be undertaken, to prevent a sense of apathy from setting in that can demotivate POs and become yet another barrier to their effective functioning.

Yet, there are aspects where the Law has had a positive impact. One clear example is that most POs do not appear to judge whom they feel 'deserves justice' under the PWDVA. In both the states, very low proportion of POs feel that women who have illicit relationships or women who are in live-in relations should not be included within the ambit of the law. It is also likely that the knowledge of who is covered under the Law contributes to this perception. Given that this is the first and the only Law that covers women in relationships in the "nature of marriage", this is an extremely encouraging trend and points to the potential of legislation in influencing social norms.

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This is seen further with regard to knowledge of domestic violence, as defined under the PWDVA. The Act has succeeded in creating a comprehensive understanding of violence to include all forms, and bring them within the purview of 'offence'. This understanding is prevalent among all POs in Delhi, though more varied among POs in Rajasthan. The main concern is the lack of recognition of forced sexual relations within marriage as domestic violence by approximately half the POs in Rajasthan. This again reinforces the comments around the prevailing attitude and perceptions of POs in Rajasthan, and calls for deeper discussion on the issue.

There are a few key areas of knowledge regarding the PWDVA where further clarity is needed, and this is more pronounced in Rajasthan. These include gaps in the understanding of key concepts such as the definition of Respondent, AP and the meaning of right to residence. The confusions centres around two core issues: one whether the definition of Respondents includes females; and the distinction between right to reside and ownership rights. Both could be influenced by the practices and judgments of courts, and are discussed further in Chapters 9 and 10.

Nevertheless, these are critical areas to address, as they can have serious implications on the accurate filling of the DIR, and direct the women to claim certain reliefs. The confusion around ownership in Rajasthan manifests itself in an incorrect understanding of the right to reside, wherein almost half the POs take it to mean that the wife has ownership right over the Shared Household. This can be a major deterrent to POs advising the woman to file for this relief, especially with attitudes that are not supportive of women's rights. In Delhi, interestingly, an equal number of POs feel that the wife has a right to reside, only if the household is owned by her husband. This could also be impacted by the judgments that have been passed by the courts that have interpreted this proviso in a specific way, pointing to the immense impact that misinterpretation by the Judiciary can have on understanding and practice of the Law. This emphasises the need not only for constant clarification and discussions around specific reliefs among all stakeholders, but also calls for some public clarifications around orders passed by courts around key concepts of the Act.

The practises around recording of the DIR are another area of concern. In the absence of the DIR, it is likely that there is no record of the woman's complaint or visit. This could have negative implications in case the woman decides to file a case in court at a later stage as no record of history of violence would be available. Further, with counselling being taken up by POs at the pre-litigation stage, the POs are serving as the first filter to cases of violence and possibly acting as a barrier to the woman wanting to approach courts. As discussed in this chapter, this is an area that needs urgent attention. The varying practices emerging around procedures such as service of notice, filling of DIR, level of involvement of the PO in cases highlights the need to draft clear practice and procedural directions for all stakeholders. Finally, focused discussion on the role of the PO and their myriad responsibilities must be undertaken. This must be informed by the realistic barriers being faced by them, and the actual practices adopted by courts.

Chapter 8

KEY STAKEHOLDER: THE POLICE

The PWDVA specifies the role of the Police at two critical junctures in the process of implementation. First, at the outset, when they receive a complaint of domestic violence. At this stage it is the duty of the Police Officer to inform the AP of her rights; to file a complaint under the PWDVA, specific reliefs available, her rights under Section 498A of the IPC right to free legal aid and give her information on the availability of POs and SPs. Secondly, upon breach of order, the role of the Police comes into play automatically as the breach is to be dealt with as a cognisable offence.

Currently, the Police are the most known, accessible and obvious structure, approached for help by women facing domestic violence. The response, guidance and direction that women get at the police station can influence what the woman chooses to do in her case, and also the outcome. Taking the extreme scenario, if the woman is met with an insensitive, disbelieving attitude and told that her complaint is invalid or "trivial", she cannot get any relief, and will not be referred to any other agency who can take her complaint forward.

This chapter presents the results on KAP of Police Personnel of various ranks from Delhi and Rajasthan as they relate to the implementation of the PWDVA. A representative sample of 500 Police Personnel were interviewed. This included Head Constables, Assistant Sub Inspectors, Sub Inspectors and Inspectors, including the Station House Officers. More than half the Police Officers had been in the force for more than 20 years in both the states. In addition, relevant qualitative data pertaining to perception about the role of the Police, gathered from the PFGDs with the women survivors of domestic violence and other Key Informants is also discussed in this chapter.

Perceptions and Attitudes Towards Gender and Violence

One of the key factors that determine how Police view and receive the complaint from a woman affected by domestic violence depends upon their gender attitudes in general and their attitudes to VAW in particular. Each Police Officer was given a set of statements reflective of societal norms around gender roles and domestic violence and asked to respond on a three point scale ranging from agree, partially agree or disagree.

A high proportion of Police, both in Delhi and Rajasthan (57 percent in Delhi and 81 percent in Rajasthan), agreed with the statement that "Women before filing a complaint of domestic violence should consider how that would affect their children", suggesting the possibility that women are unlikely to be treated with empathy when they approach Police for help. This proportion rises even higher; if we add the category of partially

agree. Close to half of all Police in both the states agreed or partially agreed with the statement that "Women deserve to be beaten in certain situations' and over 80 percent in both the states considered domestic violence as a family affair, that can best be resolved by counselling the woman. Table 8.1 presents inequitable gender attitudes of Police on a range of issues that can have detrimental impact on the effective implementation of the Law.

Table 8.1: Attitude of Police towards Gender Equality and Violence

	Delhi				Rajastha	n
	Agree	Partially agree	Disagree	Agree	Partially agree	Disagree
Statements	%	%	%	%	%	%
Women deserve to be beaten in certain situations	14	27.6	58.4	30.4	18	51.2
Domestic violence is a family affair	50.4	28.8	20.8	84.4	5.6	9.6
Domestic violence can be best resolved by counselling the woman	48	35.2	16.8	80.4	8.4	10.8
Women before filing a complaint of domestic violence should consider how that would affect their children	57.6	15.2	27.2	81.2	11.6	6.8
Primary role of the man in the family should be to earn for the family	36	26	38	65.6	17.6	16.4
Primary role of the woman in the family should be to take care of her children and other family members	74	17.2	8.8	78.8	9.2	11.6

Table 8.2: Perception of Police around when to Lodge a Complaint and under which Law – PWDVA or Section 498A or in both?

(all figures in percentages)

Act of violence	Delhi			Rajasthan		
	PWDVA	SEC 498A	None	PWDVA	SEC 498A	None
Slapping the woman once in a while	68.0	6.8	25.2	62.0	6.8	31.2
Threatening to throw the woman out of the shared household once	79.2	6.8	14.0	56.8	8.0	35.2
The husband forcing the wife to have sexual intercourse with him	82.8	5.2	12.0	61.2	8.8	30.0
Ridiculing the woman by calling her names	87.2	6.0	6.8	87.2	4.8	8.0
Refusing to give the woman money for running the house	89.2	2.8	8.0	94.4	2.8	2.8
Banging her head against the wall repeatedly	67.2	29.6	3.2	82.0	16.8	1.2

Note – Percentage will not add up to 100 due to multiple response

Specific questions were asked to assess the perception of the Police around what constitutes domestic violence and when does an act of violence attract lodging of complaint and under which law? Table 8.2 presents variations in the perceptions. It

appears that for the Police, severity of the act in the form of physical violence is the prime criteria for lodging the complaint, although a large number, particularly in Delhi also recognise slapping and name calling as acts that justify filing of a compliant under the PWDVA. In Rajasthan, one-third or 30 percent expressed that in case of slapping once in a while, threatening once and forced sex, women should not lodge a complaint.

In Delhi a significantly lower proportion of Police (less than 15 percent) disapproved the lodging of a complaint, particularly for threatening and forced sexual relations. Among those who justified the lodging of complaint, majority favoured the PWDVA over Section 498A in both the states. Only for the act of banging a woman's head against the wall repeatedly, a substantial proportion of Police (30 percent) said that they would lodge the complaint under Section 498A in Delhi. The proportion of those saying the same in Rajasthan was only 16 percent.

Talking about the attitude of the Police towards violence, an Assistant Commissioner of Police at the CAW cell, Delhi said, "Firstly, cruelty and violence are subjective and we cannot and should not judge whether the women should consider the action as violence or not. The woman comes to the Police station because she thinks what is happening with her should not happen. Secondly, we (the Police) may not have interviewed the woman properly, or recorded what the woman says properly. There could be gaps in the investigation that makes the woman's case weak. There is thus a gap between what happens and what is recorded. Empathy does not come easily, and we (the Police) are gatekeepers who must take the responsibility to record and act properly."

Attitudes towards the PWDVA

Two-thirds in Rajasthan and one-third in Delhi felt (agree either fully or partially) that the PWDVA is a tool designed to harass men and their relatives. A substantial proportion of Police in Rajasthan (over 75 percent) expressed that a woman in an illicit relationship or in a live-in relationship <u>should not</u> be included under the PWDVA. Percentage of such Respondents in Delhi was lower at around 30 percent. (See Table 8.3)

Table 8.3: Attitude towards the PWDVA

	Delhi			Rajasthan		
	Agree	Some what agree	Disagree	Agree	Some what agree	Disagree
Statements	%	%	%	%	%	%
The PWDVA 2005 is a tool designed to harass men and his relatives	14.8	18.4	66.8	34.4	32.4	32.8
A woman who has illicit affair with someone should not get any help from the PWDVA law	17.6	11.6	70.8	64	11.2	24.4
Women in live-in relationship should not be covered under the PWDVA.	23.2	9.2	67.6	57.2	12.4	30

Knowledge of the Provisions Under the PWDVA

Information or advice given to a woman about her rights and potential options under Section 5 of the Act, will be impacted by the extent of the understanding that the Police themselves possess. This part of the chapter describes the findings of the extent of the knowledge of the Police with respect to the key definitions and concepts enshrined in the Law.

Definition of Aggrieved Person

The knowledge that the PWDVA includes women who are married is universal; however, there seems to be some variation in the perception, particularly in Rajasthan, whether or not women in live-in relationships can seek protection under the Act. In Delhi 81 percent of the Police knew that women in live-in relationship can access the PWDVA, while only 42 percent in Rajasthan knew this. In both the states, 89 percent or more Police stated that under the PWDVA a daughter can file a case against her father, and mother against her son. Interestingly, a majority also reported that a daughter can file a case against her mother, mother-in-law against her daughter-in-law and a female domestic worker against her employer. It could be that, the Police have responded assuming that all women are covered under the Law, but do not have any specific knowledge about who exactly an "Aggrieved Person" is under the Law.

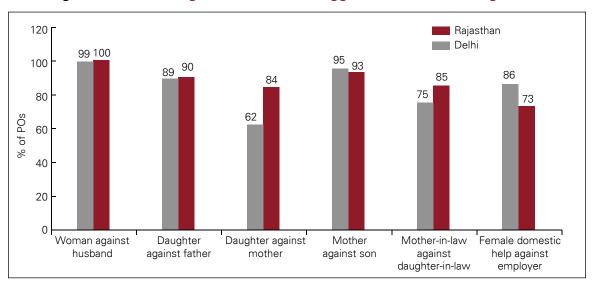


Figure 8.1: Knowledge of Definition of Aggreived Person among Police

Definition of the Respondents under the PWDVA

Similar confusion prevails regarding who can be made Respondent under the Law. The pattern of responses from Rajasthan in Table 8.4 shows that all options have equally high responses. This may be indicative of the fact that they are not clear as to who the Respondent is or that they have failed to understand the use of the word *only* in the last option given¹. Approximately half the Police Officers in Delhi felt that a female relative could be a Respondent under the PWDVA.

¹ Each of these options were read out separately and the police officer provided a Yes, No, D/K response

Table 8.4: Who can be a Respondent under the PWDVA?

Respondent under the PWDVA	Delhi		Rajasthan			
	Yes	No	Don't Know	Yes	No	Don't Know
An adult male member in the domestic relationship	91.2	6.8	2.0	96.4	3.2	0.4
Any adult relatives – male or female of husband/ male partner	48.4	48.4	3.2	86.8	12	1.2
Only male relatives of the husband/male partner	88.4	8.4	3.2	85.6	13.2	1.2

Acts defined as Domestic Violence under the Law

In the survey, a list of specific acts was given (Figure 8.2) and officers were asked whether or not each of those acts fall under the PWDVA. In both states, a large proportion- over 80 percent categorised acts such as slapping, forcefully marrying the daughter, name calling, refusal to give money and preventing women from taking up a job or leaving the house as domestic violence under the Law. There were some differences with regard to forced sexual relationship within marriage. While, most in Delhi agreed that this constituted violence, in Rajasthan, 23 percent of officers felt that it was not defined as domestic violence under the Law.

120 Rajasthan Delhi 100 90 90 87 84 86 82 81 80 80 % of Police 60 40 20 Forced sexual Name calling Refusing to Preventing Preventing Slapping Forcefully give money from taking from leaving within a marrying the the house marriage daughter a job

Figure 8.2: Knowledge about Acts of Violence Defined under the Law

Provision of Reliefs under the Law

In order to gauge knowledge of the remedies under the Law, a list of reliefs was provided to the Police. This included the correct options, as well as two commonly held incorrect perceptions about the reliefs; namely the division of property and divorce. The data reveals that a high percentage of officers (more than 90 percent in both the states) have correctly reported that a Protection Order, right to residence, right to custody, Maintenance and Compensation Order are reliefs that can be sought under the Law. At the same time we also found that a fairly large proportion perceived that division of property (Delhi - 71 percent, Rajasthan – 86 percent) and divorce (Delhi - 60 percent, Rajasthan – 57 percent) can also be sought as reliefs under the Law. This misinformation or wrong

information can be potentially very damaging. It contributes to the misconception that the PWDVA gives women right to ownership over property, and reflects the increasing misinterpretation of the right to reside.

This is further reinforced by the findings in Table 8.5. The PWDVA is the only Act in India, which recognises a women's right to reside and therefore it is important that all stakeholders understand it accurately. In Rajasthan, there has been an equal agreement to both correct and incorrect options. In Delhi, 80 percent agreed to the incorrect options, while only half were aware that a woman has a right to reside irrespective of title or ownership or beneficial interest in the shared household.

Right to Residence means Delhi Rajasthan No DK Yes No DK Yes 19.2 A wife has an ownership right over the shared household 80.4 16.8 2.8 0.08 8.0 82.8 13.6 3.6 96.8 2.8 0.4 A wife in a domestic relationship has the right to reside in the shared household only if the shared household is owned by the husband. A wife in a domestic relationship has the right to reside in 48.4 50.4 1.2 78.4 18.4 3.2 the shared household whether or not she has any right, title or beneficial interest in the same. The husband provides the wife with rental 77.6 18.4 4.0 86.4 10.4 3.2 accommodation or alternate accommodation

Table 8.5: Meaning of Right to Residence

Objective of Counselling

In the survey, Police were asked about the objectives of counselling under the PWDVA and were given three options to choose from. The responses reveal interesting patterns. Almost all the Police expressed that the objective of counselling under the PWDVA is to get an assurance from the Respondent(s) that the act of violence should not be repeated. They also agreed that families should be saved from breaking up (95 percent in Delhi and 97 percent in Rajasthan) and compromise should be reached between the couple (Delhi-87 percent, Rajasthan-99 percent). These responses are indicative of the current practice around counselling, where getting an assurance that violence will not be repeated, is extended to mean that the parties have reached a compromise since the source of the conflict, the violence, has been resolved, and thus the family will now not break up.

During the data gathering interviews one Police Officer said, "We are able to resolve many complaints at our level. We call both the parties and explain, resolve the matter. We 'finish off' the complaint in the beginning itself!" Another mentioned, "We explain to both the parties that if this becomes a case, then your family will break up. It is better that you both sort out the matter between yourselves. We explain or even threaten, if needed." This practice may suggest that most Police Personnel are likely to settle the case at their end based on what they think is right in the interest of the family, rather then refer them to a qualified counsellor. This could be potentially damaging.

Role of Police as defined under the PWDVA

Police are key stakeholders in the implementation of the Law. It is, therefore, very crucial that they assist the POs to facilitate the efficient multi-agency response envisaged under the PWDVA. 15 percent of the officers in Delhi, and 41 percent in Rajasthan said that Police has no role under the PWDVA. Over 77 percent in Delhi are aware that a woman can file under the PWDVA even if she is getting maintenance, the corresponding percentage is as low as 36 percent in Rajasthan. An overwhelming proportion (86 percent in Delhi and 90 percent in Rajasthan) reported that the purpose of a DIR is to initiate legal proceedings. More than 90 percent were aware that the purpose of a Home Visit Report is to investigate the occurrence of domestic violence. (See Table 8.6)

Table 8.6: Knowledge of different provisions of the Act

		Delhi			Rajasthan		
	True	False	Don't Know	True	False	Don't Know	
A woman already getting maintenance from her husband cannot file an application under the domestic violence Law	16.8	77.6	5.6	62	36	2	
It is the duty of the Police to make a diary entry when a woman approaches with a case of domestic violence	90.0	7.6	2.4	88.4	11.6		
There is no provision for arrest under the PWDVA	67.2	19.2	13.6	50.4	36.8	12.8	
An unmarried adult daughter has a right to reside in her parental home	97.2	2.4	0.4	98.4	1.6		
The Police have no role under the PWDVA	15.2	80.8	4	40.8	56.4	2.8	
It is the duty of the PO to serve the notice	36.8	50	13.2	27.2	67.2	5.6	
The purpose of the DIR is to start the legal proceeding	86.4	8.4	5.2	89.6	7.2	3.2	
The purpose of home visit is to investigate the domestic violence properly	94.4	2.4	3.2	98.8	0.4	0.8	
Breach of a Protection Order is cognisable and non-bailable under the PWDVA	66.8	19.6	13.6	73.6	22.4	4	

It is important to understand the perception of the Police regarding the nature of the Law; whether it is civil or criminal or both. A large number (67 percent in Delhi and half in Rajasthan) stated that 'there is no provision for arrest under the PWDVA'. However, when asked whether 'breach of a Protection Order is cognisable and non-bailable under the PWDVA', two-thirds in Delhi and three-fourths in Rajasthan responded positively.

As seen in Table 8.7, half of the Police in both the states reported that when a woman approaches them for the first time an FIR can be registered. Further, 80 percent in Delhi and 98 percent in Rajasthan reported that when the violence is severe *police can register an FIR under the PWDVA*. However, none of these conditions demand registration of FIR under the PWDVA. It is only at the time of the breach of the order that the Police should register an FIR and arrest the offenders.

10.4

Delhi Rajasthan Yes No Yes No 50.4 47.2 44.4 When the woman approaches Police for the first time 55.6 When the violence is severe 19.6 80.4 98.4 1.2

78.0

19.6

89.6

Table 8.7: When can the Police file an FIR under the PWDVA?

In Figure 8.3, 67 percent of the Police in Rajasthan and 50 percent in Delhi say that it is not the duty of the PO to serve notice. When asked 'what kind of assistance can the Protection Officer take from the Police?', more than 90 percent of the officers in both the states said that POs can be assisted in service of notice, retrieving the stridhan, enforcing court orders and confiscating the weapon used in the act of domestic violence. This knowledge may stem from practices followed in the states and the actual assistance taken by POs. In that respect, the Police appear to have an understanding of the major hindrances faced by the POs in fulfilling the aforementioned duties, which is where it is crucial for an enforcement authority like the Police to step in.

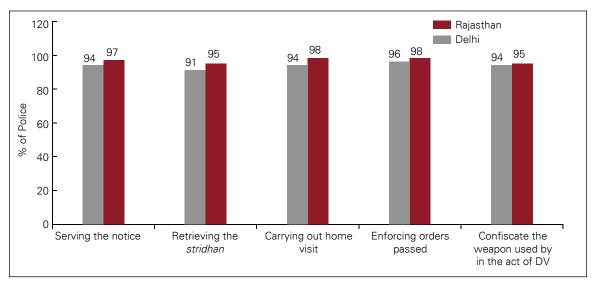


Figure 8.3: Knowledge of the assistance POs can obtain from Police

Implementation of the Law

At the time of the breach of the order

Perception of the Women approaching Police stations with the Complaint of Domestic Violence

In both the states, 90 percent of the officers reported that most women come to the police station with complaints of domestic violence on their own, and usually approach the police station within their own jurisdictions. Most of these women are between the ages of 20-40years.

Sixty seven percent of the police officers in Delhi and 58 percent in Rajasthan informed that women facing domestic violence have approached their police

stations in the last year. Of these, 48 percent in Delhi reported that cases of domestic violence are recorded at their police stations. In Rajasthan, 80 percent of the officers confirmed the practice of recording cases of domestic violence at their police station.

Forms of violence reported by the women

Police officers in Delhi shared that women usually approach them with complaints of being 'bashed-up' (maar-peet). When asked for details of the maar-peet, officers informed us that women say they are slapped, scolded and called names. One-fifth (21 percent) of the officers reported that women come with complaints of coercive sex. In Rajasthan, 62 percent officers report that women approach them with complaints of being slapped, followed by 38 percent reporting that women report being scolded and refused money.

Table 8.8: Percent police officers reporting acts of violence for which women approach the police station

Acts of violence reported to police	Delhi	Rajasthan
Slapping	97.6	62.1
Scolding	55.0	37.9
Name calling	52.1	18.6
Was refused money	38.5	37.9
Trying to get married off forcibly	34.9	3.5
Was stopped from going outside the House	26.0	6.9
Husband had sex forcibly with her	21.3	2.1
Was stopped from going for job	8.3	6.2

Help sought from the Police and action taken by the Police

Almost 90 percent of the officers in both the states reported that women want Police to advise their husbands and relatives to stop the violence. Interestingly, in Delhi almost the same number reported that women want Police to a lodge a complaint. Police in Delhi often narrated the sequence of events that unfolds when a woman approaches the police station. To quote a Police Officer in Delhi, "the women come to us after they have had a fight, and say - please lodge a complaint that my husband is beating me. Call him here and threaten him. Scare him enough that he stops beating me. We then threaten the husband and his family, thereby making the home safe for women and giving her protection from violence." This actual practice, thus explains the findings presented in Figure 8.4, wherein lodging a complaint and wanting the Police to communicate with the family are reported almost equally in Delhi. Almost 60 percent of officers said that women request Police to ensure protection from further violence, and provide her safe shelter, preferably within the shared household. In Rajasthan too, officers report that women approach them with the expectation that they will talk to the husband and family to stop the violence. However, in contrast to Delhi, only 41 percent report that they also wish to lodge a complaint. This clearly reflects that even when a woman decides to approach an institution outside of her home, such as Police,

her main aim is to stop the violence and get relief from the violence and not to 'punish' the offender.

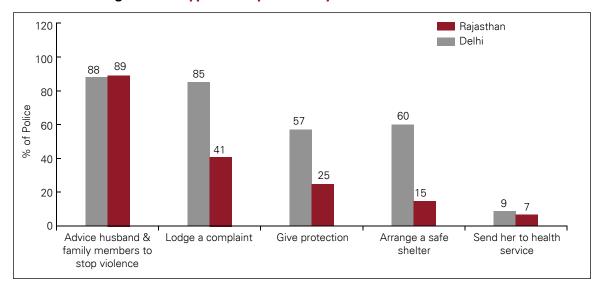


Figure 8.4: Type of help asked by women from the Police

Action taken by the Police

The Police Officers were asked to share what they usually do, at *first point of contact*, when the women approach them for help. In response to this question, most of the officers described the entire process, up to the point of 'settling' the case. In both states, over 70 percent Police Officers report that, in line with the women's request, they call the husband and other family members and talk to them to stop the violence. Subsequent actions taken however are different in the two states.

In Delhi, along with the above, the Police also inform women about their rights under the PWDVA. Further, half of the officers shared that they record a complaint under the PWDVA and inform women of their rights under Section 498A, IPC. This 'informing about rights', however, must be examined carefully. While the Police maintain that it 'builds pressure', it seems that this is often part of the process of threatening the perpetrators, rather than an empowering process directed at the woman. As one Police Officer stated "we threaten him. We tell him - do you know that if you don't stop the violence, there is a Law under which she can go to court, or even get you arrested and put you in jail under 498A?" Only 39 percent of the officers said that they refer women to the POs, while 35 percent said Police fill a "Domestic Violence Report". However, it is likely to be different from the DIR.

In Rajasthan, advising perpetrators to stop violence, is closely followed by advising the women to go back home. 61 percent of officers report this. Only one-third officers reported that women were made aware of their rights under the PWDVA. Referring women to the POs was the least favoured action, in spite of the fact that the POs have been in existence in Rajasthan for over a year and a half. This is discussed further in the next section.

Table 8.9: Action taken by Police in response to help sought by women, as reported by Police

Action taken at police station, as reported by Police	Delhi	Rajasthan
Advise her husband and other family Members to stop violence	75.7	71.7
Make the women aware of her rights under the PWDVA	75.7	36.6
Record the case under the PWDVA	56.8	5.5
Make the women aware of her rights Under 498 A, IPC	55.0	20.0
Send her to the PO	39.1	2.1
Fill the domestic violence report	34.9	6.2
Advise her to go back home	27.2	61.4
Note down the incident in the daily diary	18.9	5.5
Send her for medical examination	16.6	12.4
Send her to the CAW cell/mahila thana	14.2	2.8
Record the case under 498 A, IPC	13.0	6.9
Send her to the counsellor	12.4	4.1
Advise the women to lodge a criminal Complaint	11.8	14.5

Women, who have filed cases under the PWDVA in Rajasthan, were extremely articulate about their negative experiences with regard to the Police. During the PFGD, almost all the women, several times, said that their cases were "spoiled " or "made worse" by the Police because they took bribes or connived with their husbands. They validate the finding that Police counsel them to go back home. This they said is the usual response when they go to police stations on their own, without a Lawyer or women's organisation to back them. "We are told-go back home, these are usual things in a marriage. If you go to thanas and courts, things will get worse and you will only get nothing, except a bad name in the community". Another woman shared her experience with the Police in Rajasthan saying,"When I told my husband that the Police will come to arrest him, he laughed and said- what do you know about them, they are my friends! Sure enough when he was arrested, he called me from the police thana and said come and see we are all having drinks and having a party. His behaviour became worse after that". The women's groups in Rajasthan added that they have known this to be a standard practice. They have reported the same to senior officials, this has led to inquiries and suspensions of the guilty.

Women also report that Police connive with the Respondent's lawyer, when they are to serve notice for the Respondent to appear in court. "The notice is never served because the Police will then report that they cannot find the Respondent". Another woman observed "it is ironical that for perpetrating the violence the man is there, but for taking the notice he can never be found/traced".

The difference in response of the Police in the two states, however, does not necessarily result in a better situation for the women. Women from Delhi share that the lack of conviction on part of the Police defeats the actual action they may take. For example, a woman shared, "When we go to the police station, they ask us to give a complaint, but will not make any entry. Now we know, we ask them to write in their register." Women also share that usually, the Police try to convince the woman that she will have to tolerate,

as ultimately she has to live with the same man. This inaction openly encourages the perpetrator and often the violence becomes worse, as he tells the woman "you have to come back here to me. No one is going to listen to you, so you better stay as I keep you!" Another woman said "...when we call 100, Police come and ask – what happened then they say in front of everyone-...what can we do in this? It's your matter, and then the husband becomes bolder". The attitude of the Police at this juncture can compromise the woman's situation further. A woman shares, "The Police will ask you to show the sign of violence... what can we show in case of mental abuse. Then they will not do any thing. Husband will taunt you. Next time you will think twice before calling police."

Often, if the woman insists, the Police say that they will put the man in prison to threaten him. However, many women state that this does not necessarily change their situation. "Sometimes after getting threats, there is a change – but it's only in the form of violence – from physical violence, it changes to emotional abuse." Women acknowledge that, in both situation, Police try to push her back into the same violent environment without any relief.

Multi-Agency Coordination

A large number of Police personnel in Delhi (88 percent) are aware of the circular issued by the Delhi High Court regarding the support Police have to provide to the POs. Over 80 percent of the Police Officers in Delhi said that they have contact numbers of different stakeholders such as POs, SPs and SLSA. Significantly, a lower proportion of the officers in Rajasthan reported having the contact numbers of POs (34 percent), while 52 percent had information about the SLSA (52 percent)

In Delhi, 39 percent officers reported that POs had approached their police station for help, as compared to only 6 percent in Rajasthan². In response to the type of support sought by the POs, approximately 80 percent officers in Delhi reported that their help was sought for enforcement of court order, to restore the dispossessed woman and for service of notice. 70 percent shared that the POs had requested the Police to accompany them to record the DIR. Around 40 percent reported that help was sought to make a Home Visit, to save the women in emergency and to confiscate the weapon used in the act of violence. In response, the Police report to have provided most of the help sought by the PO. The data does not reveal how often this help is sought and offered in Delhi, and we cannot infer whether help is provided consistently. However, it is clear that some level of coordination is definitely emerging,

Discussions with the POs (as detailed in Chapter 7) reveal that the kind of assistance they receive depends largely on the willingness of the individual Police Officer present in the *thana* at that time. Some flatly refuse, saying that they have other work, others agree to go provided they have a vehicle or some other means of transport to take them along. Others come along pitying the plight of the woman PO who has to carry out 'such duties'. The Police in Delhi reinforce this saying, "what can the POs do on their own? These are not the type of things women can do on their own. Whatever has

² Owing to the small number, further analysis of the type of assistance sought or provided has not be undertaken in Rajasthan

to be done, we have to do." Another added, "People only recognise the authority of the uniform and the stick. How can you expect them to listen to the women (POs) or take them seriously?" There is interestingly almost a sense of hurt that many Police Officials hint at being "kept out" of the Act. This was observed both, in Rajasthan and Delhi, where comments such as "you women do not trust the Police, even though we stand by you, and so you have removed us from the Act" or " the common man only respects the stick and the uniform - if you keep us out how will anything get implemented."

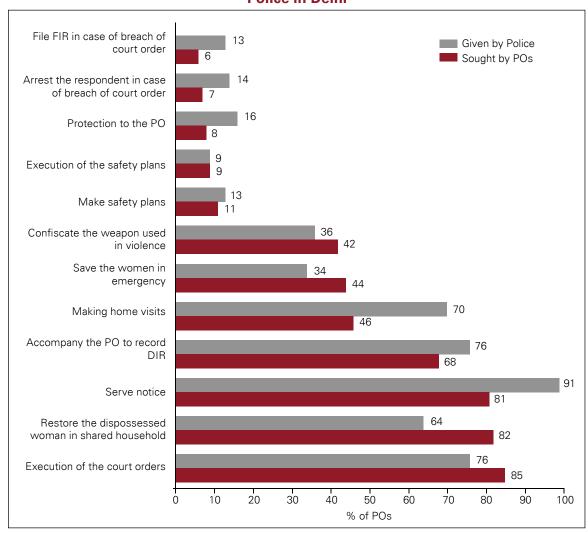


Figure 8.5: Type of assistance sought by POs and given by Police as reported by Police in Delhi

Thirty percent of the Police officers in Delhi were individually approached by the PO for help. Twenty nine percent of these officers were duty officers, of the rank of head constable and another 21 percent were Inspectors. One-fourth of them shared that NGOs/Shelter homes had also approached them for help and that their requests were adequately responded to. In Rajasthan, only 8 percent of the Police reported that they had been approached by the POs for assistance.

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In Delhi, only 11 officers were aware of any breach of order and 10 of them said that they lodged a FIR in response. In Rajasthan, only 4 officers reported this, of which only one stated that a FIR was lodged.

The study also documents that forwarding a copy of the DIR and court order to the concerned police station is not a common practice. More than half of the officers in Delhi reported that they received a copy of the DIR as opposed to 43 percent reporting this in Rajasthan. Similarly 58 percent officers reported that they received copies of court orders in Delhi, and 48 percent reported this in Rajasthan. Further, only 3 percent (7 out of 250) of Police Officers in Delhi could recall orders where courts had specifically directed them to provide assistance to PO. Six of them shared that courts had ordered them to restore the dispossessed woman. In Rajasthan, 16 percent (40 out of 250) of the officers could recall court orders where they had been given specific directions. Of these, 28 said that courts had asked the police to execute the Maintenance Order.

Effect of the PWDVA on the Cases of 498A

Two-third of the officers in Delhi and 45 percent in Rajasthan believe that the implementation of the PWDVA has reduced the number of complaints under Section 498A, IPC. This report does not have the evidence to support this perception of the Police Officers.

Suggested Amendments in the Law by Police Officers

One-third of the officers in Delhi and over half in Rajasthan suggested some amendments to the Law. Of those who suggested amendments, 41 percent in Delhi suggested limiting the scope of definition of violence and in Rajasthan a similar number suggested limiting the Respondent category to relationships within marriage.

Training

Since the introduction of the PWDVA in 2006, only 22 percent of the officers in Delhi reported having received training on the Law. Of these, nearly two-third attended trainings only in 2009. In Rajasthan, only 9 percent of the Police force has received some sort of training on the PWDVA. Majority of the trained officers stated that they shared information on provisions and their role under the Law. However, the findings from the survey suggest an urgent need to familiarise the Police with the Law. Further, it is imperative to organise training and refresher courses for the Police on a continuous basis, with focused efforts to ensure that every officer gets exposed to these trainings.

Interviews with key personnel from the Police confirmed that the knowledge of the Law among the Police needed strengthening, though they felt that the Police Force was nevertheless "aware and doing its job as it always did, because cases of violence have always come to the Police even before the law." They also tended to agree, that efforts are ongoing by civil society organisations, but felt that widespread and sustained efforts need to be made to ensure that the attitude of a 'critical mass' of Police Officers is transformed, to create a culture within the Police that is respectful

of women and addresses situations of violence. In Rajasthan both the Lawyers and civil society organisations felt that they "would prefer the police to be more actively engaged in the implementation of Law, since they are accessible and easier to negotiate with."

Conclusions

The data from the survey with the Police Officers in the states of Delhi and Rajasthan must be viewed critically to answer two questions. Firstly, do the Police facilitate women's access to the PWDVA, given that they are vested with the responsibility of guiding women under Section 5 of the Act? Secondly, do they extend assistance to the POs and fulfill their role when breach occurs?

Findings from the survey reinforce that Police are often the first point of contact for women in cases of domestic violence, and hence they have a tremendous potential to play a critical role in informing women of their rights and protecting them from further violence. Data however suggests that Police in both states believe that maintaining the family and the security of children should take precedence over a woman's personal well-being and safety.

These gendered perceptions, if not addressed through appropriate training and sensitisation workshops can be impending barriers to women accessing the Law. The gendered perceptions around violence and its justification are perhaps also corroborated through the data that emerges on counselling. The data on acceptance of counselling of the woman as the best way to resolve violence becomes problematic when one views it against the perception that 'family needs to be protected or saved "at any cost".' It is not clear what constitutes 'counselling' in this context. However, given that half of the Police interviewed report that women should think of their families and children before accessing the Law, it can perhaps be assumed that the 'counselling' is done by them (and as corroborated by data and perception that 'women often deserve to be beaten'), and that perhaps this counselling is not neutral and not in keeping with the spirit of the PWDVA. Therefore, there is a need to understand counselling as mandated by the Law.

It is evident from the data that while women want the violence to be resolved through talking to the perpetrators, they also want complaints to be registered. While a high percent of Police has responded to "advising the husband and family", lesser numbers have actually lodged the complaints, as requested by women. Thus, whether the nature of counselling and assistance provided by the Police is the one sought by women, is of considerable doubt.

What is of more concern is that only about 40 percent of the officers in Delhi have referred the woman to the POs, and in Rajasthan 60 percent report advising her to go home. Thus, Police are not facilitating women's access to the Law as would be necessary for effective functioning of the multi-agency response under the PWDVA.

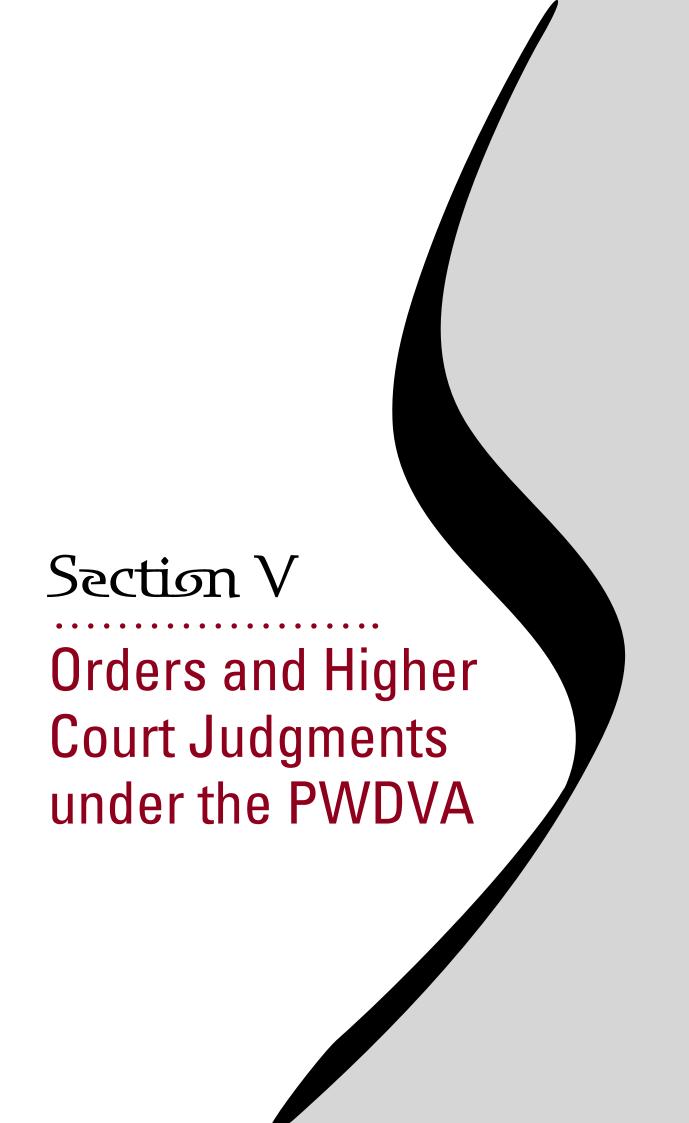
Prior to referring women to the POs, it is necessary for the Police to understand the

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various shades of domestic violence. The PWDVA has made a definitive contribution by giving recognition to emotional and verbal abuse as forms of violence that are covered under the Law. In Rajasthan one-third of officers lack this comprehensive understanding, reporting that acts such as slapping once in a while, and threatening to throw the woman out of the house are not acts covered under the Law. Sexual violence is an area of concern as 30 percent of officers in Rajasthan did not think it was an act of domestic violence under the Law. The inability to see forced sex within marriage as an act of domestic violence can have serious implications for women.

In terms of knowledge of the Law, responses seem to be based more on assumptions rather than on actual information. There persists confusion around certain key provisions, such as the definition of the Respondent and the meaning of the right to reside, that could impact the nature of advice that the Police would give to a woman who approaches them for help.

It is encouraging to note that more than 90 percent of the Police in both the states agreed that the POs can seek assistance from them for a variety of reasons, such as serving notice, retrieving the stridhan, enforcing court orders. Even though many POs suggested that the assistance is not always consistent or forthcoming, this readiness to assist and the perception that they have a direct role in the implementation of the Act is a positive finding. However, perceptions and attitudes may not always translate into actual practice. For example, in Rajasthan, sending the woman complainant to the PO is reported as the least favoured action by Police officers in the state. What could be the possible reason for this may require more in-depth exploration in the coming years, including the impact of having a cadre of POs who are District Level Officers holding posts on additional charge. Nevertheless, the collaboration between the POs and the Police present an encouraging trend in Delhi that needs to be supported so that the intent of the Law in providing for multi agency coordination is translated into action. Further, it must also be considered that the Police are the most visible law enforcers for the public, and they also see themselves as fulfilling that role. Thus carving a definite role for them with specific functions under the PWDVA could contribute both to multi agency coordination efforts, and make implementation of the Law more effective.



ANALYSIS OF ORDERS PASSED BY MAGISTRATES' AND SESSIONS COURTS

Chapter 9

This Chapter undertakes a comparative analysis of the orders passed under the PWDVA by Magistrates' and Sessions Courts.

Introduction

In order to assess the impact of any legislation, and particularly a social legislation, it is necessary to understand and evaluate whether the beneficiaries of the legislation are able to access and obtain the reliefs that the Law promises to provide. The PWDVA, as detailed in the preceding chapters of this Report, establishes a multiagency response system to ensure that women facing domestic violence are able to effectively access the Law. Since the coming into force of the Law, there has been a concerted effort by various stakeholders to facilitate women's access by establishing this multi-agency response system and monitoring its functioning. However, the answer to the concomitant question of whether the courts are granting the reliefs as provided under the Act, can be found only through an analysis of the orders and the reliefs that are fashioned by the trial courts as evidenced from a reading of these orders. To take this argument further, while it is true that a number of external factors do play a role in enabling access and to an extent, fashioning of reliefs,1 finally, it is the Judge who determines the nature of reliefs granted and the efficaciousness of such reliefs. This determination is however, not made in a vacuum but is affected by a number of factors such as, the letter of the Law, legal principles, existing precedents, facts and circumstances of the case, and the individual attitudes, perceptions and understanding of the Judges.

It is in this context that an analysis of orders passed by the courts under any law assumes significance, as this is a fairly and perhaps the only single comprehensive method of answering the aforementioned issues, in evaluating the impact of a legislation.

As it is the attitudes, knowledge and perceptions of Judges that determine the orders passed or reliefs obtained by women, we have analysed the orders in conjunction with the primary data collected by LCWRI and ICRW on the attitudes, knowledge and practices followed by the Judiciary. The data, as discussed in Chapter 4, was gathered through pre and post-questionnaires. In this chapter, we have analysed the practice questionnaires circulated by LCWRI to Magistrates in the judicial training held in collaboration with the SJA Delhi.

¹ The expression 'fashioning of reliefs' takes into consideration whether and to what extent the applicant is successful in her claims. This may be determined, for instance, by the effectiveness of legal aid available to her, the efficiency of the police/investigative agencies responsible for evidence gathering, her social support system, including the natal family which encourages her to continue with the litigation under adverse circumstances, availability of other support services like shelter and counselling, and protection programmes if required, amongst others.

Although this data gathered from the Judiciary is of limited sample size and restricted to the state of Delhi, it informs and supplements our detailed order analysis. It provides a brief outline of the practices adopted by the Magistrates in Delhi under the PWDVA. The reading of orders coupled with the findings from the practice questionnaires, we hope, will provide a comprehensive understanding of the Act's implementation by the Judiciary in the state of Delhi. It must be noted that this comparative data gathered from the aforementioned questionnaires is reflective of the practice of Magistrates only in Delhi and should not be used to interpret the overall scenario or practices followed by Magistrates in courts in other states.

Findings and Methodology of Order Analysis in previous M&E Reports

The methodology adopted for the analysis of orders for the period 1 April 2008 to 31 March 2009 builds on the learning from the M&E exercises undertaken by the LCWRI in the previous two years. In the First M&E Report, orders were analysed from all states, through the office of the Hon'ble Chief Justice of India, which provided a baseline understanding of how and to what extent the PWDVA was being used in various parts of the country. The analysis in the First M&E Report however, was primarily limited to figures, e.g. number of applications filed, who were the women approaching the courts, what was the nature of orders being passed etc. This was essential given that the Act was only a year old, and the courts were seeking to understand its substantive and procedural provisions. In the second year of M&E exercise, due to the fact that orders from all states were not available, an analysis of trends from eight states was undertaken. The LCWRI was successful in obtaining these orders through the Ministry of Law and Justice and NCW. Although limited in coverage, the findings from these states did provide a good understanding of the shape that the Law was taking, and highlighted the areas of concern. In fact, the indicators developed as part of this analysis have formed the basis for this year's comparative exercise.

A few of the relevant findings from the First and Second M&E Reports have been discussed below:

- i. Coverage of the Law: Married women emerged as the primary users of the PWDVA in the comprehensive trend mapping in the First M&E Report and a snapshot that was provided in the Second M&E Report. An interesting trend that was noted in the First Report was that widows were also using the provisions of the Act against their in-laws.
- **ii. Respondent:** The issue of whether women can be made Respondents was one of the major issues that led to conflicting court orders. While in a majority of cases in both the years, the courts refused to grant reliefs against female relatives, there were instances where the courts interpreted the proviso to the section accurately and allowed the application against female relatives of the husband.
- iii. Reliefs claimed and granted: Maintenance Orders were the relief most sought by women applicants, and granted by the courts. It was the conclusion of the two Reports that this may be attributed to the fact that Magistrates have been passing

Maintenance Orders under Section 125 CrPC, and that maintenance is considered in Law to be a wife's accepted claim over her husband. Residence Orders were also being claimed and granted in a large number of cases from the first year of the analysis.

- iv. Time taken for grant of reliefs: While due to the paucity of data available, this issue could not be dealt with in the Second M&E Report, the analysis of interim orders passed in the First Report (in the first year, because the Law had just come into force, a majority of orders examined were of ex-parte interim nature) reveals that by and large, interim orders were being granted only once the report of the PO was filed or the Respondent appeared before the court. Exceptions were Delhi and Maharashtra where interim orders were granted on the first day of hearing in quite a few cases.
- v. Reasons for denial of reliefs: One of the primary reasons provided for denying reliefs under the Act in the First year of analysis is that the parties have been living separately for sometime and there is no threat of immediate violence.
- vi. Orders from Gujarat: An analysis of orders received in the first year from Gujarat shows that in most cases, no order was passed at the time of examination and the matter was pending at the stage of service of notice. In a number of cases, reliefs had been denied on grounds primarily of pending cases under Section 498A IPC, and because the application had been withdrawn by AP for compromise.
- vii. Orders from Maharashtra and Goa: As far as Maharashtra and Goa are concerned, while only a few cases were examined in the first year, it was noticed that women generally prefer to initiate proceedings both under the PWDVA and Section 498A IPC. Also, most of the cases examined were pending at the stage of service of notice, while in cases where reliefs had been passed, interim Residence Orders were being granted. An interesting phenomenon in Maharashtra was Protection Orders granted to widows who were HIV positive against their in-laws. Non-bailable warrants were being issued by courts to secure attendance of Respondents.

The Objectives of Analysis

The primary objectives of order analysis that was undertaken for the period 1 April 2008 to 31 March 2009 can be summarised as follows:

- i. To identify, collate and analyse the trends developing with regard to the implementation of the Law in Identified States of the country.
- ii. Secondly, the objective of the comparative analysis is to track the development of the jurisprudence on domestic violence, through a mapping of the reasoning of the courts.
- iii. Finally, through the exercise of order analysis, LCWRI seeks to examine the role played by the Judiciary in building and sustaining an effective multi-agency response system.

The PWDVA may be said to have offered an extraordinary opportunity to the trial courts to aid the development of legal principles on the issue of domestic violence. As being a Law in its infancy, there are only two reported judgments of the Supreme Court

related to the Act, while all the High Courts combined have passed approximately. 50 judgments under the Act, at the time this report went to print. As a result, it is through the Magistrates' Court orders that various provisions of the Law and legal principles to be applied are being interpreted and explained. The objective of order analysis would therefore, be to map some of these interpretations and principles that provide evidence of consensus across various states on specific provisions under the Act. Within this broader object, the Chapter also attempts to examine whether the courts have been able to understand the intent of the Law and use the provisions in an innovative manner to uphold its spirit. This kind of analysis is also important in view of the fact that Magistrates are not trained to adjudicate cases involving civil claims and principles.

This Chapter however, does not attempt to undertake an analysis of the attitudes and perceptions of the Judges but only maps some of the aspects of reasoning and interpretation that the LCWRI believes will be critical in developing jurisprudence in the future. However, the LCWRI remains conscious of the significance of undertaking a holistic analysis and hopes to achieve this goal in the coming years.

Methodology and Indicators

For the purpose of this M&E Report, the orders analysed are from the period 1 April 2008 to 31 March 2009.

States Covered

In this Report, analysis of orders from three states has been undertaken. These states are **Delhi, Maharashtra, and Gujarat**. These states have been selected because of certain key factors provided below:

- (1) These three states represent different trends with regard to the implementation structure put in place. Hence, while Delhi has appointed POs on a contractual basis with a background in Social Work (1 for each district), Maharashtra has appointed existing government functionaries as POs on additional charge, from the block and the district levels. The state of Gujarat on the other hand, can be said to reflect a national average in terms of appointment of POs where the POs are appointed at the district level and include contractual and existing government functionary without any formal system of appointment and appointed on an ad-hoc basis. The effectiveness of the implementation structures created in all three states differ, a detailed description of which has been provided in Chapter 4 of this Report. The nature of existing implementation mechanism naturally impacts litigation in the courts, particularly the access to the court and the role played by POs/SPs during litigation.
- (2) The relative population and size of the states also acts as an interesting comparator; the attempt was not to examine similar states but to examine whether there are common trends emerging, irrespective of the variation in the physical and demographical constitution of the states.

(3) Finally, as has already been explained in this Report, the M&E exercise also attempts to evaluate the impact of actual interventions made by LCWRI in Delhi and Maharashtra. While such impact is not expected to be reflected in the orders passed by the courts, it is certainly hoped that analysing orders from these two states will provide an overview of the functioning of the multi-agency system envisaged under the Act and inform and influence the LCWRI interventions in the coming years in the two states.

Although LCWRI has also received orders from the state of Rajasthan, the third state for the purpose of the LCWRI study, these orders were from the time period 2007–2008 and hence, it was decided that these orders will be analysed as part of a consolidated comparative analysis of all orders at a later stage.

Data Collection

The orders from the states of Delhi, Maharashtra and Rajasthan were received in response to the LCWRI's request to the Hon'ble Chief Justices and Registrars of the High Courts of Delhi, Bombay and Rajasthan respectively. The data requested for included:

- (1) The number of interim and final orders passed by Magistrates' Courts during the identified timeline
- (2) The number of orders passed by Sessions Courts in appeal during the identified timeline
- (3) The number of applications received by the trial courts.

The orders passed by the courts in Gujarat were collected and provided to the LCWRI for the purpose of order analysis by our partner, the NCW. The tabulation of data in the orders, which were in Gujarati, was done with assistance from the Gender Resource Centre, Gujarat and its associate advocates. A sizeable number of orders from Maharashtra were in Marathi, and assistance to tabulate the information from these was provided by experienced case workers of Stree Mukti Sangathana, Mumbai.

The High Courts have collated this data from the information received from the Magistrates' and Appellate Courts in all districts of the respective states. Hence, the number of orders received by the LCWRI from the High Courts of the three states is the data that was sent by all the district courts.

Methodology and Indicators

A three-step methodology was followed in analysing the orders from the identified states.

Firstly, through the experience of identifying trends and "good practices" in orders and judgments being passed by various courts under the Act, the LCWRI had developed a hypothesis regarding specific substantive and procedural issues, which required better understanding and adoption of innovative approaches by the courts. The hypothesis was developed taking into account the existing implementation pattern in the identified states, the socio-cultural context, as well as an evaluation of whether the trends from

the previous years have continued. Based on these factors, a set of domain indicators was prepared, which guides this analysis of orders.

The second step was to translate the information and data dispersed throughout the text of individual orders into an analytical form. This was done through tabulation of the data/information from the orders in a matrix developed on the basis of the indicators referred to above.

As the final step, a comparative analysis of the trends emerging from the identified states was undertaken, focusing on the context, existing scenario of implementation on-the-ground and substantive aspects of the Law. A major difference between the analysis made in the previous M&E Reports and the current study is that in this Report, the data has been quantified to the extent possible, enabling conclusions to be drawn as to the rate of success of the Act.

Methodology Adopted for the Analysis of Practice Questionnaires

As mentioned at the beginning of this Chapter, a questionnaire on practices followed by the Magistrates in Delhi was developed and circulated at the training programme. However, it could not be immediately completed during the training and was given to the Magistrates to fill and return to the Delhi SJA. Among the 27 Magistrates who received training in Delhi, 20 Magistrates filled in the practice questionnaire and provided information on issues related to interim order, types of relief sought and granted, timing of orders, reasons for delay, etc. Among these Magistrates, only 7 were from Mahila Courts dealing with cases under the PWDVA on a day-to-day basis. Others reported to have not handled such cases for more than a year immediately preceding the training programme. Magistrates were asked to provide information for last 3 cases where they had passed some orders under the PWDVA. In response, they reported 41 cases, which were handled in last 2-2½ years. Therefore, the analysis is based on these cases and could only be indicative of the practices followed in Delhi.

Limitations of the Methodology

While this year's analysis was intended as a pilot study, and therefore, only 3 states were identified on the basis of the criteria mentioned above, the process of requesting for and obtaining orders from courts continued to remain time consuming and a challenge for the LCWRI. This underscores the need for a centralised depository of data and information on court orders.

It must be noted here that the order analysis has been greatly enriched by the data from other sources used in M&E of implementation of the Law, as described in Chapter 3 of this Report.

Some of the key limitations faced were:

 Given that the orders sent from Rajasthan were not within the timeline identified for this year's study, the LCWRI was unable to undertake an analysis of orders from Rajasthan for the purposes of this Report. This constitutes a major limitation of the

- study as Rajasthan has been identified as a control state for the M&E exercise, as explained in Chapter 3 above.
- LCWRI in its study observed that there is a lot of variation in the manner in which orders
 are written. Hence, although all courts are required to give reasoned orders, in many
 cases in the orders examined, there is no detailed reasoning provided by the courts.
 Such discrepancy was found to be the least in case of orders passed by Mahila Courts
 in Delhi. This made the analysis of substantive questions and indicators difficult.
- In addition, a lot of information is generally not obtainable from the text of the
 orders, for instance, who did the woman approach to record the complaint/DIR;
 how did she approach the court/file application; what happens after the passing of
 the order i.e. what steps are taken for implementation/execution of the order (only
 when breach is complained of or a separate application for execution of order is
 filed, is there any mention of it in the order).
- The differential style in writing orders and the insubstantial procedural information meant the role played by other implementing agencies, particularly the PO, SP and Police were not referred to or difficult to assess in a majority of orders analysed, across the three states. Hence, findings in the preceding chapters were greatly relied upon to draw some of the conclusions.
- A large number of compromise cases received from Gujarat posed a difficulty as in such cases, little information is available on the facts of the case and reliefs claimed. Although the fact of compromise itself is a reflection of a trend, for the purposes of undertaking a comparative analysis of orders from three states, it has acted as a challenge in this initiative of the LCWRI. Moreover, there exists no follow-up data or method to check what happens after a compromise, what 'compromising' usually entails, whether it is honoured or whether the dispute is satisfactorily resolved.

Findings from Order Analysis 2008 – 2009

Broad Themes

The running theme of the analysis for the next three years will be to examine whether and to what extent are the courts combining gender sensitivity with legal reasoning to uphold women's right to reliefs guaranteed under the PWDVA. This is based on the hypothesis that over the last couple of years, we have witnessed favourable orders being granted by courts across the states. However, an examination of the reasoning in granting such reliefs as well as in LCWRI's limited interaction with Magistrates has led to the conclusion that very often, this is a reflection of the courts following the strict letter of the law, based on the understanding of their own roles as enforcers of the law. The PWDVA in its Objects and Reasons provides sufficient guidance as to the spirit with which its provisions ought to be interpreted. This hypothesis however, requires a deeper analysis over a sustained period of time. It is our hope that with the evolution of the law over the next three years, LCWRI will be able to undertake this indepth analysis. For the purpose of this Report, the themes being specifically looked at are:

- Nature of domestic violence and the manner in which courts are being accessed
- Nature of reliefs being granted or denied and enforcement
- To what extent does the reasoning of the courts furthers the constitutional goals of equality and non-discrimination
- Role played by other implementing agencies in the litigation process
- Mapping of attitude of the Judiciary towards women and the law
- Knowledge and practice of the courts with regard to interpretation and use of the law, to the extent possible.

As discussed previously, a set of themes and comparative indicators were identified at the beginning of this exercise. These indicators are a combination of substantive, procedural and attitudinal issues that have been raised time and again with regard to the PWDVA, and which have been argued before and by the courts. However, for the sake of brevity, broad themes have been reproduced in this chapter (see text box "broad themes"), on the basis of which the findings will be examined.

An attempt has been made to analyse the orders on the basis of all the above themes. However, due to the lack of adequate data on some themes, certain aspects could not be covered this year. LCWRI shall continue its endeavour to obtain the necessary data through collection of orders from the maximum number of states in the coming years.

All the orders received from the states have been used for the purpose of this analysis, except Maharashtra. LCWRI received 1366 orders from Maharashtra, out of which only 602 orders have been analysed for the purpose of this Chapter. This was due to the limited time and resources available.² However, it must be emphasised that an attempt has been made to ensure that a representative number of orders from all the districts in Maharashtra are used for this analysis. (Please see the text box for the list of districts covered in Maharashtra.)

1. Ahmednagar	15	18.	Nagpur	33
2. Akola	19	19.	Nanded	19
3. Amravati	13	20.	Nashik	7
4. Aurangabad	34	21.	Osmanabad	6
5. Beed	22	22.	Parbhani	2
6. Bhandara	8	23.	Pune	29
7. Buldhana	12	24.	Raigad	20
3. Chandrapur	12	25.	Ratnagiri	1
9. Dhule	7	26.	Sangli	10
10. Ghadchiroli	5	27.	Satara	3
11. Gondia	2	28.	Sindhudurg	6
12. Hingoli	1	29.	Sholapur	1
13. Jalgaon	6	30.	Thane	13
14. Jalna	4	31.	Wardha	2
15. Kolhapur	16	32.	Washim	2
16. Latur	19	33.	Yavatmal	9

² The LCWRI will undertake analysis of the remaining orders (of the year 2009) from Maharashtra in its next annual M&E Report

The total number of orders (including Magistrates' Court orders, appeals, revisions, settlements recorded in orders and orders passed on breach under Section 31) examined for each state is:

- Delhi 72 orders
- Maharashtra 602 orders
- Gujarat 178 orders

A detailed break-up of the orders from each state is given in the table below:

Table 9.1: Break-up of Orders from each state

State covered	No. of Magistrates' Court orders	No. of Appellate Court orders (includes appeals & revisions)	Settled cases/Breach etc.
Delhi	35 (48.6%)	37 (51.3%)	6+4 (13.8% in total)
Maharashtra	565 (93.8%)	67 (11.1%)	26**+4 (4.9%in total)
Gujarat	49 (27.5%)	1	125 (settled) + 3 (not pressed for by AP)= 128 (71.9%)
Total	649	105	157 (settled) + 3 (not pressed) + 8 (breach)

Note: In all the above figures, there are cases where more than one order has been passed in a single case. Hence, the break-up of orders indicated in the table does not reflect the consolidated number of orders received from each state.

Trends Observed

The first segment of this Chapter discusses the trends observed and good practices that emerge from the analysis of all orders from the three identified states of Delhi, Maharashtra and Gujarat.

I. Break-up of Orders examined

Appeals

- While 51.3 percent of all orders examined from Delhi were Appellate Court orders or revisions, in Maharashtra, this percentage was more reasonable at 11.1 percent of all orders examined.
- Again, what is significant is that out of all the appeals filed in Delhi, 37.8 percent (14) of instances were against the final order and 48.6 percent against interim orders. An unexpectedly high number of appeals were filed against interim orders in Maharashtra as well (39 appeals against interim orders as opposed to 14 against final orders), which goes on to demonstrate the need to examine whether this trend defeats the rights of the aggrieved woman. The manner in which the appeals act as a barrier for women came to light during the discussions with women (as part of the M&E exercise) who accessed the Law in Delhi and Rajasthan.

^{**} In Maharashtra, more cases, which were settled than what is reflected in the table, had been received. However, in order to provide a representative sample of orders as well as to ensure there is no repetition, only few such orders have been analysed.

Women's Testimonies

"After running for almost a year, I got Compensation Order of INR 20000.00 and Maintenance Order of INR 3000 per month. Immediately my husband filed an appeal. For last three months, orders are on hold. I haven't received anything. I don't know how I am going to manage."

An aggrieved woman from Delhi

"In last 2½ years, I have been struggling to get compensation and maintenance order. Initially, court ordered INR 3000 per month for maintenance, which was later reduced to INR 1000 in response to an appeal filed by my husband. It's now more than a year, I have not received a penny. I have gone to the court several times, but nothing is moving...My husband keeps taunting that I should withdraw the case, nothing would happen. At times, I think he is right."

An aggrieved woman from Rajasthan

- The most important and perplexing data noticed was with regard to the comparative proportion of appeals filed by Respondents and AP. In Maharashtra, approximately, 86.6 percent (58) of the total appeals were filed by the Respondent whereas 16.4 percent (11) appeals were filed by the AP. However, curiously in case of Delhi, the number of appeals filed by AP (42.10 percent i.e. 16 appeals) was almost similar to that filed by the Respondents (57.89 percent i.e. 22 appeals). This is an exceptional trend where the difference between the appeals filed by both parties is minimal. Is this a reflection of the fact that more APs in Delhi are not satisfied with the orders passed, whether interim or final, by the courts or is it more demonstrative of the fact that the courts in Delhi refuse to grant reliefs on technical or other grounds in favour of the APs?
- Similarly, the statistics on appeals from Delhi also show that 56 percent of the total appeals filed by the AP are against interim orders, as opposed to 50 percent filed against interim orders by the Respondent. 45 percent of total appeals filed against interim orders are by APs, which presents a disturbing trend from the state.

This aforementioned data impacts the ultimate hypothesis of this order analysis that women are able to get the desired reliefs from the courts under the PWDVA, hence, there is a consequent increase in the usage of this Law and the number of cases being filed under the Law. However, it has also been observed that many women are not able to get the desired reliefs because of the appeals filed against interim orders which have been discussed above.

Settled Cases/Compromises

- In 125 out of 178 cases i.e. 70.2 percent of the orders examined from Gujarat, the parties had reached a compromise or settled the matter. In addition, in three cases, the counsel for AP did not "press the matter." This number is comparatively at a much lower number of 26 cases for Maharashtra and 6 for Delhi.
- The reason for such a high percentage of compromise/withdrawal cases in Gujarat is difficult to determine without taking into account narratives of women who agreed to compromise, the method of alternate dispute resolutions prevalent in the state, the attitude of the courts and other implementing agencies and most importantly, the socio-cultural background of the women who approach the courts under the Act. The other interesting characteristic of the state is the customary practice of 'sata' marriages prevalent in the state. The issue that needs to be

raised in the context of this finding is whether there is a culturally sanctioned emphasis on "settlement" and compromise in the state that is encouraged by all the machineries of justice? These are some important questions that need detailed examination in order to arrive at a definite conclusion on the issue of the high number of withdrawals/compromises, which is not encountered in the other identified states. As referred above, in our analysis of orders from Himachal Pradesh in the Second M&E Report, a similar trend of unusually high number of compromises/settlements was observed, and one of the factors that stood out was the existence of the customary practice of 'nata' marriages and the impact of nari adalats with their approach on dispute resolution involving the family and the community in major parts of the state. An analogous issue is the impact of this kind of approach on dispute resolution in cases of violence against women. In particular, with the enactment of a secular law such as the PWDVA, the impact of such methods may have to be carefully examined in our future analyses. However, without going into a definitive conclusion and acknowledging the need for a more in-depth analysis of the issue, Figure 9.1 below provides a sense of the kinds of reasons on the basis of which the compromise/withdrawal was affected in the orders from Gujarat.

Figure 9.I: Reasons for Settlements/Compromises (125 orders in total) in Gujarat



Figure 9.1 shows that in a majority of cases, no details were provided as to the reason or manner in which the settlement/compromise/withdrawal was entered into. What is interesting however, is that the "other reasons" that were observed for withdrawal/compromise of cases included in one case, the husband agreeing to sign the school leaving certificate of the child which he was refusing to do before the filing of application under the PWDVA; in the second case, the widow who had filed an application against her father-inlaw agreed to a settlement based on compensation from the Life Insurance Corporation (LIC) insurance maturity between herself and her 2 daughters; in the third of such cases, a partial relief of maintenance was granted to the aggrieved woman. Hence, it may not be inaccurate to conclude that there are instances where the woman is able to get a fair settlement or where she makes the choice to withdraw/settle based on what she might consider as a good exit option. Hence, in such cases, an out-of-court settlement need not lead to her victimisation or is not a compromise but an evidence of the need for alternative dispute resolution forums. In fact, it is this need that has been recognised under the PWDVA in Section 14 read with Rule 14 (7), which allows settlement during the process of counselling in case the woman so desires. At the same time,

the Rules provide detailed guidelines to the person conducting the settlement to safeguard the interests of the AP and ensure that she is in a strong and equal position during this process. In fact, the data from Gujarat reflects the issue of the dilemma between recognising the effectiveness of alternative dispute resolution mechanisms that enable women to get the reliefs that they want and on the other hand, ensuring that there is no inequitable compromise that she has to enter into as a result of the direct or indirect social pressures. In contrast, there were six cases where the AP withdrew the application under the PWDVA following an agreement for mutual consent divorce.

- Fifteen applications were filed by POs in Gujarat, and 11 out of these resulted in a compromise. Although there are no further details available from the orders as to whether the compromise/settlement was also affected by the PO, but it is an interesting issue that requires attention and further examination. Given the fact that there is a trend of POs undertaking counselling of the parties, most often with a view to achieve a settlement, it is possible that in cases where the PO files an application under the Act, the PO simultaneously undertakes counselling with a view to affect settlement. Such efforts of the PO may be directed by the court or it may also be an initiative of the PO.
- In Delhi and Maharashtra, it is not very clear as to how the settlement/compromise
 was arrived at. In Delhi, in one of the cases, Section 498A IPC proceeding had to
 be quashed by approaching the High Court as a result of the settlement between
 the parties. This order to quash was produced in the PWDVA proceeding as well.
 However, no such trend was noticed in Maharashtra.
 - In fact, the responses received from the practice questionnaires filled by the Magistrates in Delhi clearly reflected that in 15 cases, Magistrates have sent the parties to the Mediation Cell of the District Courts for mediation while in 9 cases, they themselves have counselled both the parties, although the orders are not clear on what is meant by compromise. It could be both the methods described by the Magistrates. Since, counselling is an extremely grey area under this Law and the orders analysed were not clear on what is meant by counselling/settlement/compromise, it is difficult to conclude the exact nature and stage at which counselling was attempted. However, it may be assumed that any matter that is referred to the Mediation Cell goes through an established procedure of mediation to arrive at a settlement between the parties. Yet, the challenge still remains that counselling seems to be attempted at every stage by every stakeholder.
- Maharashtra presents a particularly intriguing scenario by virtue of the presence of two factors. First, Family Courts that have as an express objective, ensuring settlement of family disputes towards which there are counsellors attached with the courts³ and second, the existence of Special Cells in 17 districts including Mumbai that makes for an interesting study, with their emphasis on counselling as an approach to address issues of family violence. Although the orders examined do not include details as to who is conducting the settlement and whether it was directed by the court in the 26 cases of settlement reported from the state, except

³ Section 9, Family Courts Act 1984 states that it is the duty of the Family Courts to persuade and assist the parties in arriving at a settlement wherever "there is a reasonable possibility" of such settlement.

in one case where there is a reference to the court directing "senior Lawyers" to conduct counselling that may be interpreted as mediation between the parties. It is therefore, the impact of existence of Family Courts, with concurrent jurisdiction under the Act and the Special Cells which have already been registered as SPs by the state government, with the additional proposal to appoint one counsellor from the Cells as a PO for the purpose of the Act,4 on the incidence of settlements in the state that must be examined in detail. Are settlements between the parties encouraged as a matter of course due to the particular orientation or approach that these two institutions profess? Even if there is no evident encouragement, by virtue of the emphasis on counselling and amicable resolution of family disputes, does it act as the dominant approach in the interaction between the parties and the Family Court or Special Cell workers? The final question that becomes important is whether the AP was able to get the desired outcome from the process of settlement, and crucially whether she is able to live free from violence. It is in this context that an institutionalised system of follow-up of cases of domestic violence that reach the courts or are settled becomes essential. At present, neither the Family Courts nor the Special Cells to an extent, have a systematic process of follow-up.

In <u>Sou. Ratnabai Jaising Patil v. State of Maharashtra</u> (Criminal Appeal No. 359 of 2008), the Bombay High Court provided directions to the State Government towards effective implementation of the PWDVA.

The directions given by the High Court with regard to appointment of Special Cell workers as functionaries under the Act were:

- a. 11 of the Social Workers in each of the existing 20 Special Cells shall be notified as a PO under the PWDVA, and the other Social Worker shall be registered as Service Provider within four weeks of the passing of this order.
- b. Further, with the direction as to the establishment of one Special Cell in each district level Police Headquarter within 12 weeks, the Social Workers shall be similarly notified as above within 8 weeks of the appointment.

Using the PWDVA and Access to Courts

This section will examine the following categories:

- The AP & Nature of domestic relationship Section 2 (a) & Section 2(d)
- Who is the Respondent? Section 2 (q)
- Who is accessing the court and through whom?

AP/Applicant

In more than 82 percent of all orders examined from all three states, the AP is a married woman [Delhi – 62 cases; Maharashtra – 527 cases; Gujarat – 156 cases].
 This is a trend that appears to have continued from the first year of implementation of the PWDVA.

⁴ Reference may be made to the judgment of the Bombay High Court in <u>Sou. Ratnabai Jaising Patil v. State of Maharashtra</u> (Criminal Appeal No. 359 of 2008); see text box above.

Single Women as APs & Female Relatives as Respondent: Maharashtra

There are two cases, where the courts have denied reliefs against the maternal aunt and sister. The court held that no reliefs can be passed against female members, although it is not clear whether the court also referred to female members of husband's family within this interpretation.

Widows are the other category of women who are using the Act in a consistent manner. While in Gujarat and Maharashtra, the number is a marginal 3.9 percent and 6.6 percent respectively of the total number of orders analysed from the two states, in Delhi, this proportion is significantly higher at 9.7 percent of the total orders analysed. The case of Delhi is significant also because the total number of cases analysed were less in comparison to the other two states. Of these instances from

Delhi, in only 50 percent of the cases, did the court grant the reliefs sought by the aggrieved widow. Again, in other cases where the relief claimed was the right to reside in the matrimonial home against in-laws, the same was denied primarily on the ground that the principle laid down by the Supreme Court in <u>S.R. Batra and Anr. v. Taruna Batra⁵</u> was applicable.

• The interesting trend reflected from the analysis of orders from the three states is that contrary to debate in the media and public domain about how the Act impacts relationships in the nature of marriage, there are only three cases out of the total of 852 cases examined from three states where the AP is in a relationship in the nature of marriage. In all the cases, the court granted the reliefs claimed based on the fact that co-habitation between the parties was established, which entitled her to the reliefs. However, the problematic development is the fact that the Magistrates do not take cognisance of second marriage by the husband, even where it is accepted by him, as a criminal offence under Section 494 of the IPC, which they are empowered to do as per Section 5 of the PWDVA. The courts limit their intervention in such cases to acknowledgment of the responsibility of husband to provide maintenance to the second woman (AP).

Promising Practice

In one of the cases in Maharashtra, the court granted interim maintenance of INR 15000 per month to the AP who is a divorced woman against her former husband, in addition to the maintenance granted by the Family Court u/Section 125 CrPC. The court based its decision on the fact that the Respondent had been refusing to pay her the maintenance granted by the Family Court.

Two categories of women who sought to use the Law specifically in Maharashtra were single women (8 cases, see text box) and divorced women⁶ (in 5 cases, APs were divorced). In three out of the five cases filed by divorced women, orders of maintenance were granted by the court. In one of the cases, relief was denied holding that the woman is divorced, while in the second case, the court held that she had already been granted permanent

^{5 (2007) 3} SCC 169

⁶ The issue of whether a divorced wife can claim reliefs under the Act has been litigated before the Madhya Pradesh High Court in <u>Razzak Khan & Ors. v. Shahnaz Khan & Ors.</u> 2008 (4) MPHT 413, where the court held that in accordance with the right to reside guaranteed to every woman under Section 17, the AP had the right to reside in the shared household of her ex-husband, or in the alternative, was entitled to claim alternate accommodation from him. The court also referred to the judgment in <u>Batra v. Batra</u> to validate its decision as the shared household was a joint family property. The Supreme Court has recently in its judgment in <u>Komalam Amma v. Kumara Pillai Raghavan Pillai & Ors.</u> Civil Appeal No. 6658 of 2008 reiterated the position in <u>Achala Anand's case</u> that residence is part of the right to maintenance, to which a Hindu wife under Section 18 HAMA is entitled to. Further, the court emphasised that Hindu wife is interpreted to include divorced Hindu wife for this purpose.

maintenance/alimony during the divorce proceedings. Hence, it may be concluded that although there is no trend or principle in effect established on grant of reliefs to divorced women, the courts may be open to granting maintenance by applying the existing principles under Section 125 CrPC, i.e. a divorced woman is entitled to maintenance till she re-marries. Either of these above-mentioned features were absent in Delhi and Gujarat.

• Such a consistent trend across states is a reflection of the fact that in public imagination, the PWDVA continues to be considered primarily a Law addressing violence in the matrimonial home. While it cannot be denied that by broadening the coverage of the Law to women in other forms of "domestic relationship" like mothers, daughters, sisters etc., a major step has been taken to create awareness on the issue of domestic violence but perhaps due to societal sanctions and the sanctity that is attached to the 'family,' women in relationships of blood, consanguinity etc. do not consider approaching the public domain of the justice system in situations of violence. In case of married women, it has often been argued that the step to the court is taken by women only when the marriage has completely broken down or she is in danger of losing her children.

The Respondent

- In an overwhelming number of cases (79.2 percent for Delhi to more than 80 percent for Maharashtra & Gujarat) analysed from all three states, the husband is the Respondent.
 - o The common trend across the states is that the husband is the only Respondent in a majority of the cases. In Delhi, the proportion of such cases is 47.3 percent of the total cases; in Maharashtra, it stands at 49.7 percent. Gujarat shows the most conservative proportion at 21.3 percent. This data may bear significant implications for addressing allegations such as women targeting the in-laws and potentially misusing the Act.
 - o In the other instances, the husband is Respondent no. 1, with the in-laws primarily being the co-Respondents. Gujarat has the highest proportion of cases of in-laws being made co-Respondents, at 87.1 percent.

Can Female Relatives be made Respondents?

High Court decisions on the issue began by taking conflicting views. However, at present, a majority of decisions (3:2) have ruled that female relatives are covered under Section 2 (q).

The High Courts of Madhya Pradesh and Andhra Pradesh respectively in <u>Ajay Kant v. Alka Sharma</u> (2008 Crl. L.J. 264), and <u>Smt. Menakuru Renuka and Ors. v. Smt. Menakuru Mona Reddy and Ors.</u> (Crl. P. No. 4106/2008) have held that women cannot be made Respondents under the Act, and that Section 2 (q) must be interpreted in light of the expression "adult male." On the other hand, there have been a number of decisions from various High Courts, particularly in the past 11 years that have clearly held that female relatives of the husband or male partner can be made Respondents in accordance with the proviso to Section 2 (q). Some of these judgments are <u>Sarita v. Smt. Umrao</u> (2008 (1) WLN 359]; <u>Nand Kishor & Ors. v. State of Rajasthan</u> (MANU/RH/0636/2008); <u>Rema Devi v. State of Kerala</u> [I (2008) DIMC 297]; <u>Archana Hemant Naik v. Urmilaben Naik & Anr.</u> [Criminal Revision Application No. 590 of 2008]

An analysis of some of the judgments is undertaken in the next segment of this Chapter.

Promising Practice: Mother v. Son

The single instance of such a case from Delhi was where the son had filed a revision petition against the trial court's decision directing him to remove himself from the shared household as well as restraining him from disposing it of, in favour of his mother. The court dismissed the petition and refused to interfere with the trial court's decision when it was observed that the AP was the mother. The contention of the son was that no evidence had been taken by trial court; the court dismissed the contention and held that it is not necessary for the Magistrate to record evidence and matter can be disposed off on the basis of pleadings. The court relied upon the judgment in 2008 (1) LRC 127 (MP).

- Only Maharashtra shows 32 cases amongst all cases analysed where only the in-laws were made Respondents. A majority of such cases is where the application against in-laws is filed by the widowed daughter-in-law. However, there is only a single case from Maharashtra where the court reached the conclusion that although the husband is alive, the wife filed the application against in-laws for property in the guise of claiming the right to reside, in collusion with her husband. The court in this case clearly referred to the case as that of misuse of the Act. A similar trend appeared however, more common in Delhi where there were three cases of the woman filing an application under the Act against her in-laws, even though her husband is alive and residing in the shared household. The court in two cases of appeals and one which was a revision against the trial court order either denying reliefs at the interim stage or dismissing the application held that the primary entitlement of the wife is from the husband. In one of these cases, the court observed that it was surprising that the AP did not consider including the husband as the Respondent while in the other, the primary reason for dismissing the appeal was the non-inclusion of the husband as a Respondent. In the third case, the court held that the claim for maintenance can be made only against the husband and not the in-laws, where the former is alive. In fact, such cases, where the apparent reference is to collusion between the husband and wife with regard to a family property dispute, are instances of misuse of the Law. There is a single instance even in Gujarat where only the in-laws have been made Respondents although the husband is alive. No further detail of the case is however, available.
- Applications are also filed by mothers against sons in a significant number of cases in Maharashtra (20 cases in total from the state) along with other members of his family while in three cases, only the daughter-in-law was the Respondent. In Delhi, there is only one instance where a revision petition was filed by the son against the trial court's decision in favour of his mother. Although the number in Maharashtra is not significant in itself, given the total number of orders reviewed, the kinds of cases do indicate that this form of oft-neglected domestic violence is finally reaching the courts.
- There are two instances of fathers being made Respondents in applications filed by daughters from Maharashtra, in one of which the daughters had claimed the right to reside in the household owned by the father with the brothers being made co-Respondents. In the second case, the court granted Protection Order and maintenance against the father on allegation of sexual abuse of the daughters. In fact, an interesting case is that of a father filing the application on behalf of the

minor girl child against her mother (his wife) and her grandparents over custody and visitation. The court refused the application by holding that the mother had originally filed an application under the Act, and therefore, any relief passed on the issue will make the case complicated.

Women as Respondents

The one issue that has continued as a major challenge in the effective interpretation and implementation of the PWDVA is whether female relatives of the husband/male partner can be made Respondents under the Proviso to Section 2 (q) of the Act. While the issue has been further complicated by conflicting judgments of High Courts and the absence of any apex court decision on the issue (See Box above), individual Judges of trial courts have also used their own interpretation in examining this issue. In the three states examined, the courts have taken differing approaches to this issue:

In Delhi, the courts appear to be interpreting the proviso to Section 2 (q) to mean that only male members can be made Respondents. The courts predominantly refused to grant reliefs against women⁷ stating that they do not fall within the definition of "Respondent" as provided under Section 2 (q) of the Act. There are a few cases where the court has actually relied upon the Supreme Court judgment in Batra v. Batra8 to dismiss claims against female Respondents on the ground that female members do not satisfy the requirements of Respondents under Section 2 (g) read with Section 2 (f) of the PWDVA and that of Hindu joint family. It appears that the court interpreted the decision that the wife has no right to reside in the shared household owned by the mother-in-law in that case to mean that female members of the husband's family, particularly mother-in-law cannot be made Respondents. However, in Maharashtra, the scenario appears to be more balanced with 11 cases where the court has granted reliefs against women and 9 cases where the application has been completely dismissed or the names of the women deleted. In one of the cases, the court has held that no maintenance can be claimed against a woman but only instances of ill-treatment or cruelty by female relatives is actionable. In most of the cases where relief has been granted, the courts have held that there is nothing in the PWDVA that bars proceedings against women. There is a specific case where the court has stated that the proviso to Section 2 (q) provides that female relatives of the husband/ male partner can be made Respondents. In Gujarat, there was only 1 case where the application was filed by the mother against her son and daughter-in-law. The court dismissed the claim against the daughter-in-law on the ground that women cannot be Respondents, while granting the relief against the son.

⁷ This trend includes courts refusing to grant reliefs against female members of the husband/partner's family as well as the AP's natal family. This finding appears to be based on the interpretation of the proviso to Section 2 (q) in light of the expression "adult male member" as the Respondent in the main provision. In 23.8 percent of such cases, the courts in Delhi have primarily relied upon the judgment of the Madhya Pradesh High Court in <u>Ajay Kant v. Alka Sharma</u> 2007 (4) RCR (Cri) 930.

⁸ Supra note 6.

Promising Case Study: Maharashtra

In one of the cases, the aggrieved wife was residing in her natal home with her two children, and filed an application against husband and in-laws, including female relatives. The court granted reliefs on the basis that unless there was significant ill-treatment from the husband as well as all the relatives of husband, a woman would not want to leave her matrimonial home and live in her natal home. Again, if the Respondent wanted to co-habit with her, they would have attempted to bring her back but there was prima facie no such attempt. Hence, relief must be granted.

In this case, the court tried to go to the core of the issue and understand the reasons behind the circumstances in which she was living.

- In 61.9 percent of cases from Delhi where a woman was made Respondent, either summons were not issued against the woman or the court dismissed the claims against the woman Respondent because the Act does not provide for women to be Respondents. But the court did not refuse to grant any order, even against the male Respondent(s) in any of these instances. However, the overwhelming trend in Goa is that in a majority of cases, where women are made Respondents, unless their names are removed/struck off from the application, orders are not passed by courts. This is a problematic trend and the courts need to understand that the primary objective of the PWDVA is to ensure that women get efficacious reliefs from violence, and that procedural requirements must be harmonised with this stated object.
- What is interesting about Delhi is that while in 21 cases, a woman was made a co-Respondent, she was never the sole Respondent in a single case.

Hence, from an analysis of the dominant instances from the three states, it appears that the only universal trend is that married women are using the Law against their husbands, and in some cases, additionally implicating the in-laws as co-Respondents. The other issue that continues to pose problems for courts as well as the parties is whether female relatives of the husband/male partner can be made Respondents. This issue has been noticed consistently with no uniformity in the decision of the courts since the first year of implementation of the Act. It is hoped that with the increasing number of decisions from higher courts endorsing the fact that the proviso to Section 2 (q) includes female relatives, this confusion will be resolved in the coming year.

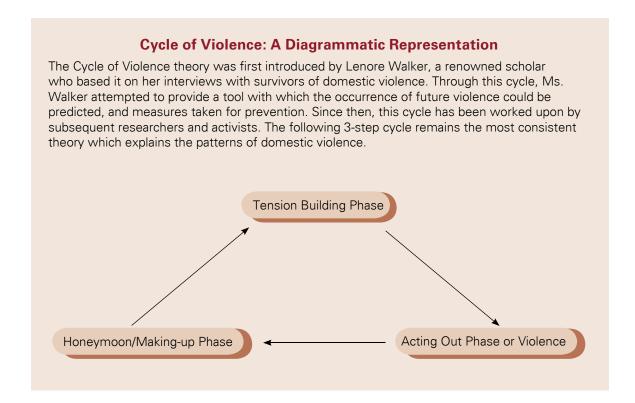
Accessing the Court: The Applicant

- The orders in Maharashtra are not clear about who filed the application. In the absence of a specific reference to the applicant, one may presume that it was the AP who filed the application through her Lawyer in a majority of cases.
- However, in Gujarat, an interesting phenomenon observed is that in approximately 18 percent of the cases, the PO filed the application on behalf of the AP. Of more significance is the fact that in more than 73 percent of such cases where the PO was the applicant, a compromise was reached between the parties. The orders are however, not clear as to whether the courts then direct the PO to conduct counselling for the purpose of settlement or whether the POs themselves initiate such action. This is a trend that will be interesting to track in the years to come.

- In Delhi, there was only one case where the application was filed by the SHO on behalf of the AP, while in 95 percent cases, the AP is the applicant.
- The kinds of abuses being alleged as a general trend
- Whether "emotional and verbal abuse" is being alleged singly or is it usually combined with other forms of abuse?
- Is there a pattern emerging in the nature of violence alleged?

Nature or Patterns of Domestic Violence

- The kinds of abuses being alleged as a general trend
- Whether "emotional and verbal abuse" is being alleged singly or is it usually combined with other forms of abuse?
- Is there a pattern emerging in the nature of violence alleged?
- The predominant trend from an analysis of all orders from three states appears to be that in a majority of the cases, a combination of the different forms of abuse is alleged. This lends credence to the fact that in intimate relationships, violence occurs as a pattern that takes different forms at different points of time. It is therefore, very difficult to isolate any particular form of abuse, without taking into account the overall emotional and psychological impact on the woman. It is in recognition of this overlapping nature of domestic violence that Explanation III to Section 3 of the Act necessitates the court to look at the "overall facts and circumstances of the case" to arrive at a finding of domestic violence. The fact that in a majority of cases, the AP alleges more than one form of abuse, in particular a combination of physical, economic and emotional abuse, also suggests that women seem to use a combination of forms of violence to strengthen their case before the courts. This may particularly be the case where the predominant forms of abuse encountered are verbal and emotional abuse, due to the difficulty of gathering evidence and the non-seriousness associated with emotional and verbal abuse for the court to pass an interim order.
- Evidence of use of combination of forms of abuse in the applications by a majority of women is found across the states. While in Maharashtra, in more than 93 percent orders examined, a combination of physical, economic and verbal and emotional abuses were alleged, the proportion of such cases in Gujarat was more than 80 percent of the orders examined. However, Delhi posed a major challenge as the nature of violence alleged was not described in detail in the orders passed by the courts. This could primarily be attributed to the fact that a majority of the cases examined were from the Appellate Court, and did not go into details of the facts of the case.
- In general, the manner in which orders are written present a challenge with regard to analysing the patterns of domestic violence. Even in cases where the form of abuse is referred to, the orders do not provide details as to the specific form of physical, emotional or economic abuse alleged.
- The form of abuse that is alleged by APs, irrespective of whether it is the single form alleged or in combination with others, is economic abuse. This appears to reiterate the fact that women's vulnerability to violence, and in fact the most significant form of violence, increases with economic dependence on the perpetrator. The second most common form of abuse alleged is physical abuse.



- Sexual abuse is alleged in very few cases. This may be due to patriarchal conditioning responsible for the notion that a man has a right to sexual relations with his wife by virtue of the fact that they are married. Hence, women in a majority of cases do not even view forced/coercive sexual acts by their husbands/male partners as a form of violence. In fact, our laws continue to retain this patriarchal attitude, as evidenced most emphatically by the clause that provides an exception to forced sexual intercourse within marriage as a form of rape under Section 375 IPC.
- The predominant form of economic abuse alleged in the three states is dispossession or threat of dispossession from the shared household, demands for dowry and refusal to maintain the AP and children. This is a trend that continues from the order analysis undertaken in the First M&E Report. It strengthens the argument for the enactment of a law on equitable distribution of matrimonial property.
- The predominant form of physical abuse alleged has consistently remained harassment or assault due to dowry. This is perhaps the reason why the Law is being used by married women against dowry harassment, sometimes in combination with Section 498A IPC and often, as an alternative to the criminal law provision. Hence, the need for a more effective dowry prohibition law along with better awareness and intervention strategies cannot be over-emphasised.
- One particular issue that the LCWRI was keen on examining was whether there are
 instances where verbal abuse and emotional abuse is alleged separately, and what
 are the kinds of abuse alleged in such cases. However, from a perusal of the orders
 where this information was available, it was found that in general, the two forms
 of abuse are alleged as one category whether singly or in combination with other
 forms of abuse.
- Although the study was not designed to obtain religion disaggregated data, it has been observed that contracting a second marriage as a form of emotional abuse has been alleged primarily where the parties are Muslim.

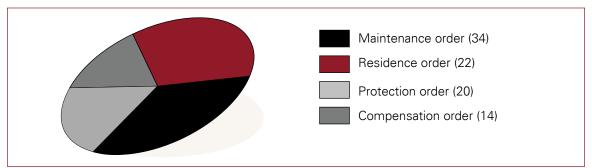
- In a miniscule number of cases from all orders examined from Maharashtra and Gujarat, only a single form of abuse was alleged:
 - o In Gujarat, physical abuse (referred to as assault) was alleged in two cases from all the orders examined while in Maharashtra, this number was 10.
 - Emotional and verbal abuse combined was alleged in a case in Gujarat as well as Maharashtra. In the case from Maharashtra, the complaint of emotional abuse was made by the mother against her son and daughter-in-law.
 - Economic abuse was alleged in two cases in Gujarat while in Maharashtra, this was higher at 22 cases.
 - An interesting trend observed in Gujarat was that in three cases, marital rape was alleged by the woman, in addition to other forms of abuse. However, in all the instances, there was a compromise between the parties. In Maharashtra on the other hand, there was a case where restitution of conjugal rights was sought by the wife against her husband, alleging refusal to co-habit as a form of sexual abuse. The question remains whether this can be considered to be a form of abuse under the PWDVA or whether the remedy lies in personal laws.

Nature of Reliefs Sought

- What are the commonly sought reliefs, and whether they are the same reliefs that are commonly granted?
- Which form of Residence Order is commonly sought by women, and against whom?
 - Consistent with the trend of the previous M&E Reports, in this year's analysis of orders, Monetary Relief in the form of maintenance was sought in the maximum number of cases. This finding includes Maintenance Orders sought in combination with other reliefs as well as maintenance claimed singly. (In Delhi, the proportion was 54.2 percent; in Maharashtra, a staggering 74.1 percent. This number was comparatively lower in case of Gujarat). Data from the practice questionnaires in Delhi validates the finding that Maintenance Orders are the most commonly sought and granted relief. According to the Magistrates, out of the 35 cases they dealt with where maintenance was sought, it had been granted in 32 cases. In a majority of cases where monetary relief is sought, the AP alleges a combination of abuses in addition to specific allegation of desertion or refusal to maintain. The disproportionately high number of maintenance orders sought is an acknowledgment of the fact that, for the average Indian woman, economic dependence acts as her greatest vulnerability. The issue to be examined in the future is whether there is a co-relation between her perceptions of greater economic independence and her leading a violence-free life.
 - Other kinds of commonly sought reliefs are Residence Orders (approx 60 percent of all reliefs claimed in all 3 states) and Protection Orders (Gujarat recorded a maximum of 76.1 percent Protection Orders sought, while in the other two states, the proportion of this relief claimed was closer to 30 percent). This finding from the order analysis is validated in case of Delhi by the practice questionnaires, where the Magistrates have provided the information that the

other most commonly sought reliefs are Protection Orders (33 cases) and Residence Order (25 cases). However, it also appears that at least in Delhi, the Protection Orders are granted less often than Maintenance Orders, in the cases in which they are sought. Therefore, according to the Magistrates, only in 15 cases (out of 33 where it was sought), the Protection Order was granted.

Figure 9.2: Proportion of various reliefs sought in three states combined (in percent)



- Again, the high proportion of Residence Orders sought, which primarily includes orders prohibiting dispossession of/restoration to shared household and/or alternate accommodation, shows that unequal patterns of ownership of property also act as a major vulnerability for women, particularly for married or widowed women. In fact, an analysis of all cases involving widows⁹ reveals that the major allegation of violence against her in-laws was that of dispossession or threat of dispossession, with the judgment in <u>Batra v. Batra</u> being used often to defeat their rights in the matrimonial home.
- An interesting phenomenon in the cases analysed from Delhi was that there
 was a comparatively high number of Compensation Orders sought (16 cases
 i.e. in 22.2 percent of total cases). This may be because compensation is
 often mistaken as lumpsum maintenance rather than as damages to be paid
 for mental injury or suffering endured by the woman. While the courts have
 generally refused to grant compensation at the interim stage, it was granted at
 the final stage.
- In the instances where only one kind of relief is being sought instead of a combination of reliefs, again Maintenance Orders constitute the maximum number from all three states. The second highest of such orders sought differs from Protection Orders in cases of Gujarat and Maharashtra to Residence Orders in case of Delhi. However, Gujarat posed a major impediment in this analysis due to compromise entered into between the parties in an overwhelming majority of cases. For instance, in more than 90 percent of cases where only Protection Order was sought, the parties entered into a compromise, thereby leaving no possibility of analysing the court's approach to cases where only a single form of relief is sought.

⁹ In case of widows, Maintenance Orders against the father-in-law have been granted by courts. However, their claim of right to reside has to an extent, been affected by whether the shared household is solely owned by the in-law, in accordance with the decision in <u>S.R. Batra v. Taruna Batra</u>.

Nature of Reliefs Granted by the Court and Reasoning for Grant or Denial

- Whether ex-parte orders are being granted by the courts?
- Which orders are commonly granted and the reasoning of the court?
- · Reasoning of the court in grant of interim orders whether domestic violence is established?
- What is the basis on which reliefs sought are denied and whether there is a pattern of denial of reliefs?

Ex-parte/Ad-interim Orders

There were no *ex-parte/ad-interim* orders obtained amongst the cases analysed from the state of Gujarat. This can primarily be attributed to the large number of compromises entered into between the parties. At the same time, the fact that no interim/*ex-parte/ad-interim* orders were granted by the courts, (from a reading of the orders obtained) before initiating settlement between the parties, may be considered to be a disadvantage for the aggrieved woman. The LCWRI has consistently argued for grant of interim/*ex-parte* reliefs by the courts before initiating settlement process to ensure that the woman begins from a position of strength.

- From an analysis of orders from Delhi and Maharashtra, the proportion of ex-parte/ad-interim orders granted in Delhi stands at 6.9 percent (5 orders) of all orders passed in the state. The responses of Magistrates in Delhi confirmed the same number of ad-interim/ex-parte orders. Hence, it appears that all the Magistrates who granted the 5 orders attended the training programme. However, in Maharashtra, this number was 67 i.e. 11.1 percent of all cases from the state.
- In Delhi, all the orders mentioned above, except one were ad-interim orders, granted primarily because either the Respondent(s) did not appear in response to the summons, or the Respondent(s) only attended the first hearing, or the summons was returned with no forwarding address. Only in one case, was the ad-interim order set aside by the Appellate Court as there was no record of the summons being issued.
- However, in case of Maharashtra, we see a mix of ex-parte and ad-interim orders. In 27 cases, ad-interim orders were passed because the Respondent(s) either refused to receive the summons or did not appear in court in response. In 20 cases however, the court granted ex-parte orders based on the application and affidavit of the AP. The reliefs were granted on the basis that the cases satisfied the principles of imminent danger or harm to the AP in case of denial of reliefs.

Ex-parte/Ad-interim Orders: Good Practices

In Maharashtra, there are three instances where the court granted an *ad-interim* order in spite of not receiving the acknowledgement of service from the PO on the basis that the PO's negligence should not be allowed to affect the efficaciousness of reliefs. This constitutes a good practice.

Again, the grant of ex parte orders in 20 cases in Maharashtra due to the recognition of need for immediate reliefs to prevent further violence also constitutes a good practice.

Interim Orders

As mentioned above, interim orders have been granted, where the need for such order was established, in a majority of the cases examined from Delhi and Maharashtra. As far as Gujarat is concerned, there is very little information on this issue as most of the cases have been compromised.

Predominantly, the interim orders commonly granted have been:

- Interim Maintenance Orders
- Interim Protection Orders restraining the Respondent(s) from committing further acts of violence
- Interim Residence Orders restraining the Respondent(s) from dispossessing the AP.

Issues of compensation and custody have primarily been left to be decided at the final stage perhaps because it becomes important to ascertain the facts and circumstances of the situation by leading evidence in case of these orders. It must be noted here that according to Section 23 (1) r/w Form III of the PWDVR, an interim order can be passed by the court on the basis of the affidavit of the AP.

- The two primary issues that the courts base the decision to grant interim orders on are found to be:
 - Whether the parties have lived together or are living together domestic relationship in the shared household established?
 - Whether a prima facie finding of domestic violence can be arrived at?
- The very fact of living together and the admission of living together by the Respondent or through the documentary submissions made before the court is considered to be sufficient to establish a domestic relationship. However, where the parties are admittedly married, the very fact of marriage is sufficient to entitle the wife to reliefs against her husband.¹⁰
- On a number of occasions, the court has held that the statement of the AP along with the affidavit in Form III is sufficient to establish domestic violence for the purpose of grant of interim/ex-parte orders. However, in certain cases, the court has taken the assistance of the "Report of the PO," which sometimes is the DIR but in some cases, is the Home Visit Report as required under Rule 10 (1)(a) of PWDVR. However, it is difficult to reach any concrete conclusion on this issue due to the confusion over what constitutes the PO's Report, as dealt with in detail later in the Chapter.
- As far as grant of interim maintenance is concerned, the first step is to examine
 whether domestic violence is established or not. In case the parties are married
 and have children, this fact is considered to be established. The most significant
 trend noticed as far as Maintenance Orders are concerned is that because providing

¹⁰ In <u>Vandana v. Mrs. Krishnamachari & Anr.</u> (2007) 6 MLJ 205 (Mad), the Madras High Court provided an innovative interpretation of the right to reside under the Act in view of the <u>Batra v. Batra</u> judgment, and held that a married wife has a de jure right to live in the shared household irrespective of whether the parties have lived together for even a single day. For a detailed analysis of the judgment, see M&E Report 2007.

No Writ petitions or Revisions without exhausting remedies under the Act: High Courts

This issue has been decided upon by the High Court of Delhi in <u>Smt. Maya Devi v. State of NCT of Delhi</u> [MANU/DE/8716/2007] and <u>Amit Sundra v. Sheetal Khanna</u> [2008 Cri LJ 66], and by the <u>Kerala High Court in Fousiya v. Muringakandy Jasmi and Ors.</u> (MANU/KE/0080/2008).

In these 333 judgments, the courts held that as the PWDVA provides specific remedies for appeal as well as alteration, modification, discharge or revocation of orders under Sections 29 and 25 respectively, the parties must exhaust the options provided in the Act before approaching the higher courts with writ petitions or revision petitions. In the instant cases, the High Court on this ground dismissed the petitions of the parties.

maintenance for the wife and children is considered to be a duty of the husband, on proof of marriage, an interim order for maintenance is ordinarily granted, unless the AP (wife) is in a position of economic independence where the court thinks that she does not require immediate relief. The second step therefore, is to ascertain the quantum of maintenance. The court examines the salary or income statement of the husband, documentary proof like bank statements, property documents etc. submitted during the hearing from both parties to arrive at a decision. The principle on the basis of which maintenance is granted is that the AP is entitled to the same standard of living to which she is accustomed. Analysis of the orders also reiterates the fact that Home Visit Reports by POs are usually directed to ascertain the "standard of living" of the Respondent(s).

- In one instance from Maharashtra, the court had granted a Residence Order restraining the Respondent from entering the house and alienating/disposing it of. However, the AP then submitted that the restraining orders could not be executed as the Respondent had already sold the shared household. Accordingly, the court modified the order to direct the Respondent to provide alternative accommodation/rent for the same to her, with a further restraining order to be passed as and when she moves to the alternate accommodation.
- Appeals and revisions are being filed against interim orders in both Delhi and Maharashtra. This is particularly prevalent in Goa, where almost every interim order is being appealed against. As mentioned at the beginning of this Chapter, most appeals are being filed by the Respondent, particularly in case of interim orders.
- While this is a problematic trend in that the Respondent(s) may use appeals and revisions as tools to subvert the reliefs granted to the woman, unless there is a specific provision prohibiting appeals from interim orders under the Act, one cannot address this issue. In fact, in a revision petition filed in Delhi by the mother-in-law against the Magistrate's ad-interim order granting Residence Order to the daughter-in-law, the Sessions Court rejected the wife's contention that no revision lies against an ad-interim order. However, attention is drawn to the judgments of various High Courts which held that the parties need to exhaust the remedies available under the PWDVA before approaching the higher courts through other methods. (See text box for details of High Court judgments on the issue).

Reliefs Granted and Reasoning for Grant

The trend noticed in the previous two years of granting Maintenance Orders under the Act continues. An in-depth examination of the reasoning on the basis of which Maintenance Orders are being granted confirms that the courts are following the general principles for grant under Section 125 CrPC. This may be due to their comfort with using the only other provision under their jurisdiction which constitutes a mix of civil reliefs and criminal procedure. The most commonly used principle for grant of maintenance by courts in all three states has already been mentioned in the segment on interim orders. While standard of living of the parties remains the predominant reasoning, the courts also consider responsibility to look after the children and their custody as a major factor in granting maintenance.

- In Maharashtra for instance, in a case where the application was filed by the maternal grandfather on behalf of the minor girls seeking maintenance from the father, the court not only awarded the requisite maintenance but also directed the father to provide for their education and marriage.
- two other orders examined from Maharashtra constitute good practices of 'standard of living' principle. In one order, the court granted maintenance in addition to that already received under Section 125 CrPC, taking into account the rising inflation. In the second instance, the court negated the contention that because the aggrieved wife was employed, she could not be entitled to maintenance. In this case, the court took into account the relative position of the Respondent to grant maintenance.
- In several cases, the courts have clearly and accurately held that the refusal to maintain wife and children is itself an act of domestic violence. This is a reflection of the sensitivity and understanding of social structures and women's vulnerability by the Judges. This social reasoning is further strengthened by the legal norm established under Section 125 CrPC and other personal laws where the woman's status as the wife entitles her to maintenance from the husband.
- Another good practice noticed in orders examined from Maharashtra is that Compensation Orders have been granted where emotional and verbal abuse has been established. In particular, character assassination of a woman, false accusations etc. have been held as acts of domestic violence, thereby ensuring grant of compensation.
- Desertion and re-marriage have in all cases that were examined been considered sufficient to establish mental and emotional abuse. Hence, in all such cases, the reliefs sought have usually been granted.
- In case of Gujarat, in less than 25 percent of cases where reliefs were awarded, the kinds of orders granted include a combination of Protection Orders, Residence orders, Maintenance orders and Compensation.

Promising Practice: Protection Orders

In Maharashtra, in a majority of cases, where domestic violence is prima facie proved, the court grants a Protection Order in favour of the AP even when it is not sought in the application.

This kind of attitude from the courts, demonstrating an understanding of the needs of a woman facing domestic violence without being limited by procedural requirements will go a long way in ensuring prevention of further violence.

Reasons for Denial

Some of the major reasons for denial of orders by the courts are as follows:

- The AP could not prove allegation of domestic violence, or existence of a domestic relationship. Although non-establishment of domestic violence was noticed in a miniscule number of cases, a finding of non-existence of domestic relationship or that the parties have been living together in a shared household was provided to deny Residence Orders to widows and married women. A detailed analysis of this issue will be made in the following segment on Right to Reside and <u>Batra v. Batra</u>.¹¹
- Denial of relief is on the ground that the allegations and reliefs claimed is, in effect, a property dispute rather than a question of right to residence. This finding has been noticed in cases where the woman filed an application against the in-laws but did not included her husband as Respondent. In all three states where this issue arose, the court dismissed the petition and reproached the possible abuse of the Law.
- The reliefs sought cannot be claimed against Respondents other than the husband. For instance, a number of maintenance orders claimed against in-laws have been rejected on this legally accurate reasoning. In certain cases where a combination of reliefs has been sought, the court granted other reliefs like Protection Order against the other Respondents but not that of maintenance, the exception being cases where maintenance has been sought by widows as APs.
- Based on the reasoning that women cannot be made Respondents under the Act, courts have in several cases refused to grant orders against female relatives of the husband such as the mother-in-law.
- Compensation and Interim Custody Orders have ordinarily been denied at the interim/ex-parte stage due to reasons mentioned earlier in this Chapter.
- Procedural issues such as service of notice not being affected due to refusal of Respondent to accept notice, lack of a PO's Report or DIR which was held as mandatory under the Law, and non-availability of adequate evidence, particularly documentary evidence, has in some cases led to denial of reliefs by the court.
- Lack of jurisdiction or refusal of the Magistrate's court to interfere with pending proceedings on the same issue in any other court of law is observed as one of the most significant although not frequently used reasons for denying reliefs under the Act. This trend was observed in a few cases in Maharashtra, the reason for which can be found in the existence of Family Courts which have concurrent jurisdiction under the PWDVA, in accordance with the provisions of Family Courts Act, 1984. In contrast, there is no perceived conflict with regard to most of the reliefs under the Act in case of Delhi. It is pertinent to note here that in Delhi, all women and family related matters (other than the personal laws) are within the jurisdiction of the Mahila Court Magistrates. Hence, an order under Section 125 CrPC or Section 498A IPC is passed only by such Magistrates, leading to no situation of conflict.
- Finally, while there are cases where the court has specifically turned down the contention that there can be no revisions filed from interim orders (see segment on interim orders). In Maharashtra, the only two revisions filed before the Sessions

¹¹ Supra note 6

- Courts were dismissed on the basis of not having exhausted the remedies under the Act. This reasoning is consistent with the law laid down by the High Courts in the judgments referred to in the text box.
- There is a case from Gujarat where the reliefs claimed by the aggrieved woman was denied on the reasoning that the marriage was of a customary form known as 'sata-pata' marriages, 12 and hence, there is no basis for alleging domestic violence in such cases. In this connection, it may be interesting to undertake a more detailed analysis of the causal linkages between customary practices like the sata-pata marriage and the high proportion of cases in which a compromise was entered into between the parties in the state. The issue arises whether women in such marriages as a result of their vulnerability, apprehend approaching the formal justice system and instead prefer to settle the issue, in spite of adverse outcomes.

Right to Reside and Impact of Batra v. Batra

As mentioned in the Introduction to this Report, the right to reside guaranteed under Sections 17 and 19 of the PWDVA constitutes one of the most significant features of this Law. The Act provides various forms of Residence Orders that may be claimed by the woman, including a restraining order against forcible dispossession or removing the Respondent from shared household, preventing the Respondent from entering a portion of the shared household, restoring her to the shared household, and directing Respondent to secure her an alternate accommodation of the same level.

From an examination of all orders passed in the three states (only 7 instances where Residence Order was granted in Gujarat), it can be observed that interim and final orders of residence have been sought in a majority of cases lending credence to the fact that dispossession from the house constitutes a major form of domestic violence. However, at the same time, the analysis also reveals that in a large proportion of such cases, the relief of residence was also denied by the courts. And the predominant reason for such denial is found in how the right to reside under the Act has been interpreted in the judgment given by the Supreme Court in *Batra v. Batra*.¹³

What does S.R. Batra v. Taruna Batra (2007 3 SCC 169) say?

In this judgment, the Supreme Court went on to examine the definitions of "shared household" under Section 2 (s) and the scope of right to reside under Section 17 & 19 the PWDVA, on a plea by the wife that she had a right to reside in the matrimonial home which was owned by the mother-in-law. Her husband had already taken a separate house on rent and had filed for divorce.

It was on these facts that the court held that for the purpose of the Act, shared household would mean a house either owned or tenanted by the husband, or which is the joint family property in which the husband has a share. Hence, the right to residence of a wife would not extend to a house which is owned by the in-laws, irrespective of whether it is her matrimonial home. The court also clarified that a claim for alternate accommodation under Section 19 (1) (f) can be made only against the husband. This judgment has had the effect of restricting the right to reside of women who live in joint family set-ups in a house owned by the in-laws as well as widows.

Sata-pata marriages are a form of customary marriage prevalent in Gujarat, which is a marriage by exchange of brides between 2 families. Under this traditional system, if 1 marriage is dissolved between the 2 contracting families, the second marriage has to be dissolved as well. Sata-pata marriages are usually entered into when the brides and bridegrooms are children, and hence, is considered as a form of child marriage. There have been in recent times, reports where 1 of the brides married under this custom has applied for annulment of marriage, on attaining majority. Sourced from: http://timesofindia.indiatimes.com/ Cities/Ahmedabad/Split-battle-claims-marriage/articleshow/1560187.cms> (last accessed on 20 August 2009)

¹³ See <u>S.R. Batra v. Taruna Batra,</u> supra note 8.

- The Supreme Court judgment has been cited in 14 cases in Delhi and 17 in Maharashtra. Although the actual number in Maharashtra is slightly higher, in relative terms, the courts in Delhi appear to have referred to and applied this judgment in a higher proportion of cases (19.4 percent of all orders from Delhi as opposed to a mere 2.8 percent from Maharashtra). Although no conclusion can be arrived at from an analysis of the trends, it may be possible to suggest that because the majority of cases examined from Delhi were appeals, the issue of whether a Residence Order should have been granted by the Magistrate in view of <u>Batra v. Batra</u> may have arisen. On the contrary, it is possible that at the trial stage, this judgment has not been referred to by the counsels in a large number of cases, which may account for the trend in Maharashtra. It must be noted that there is only a minimal difference in the proportion of cases where Residence Order is sought between the 2 states.
- There are three predominant ways in which all courts in both states have approached the issue of right to reside and the *Batra* judgment. The next three points highlight the specific approach and some significant ways in which the approach was applied.
- The first approach has been the application of the Batra judgment to deny the relief of residence to the AP, on the ground that according to the interpretation of "shared household," the AP can claim the right to reside only in the household owned or tenanted by her husband/male partner or the joint family property.
 - o In eight cases in Delhi, courts refused to grant Residence Order based on the fact that the property was owned by the in-laws, while in Maharashtra, this judgment was applied to deny reliefs to women in 12 cases. Out of these 12 cases, three constituted Appellate Court decisions which set aside the Residence Orders passed by trial court on the basis of the *Batra* judgment. In another instance, the Appellate Court refused the aggrieved wife a stay on the order of the trial court, denying her right to residence.
 - The impact of such decisions can be felt most adversely by widows or women who have been deserted by their husbands, as they have no claim in any other "shared household."
- The second approach, which constitutes a good practice, is to distinguish the facts
 of the case at hand from that of <u>Batra v. Batra</u>. This approach has been adopted in
 four cases from Maharashtra and three cases from Delhi, and the reasoning provided
 for distinguishing the facts is quite striking. (See text box above for instances of
 these good practices.)

Distinguishing Batra v. Batra: Innovative Arguments by Courts

- 1. In a case from Delhi, the reasoning provided was that there is no evidence to prove that property belongs to MIL and the wife has been residing there since the beginning.
- 2. In another case, the court granted interim residence on the reasoning that this issue is to be decided based on evidence at the final stage.
- 3. The reasoning provided in three cases from Maharashtra is interesting in that it is held that although the property is in the name of MIL presently but it was bought by the FIL & MIL together, and therefore, will be joint family property in the hands of son and his wife.
- 4. The final order from Maharashtra (Dhule district) which provided an innovative interpretation and residence was granted using the Batra judgment, to the first wife in the house where the husband resided with another woman and not in the matrimonial home in which she had been residing with her in-laws.

- The third trend has been to refer to the Batra judgment in the process of granting/ denying reliefs but not necessarily basing the order on the principles of the judgment. In fact, Delhi reflects a unique approach in three cases in particular where the reliefs were denied, holding that the definition of Respondent under Section 2 (q) read with Section 2 (f) of the PWDVA. In two cases out of these, the court discharged the Respondents stating that in view of the SC judgment, joint family as per Hindu law was not found to exist. In the third case, the court merely refers to the Batra judgment as having been perused but further details as to its applicability in the case are not provided. From an analysis of the above three orders, it appears that the Batra judgment was referred to before the courts and hence, there is a mention of the same in the orders. Beyond this, a direct application of the judgment cannot be found on the issue of Respondents. As far as Maharashtra is concerned, in two cases, the Batra judgment was referred to by the courts but the decision in the cases was not based on the same.
- No references were found about the judgment in the Gujarat orders examined.

Use of the Multi-agency System by Courts: Role of Other Implementing Agencies

- Role of the PO and SP during litigation
- Role of the Police during litigation

As mentioned in detail in this Report, the PWDVA envisages a multi-agency response to domestic violence by creating the mechanisms of the PO and the SP to provide holistic support to an aggrieved woman. While the PO is to act as the link between the court and the woman and the coordinator of the multi-agency system, the institution of the SP recognises the need for institutionalisation of support services like shelter, counselling etc. through organisations experienced in dealing with cases of domestic violence. The PWDVA also recognises the fact that the Police will remain the first port of call for a majority of women and the only existing criminal justice institution with reach across the country. Hence, although the Police cannot record DIRs under the Act, they have been vested with several important duties and functions under this Law in addition to their duties under existing criminal law provisions that impact the PWDVA.

Role of the PO and SP during Litigation

At the outset, it must be noted that among the three states being studied in this exercise, only the states of Maharashtra and Gujarat have some information provided in the orders about the role of SP, although they have been registered in Delhi as well (see Chapter 5 of this Report for details). In fact, what is interesting is that the registration of SPs under this Act is still "under process" in Gujarat; the reference to the role of SPs in the orders from the state therefore, suggests that either the courts have interchangeably referred to NGOs that are not registered under the Act as SPs or they were not aware that the process of registration is not complete. Nevertheless, the role of the SPs is being analysed from the orders obtained from Maharashtra and Gujarat only.

- In 477 out of 600 (approx 80 percent) orders from Maharashtra, there were either no details provided or no reference made to whether the PO played any role during the course of litigation and as recorded in the orders, there may be two kinds of conclusions drawn from this lack of information, that in these cases:
 - Either the PO, although appointed in all three states did not play any significant role during the time of litigation, which may mean that in a majority of cases the courts rely upon the Lawyers and other criminal justice agencies at its disposal for its purposes and the POs see their role as being limited to pre-litigation stage; or
 - The POs' role is very simply not recorded by the courts in the orders as they are expected to assist the court as a matter of routine; or
 - The POs do not play any role or discharge their duties, either at the pre-litigation stage or during litigation. In such cases, women approach the courts directly without having recorded a DIR or get the DIR recorded by SPs. This conclusion, in fact, is particularly interesting in the context of the information obtained from NGOs, Lawyers and women facing violence that the POs in Maharashtra have not been playing a proactive role. It is in this context that a review and examination of the method of appointment of POs in the state becomes necessary.

However, it must be clarified that the above conclusions singly or in combination, may not have any relevance for any of the states being examined.

- Although the appointment of POs has already been brought into question in Maharashtra, in Delhi, appointment of qualified women with background in social work as POs on a contractual basis has been mentioned as a good practice in LCWRI's previous Reports as well. However, the analysis of orders from the state shows a figure that is only marginally better in terms of the role played by POs during litigation as opposed to Maharashtra. The proportion of orders in which there is any reference to the role played by POs in Delhi is 38.9 percent, although the proportion in which a substantial role is played by them is lower at 33.9 percent of total orders examined from the state. This may however, be because a majority of orders analysed from Delhi are appeals, and the Appellate Court does not refer to their role in detail. This trend needs to be examined in the coming years.
- Following are some of functions that the POs are directed to perform by the courts during the litigation:
 - Directing PO to record DIR or submit DIR before the court In 7.9 percent cases in Maharashtra and 19.4 percent cases in Delhi, the PO recorded the DIR or was directed by the court to record and submit the DIR during litigation. However, as far as Delhi is concerned, a cause of concern noticed even in the previous M&E Reports has been the lack of clarity in what constitutes the "Report of the PO." According to the Magistrates, all but one case referred to in the questionnaires was filed through Lawyers, without a DIR. The Magistrates therefore, simultaneously issued the notice and directed the POs to submit the DIR. This is a validation of the observation that POs are not playing the role as envisaged under the Act particularly with regard to filing of applications, and women prefer to approach Lawyers for the same.

- Directing a Home Visit Report It is the Home Visit Report that has given rise to the confused understanding of the "Report of the PO." For the purpose of this analysis, it has been presumed that situations where the court directs the PO to ascertain/verify the facts alleged or stated in the submissions of the parties, gather information by visiting the house of the parties and neighbours, ascertain the standard of living etc. is in effect the Home Visit Report. Again, any report directed once the summons is issued to the Respondents may be considered to be a Home Visit Report and not a DIR. On this basis, it appears that a Home Visit Report has been directed in Maharashtra in 11 cases as opposed to at least 6 instances in Delhi.¹⁴
- o In 3 of the 6 cases from Delhi, the PO's Report was questioned by the parties—in 2 cases by the AP herself and in one case by the Respondent. In both cases questioned by AP, the court directed the SHO to verify the Report. The SHO's Report found that the PO's Report did not verify the facts accurately and hence, was not reliable, and the court rejected the same with warnings to the PO.
- o In one case from Maharashtra, the Home Visit Report found that the allegations of domestic violence could not be substantiated based on which the court dismissed the application under the Act. There is a reference to a similar case in amongst the orders examined from Gujarat.
- o In three cases from Gujarat, the Report of the PO (Home Visit Report) was not received by the court on time, and a notice was served against the PO.
- From an analysis of the orders from all three states, it appears that the Magistrates very often refer to the Home Visit Report as the PO's Report, while in other cases, the DIR is being referred to as the PO's Report. In this chapter, an attempt has been made to identify what is meant by the Report of the PO from the facts of the case and what directions are given by the court but there is still a room for error on this issue.
- o In 14 cases from Maharashtra, the PO was directed to serve the summons to the Respondent(s) while in Gujarat, the number stands at 7. Although there is no information in the orders as to who has served the summons as far as Delhi is concerned, the practice questionnaires help provide a clearer picture. Only two Magistrates (out of 20) have used *Nazarat* branch or police to serve notice, the rest of the Magistrates (18) have directed the POs to discharge this function.
- Again, in 14 cases from Maharashtra, it is not clear whether POs have been appointed at all. These cases are primarily from the districts. What is interesting is that in a number of cases, the interim order passed by the court directs the state government to appoint POs. It is pertinent to remember that POs have now been appointed at district and block levels in the state, although, their effectiveness has been questioned on many occasions.
- Role of SPs The interesting and extremely curious trend in Maharashtra is the limited reference to the role of SPs during the stage of litigation.
 - In fact, the analysis of orders from Maharashtra shows that there are two cases where the SP has filed the DIR instead of the PO. However, what is surprising about this number is that while the POs in the state have been alleged to be not

¹⁴ Delhi figure may actually be more or less than indicated.

sufficiently proactive, the SPs were said to have been discharging the functions of the POs. This issue requires in-depth analysis also in view of the registering of Special Cells across the state as SPs for the purposes of this Act. The issue that needs to be examined is what kind of role the SPs are playing in implementing the Act. In case the role of the SPs is primarily limited to the stage of affecting a settlement/conciliation, which explains why their role is not referred to in the court orders, the method and approach of such SPs in conciliation/settlement also needs to be examined in detail. A similar trend is also noticed in Gujarat, where out of the 5 cases where DIR was recorded by SPs, 3 were withdrawn and 2 were not further pressed by counsel for the AP, implying some form of settlement/compromise between the parties.

Role of the Police

The issue of whether the police are required to play any role under the PWDVA has been one of the major questions, particularly in the first two years of implementation of the Act. However, an analysis of the orders this year reveals that although Police assistance is not sought by the court or the PO in a majority of cases but the role that can be played by them has come to be recognised.

- In 6.9 percent of all orders examined from Delhi, the Police has been seen to play a role or at the very least, referred to in the order by the court. A similar proportion of 7.47 percent of orders refers to the Police's role in Maharashtra. There is no data available from Gujarat on the role of the Police.
- In Maharashtra, the Police have been predominantly directed to:
 - Assist in enforcement/implementation of the order or providing protection to the AP or getting the Respondent to execute bond as directed by the court (33 cases).
 - In eight cases, the court has simply directed that the information of the order and a copy of the same should be forwarded to the Police, without specific instructions.
 - o In three cases, the Police have recorded the DIR/filed application on behalf of the woman. There was one instance where the police sought to affect a settlement between the parties but the matter reached the court. In another case, the court rejected the application because the notice was served and the report filed by the Police.
- In case of Delhi, only two orders specifically direct the police to ensure compliance with the order and provide protection to AP. However, the interesting finding in Delhi that was not observed in case of Maharashtra is that the SHO was asked by the court in two instances to verify the Home Visit Report submitted by the PO. The reports in both cases were questioned by the AP as biased, and the court reprimanded the PO based on the finding of the SHO.

Fact finding by the Courts: DIR and Home Visit Report

- Who has recorded the DIR and filed before the court?
- Whether the court requires POs to file DIR before passing any order?
- Under what circumstances is Home Visit directed and who conducts it?

- As a general rule, the orders do not provide any information on who has recorded the DIR and filed it along with the application under the Act. This data is only available, and that too in a few cases, where the DIR has not been recorded at the time of filing the application under the PWDVA. In such cases, the court has 2 options before it, either to proceed with the trial based on the application and evidence adduced or to direct the PO to record a DIR and file it before the court and then pass an order, in accordance with Section 12 (1) of the Act. It is only when the court directs the PO to record and file a DIR is the information available.
- A major concern that has been raised in several forums is whether an accurate interpretation of Proviso to Section 12 (1) requires a DIR by the PO to be submitted before the passing of an order. It must be reiterated here that a DIR is not a pre-requisite for the admission of an application and grant of orders. However, an examination of the orders received from the three states reveals differing trends. While Maharashtra and Gujarat do not provide details on this issue so as to draw a conclusion regarding the same, Delhi provides evidence of the significance that this issue has assumed in making a difference between speedy reliefs for the woman or delays in grant of reliefs. We may conclude that because only the POs in Delhi have been appointed on a full-time basis (as opposed to the other 2 states), the courts in Delhi use their services more frequently. At the very least, it appears that the courts interpret the Proviso to Section 12 (1) to direct the POs to first submit a DIR before passing any order under the Act. This is true of all those cases where the AP approaches the courts directly, without a DIR being recorded through the PO. The number of cases where the courts considered the DIR before passing an order is 14, i.e. 19.8 percent of the total cases. The different instances where the DIR was examined includes the court directing the PO to submit a DIR or Report of the PO as has been referred to by some courts, and already mentioned in this Chapter.
- The actual number of cases in Delhi where the courts refer to the DIR before
 passing an order may be higher than the number indicated above, as the AP
 may have already approached the PO and recorded a DIR, which was filed along
 with the application. The court may not have in such cases, referred to the
 DIR separately.
- There is very little clarity on Home Visits and who conducts them in Maharashtra and Gujarat. As evidenced from Figure III, the number of cases where Home Visits have been directed by courts is significantly low, particularly in Maharashtra and Gujarat. The situation in Gujarat can be explained by the fact that there was no requirement of directing a Home Visit in the first place, given that most of the cases were compromised. Again, in the context that the role of the POs in Maharashtra is questioned by the data available, the inadequate reference to home visits in the orders is not surprising. As far as Delhi is concerned with full-time POs, the number of six cases where Home Visit was directed appears to be too small. It may be concluded that the courts do not record the details of Home Visits in writing the orders. Also, what is of significance is that in case of Delhi, a majority of the orders received were from Appellate Courts, which in probability do not make a reference to this issue.

Trial Procedures and Efficaciousness of Remedy Followed

- Procedure followed by the court for passing interim orders
- Procedure followed during the trial for final orders whether cross-examination was allowed by the courts
- The time taken for grant of interim/final orders

Although the examination of the orders from all the states does not provide a clear indication of the procedure adopted, the principles used and the manner in which the orders have been written provide a sense of the procedure that was used for both interim and final orders. The discussion on principles used has already been undertaken as part of the analysis of the rationale, and principles of grant of interim and final orders in the preceding segments.

In sum, it can be concluded that in passing interim orders, the courts relied upon the affidavit of the AP (Form III filed along with the application under Section 23 (1)) and in some cases, also directed the PO to provide a Home Visit Report to verify the statements made by the parties. In Delhi primarily, interim orders were granted based on affidavits.

As far as trial at the final stage is concerned, a major difference between Delhi and Maharashtra was that while in the former, the courts ordinarily did not require/allow cross-examination of the parties, in Maharashtra, the general procedure followed was to allow cross-examination. This is consistent with the differences in approach related to cross-examination being discussed across the other states as well.

There do not appear to be many instances of or references to the courts' use of Section 28 (2) procedure i.e. the court devising its own procedure to fashion reliefs. However, from an analysis of the orders from Delhi and Maharashtra, it appears that the courts have combined the procedures available under the CrPC as well as the CPC in the manner in which notice has been directed to be served. The other interesting instance where the court may be said to have formulated its own procedure in the absence of specific guidelines in the PWDVA or its Rules is in the two specific cases from Delhi where the PO's Home Visit Report was called into question. In both the instances, the court directed the SHO to submit a report, verifying the findings of the PO.

Promising Practice: Andhra Pradesh High Court Circular

In recognition of the need for speedy disposal of cases, the Chief Justice of the Andhra Pradesh High Court issued a Circular (ROC. No. 1246/EL/2009; dtd. 27.08.09) to all District & Sessions Judges in the state to the following effect:

- That Sessions Courts shall fix a specific day every week/fortnight for all subordinate courts for taking up of cases under the PWDVA. The day once fixed shall be communicated to the High Court.
- That all subordinate courts shall take up cases under the PWDVA, and may also take up other cases of atrocities against women on that day. On the completion of such cases, other regular cases may be taken up on the same day.
- Regular updates on progress of cases under the PWDVA to be provided to High Court.

As mentioned in this Chapter, because a majority of the orders in Gujarat led to compromise/settlement between the parties, the information on procedures adopted by the courts is not available from the state.

Time taken for Grant of Interim/Final Order

This is one area where the least information is available in all orders from the 3 states. Although the date of the order is available in all the orders examined, the date of filing of the application is not mentioned in more than 80 percent of the cases, making any conclusion or data on this issue difficult to collate. At the start of this initiative, LCWRI hoped to obtain a comprehensive understanding of the time taken for disposal of an application under the Act as this constitutes a major factor for assessing the effectiveness and efficaciousness of the Act.

However, from the examination of the orders, specifically in Delhi where the majority of appeals have provided this data, it appears that on an average, 4-5 months is taken to dispose of an appeal. There are instances where appeals have been disposed of in a single day.

Again, in cases where a settlement between the parties has been effected, it has been noticed, particularly in case of Delhi, the application for withdrawal by the AP along with terms of settlement, is allowed the same day as it is submitted before the court.

The data from the Magistrates in Delhi supplements this information to a certain extent. Out of a total of 41 cases, interim orders were passed in 29. However, only in 2 of these cases, the interim order was passed within 3 days, while in 17 cases it was passed between 10 and 60 days and in the rest of the 10 cases, after 60 days. With regard to final orders, out of the total 41 cases, final order was passed only in 8 cases within the stipulated time of 60 days. The Magistrates also pointed out that delay in service of notice coupled with adjournments sought by the counsels and overburdening of courts have derailed the timeline for orders as stipulated in the Law.

The delayed disposal of cases by Magistrates has been a major factor in the disillusionment of women facing domestic violence. This also came to light in the PFGDs with the women.

Women's Testimonials

"When first I was told about this Law, I was so hopeful. I had expected that justice would be done fast. But it is just like any other Law... Now I know that Lawyer is not necessary under this Law, but Judge does not entertain the case without them. It has happened several times with me. In last $2\frac{1}{2}$ years, only once the judge has heard the argument and gave a maintenance order..."

An aggrieved woman from Delhi

"In last one year, I have got date after date for hearing without any success. Sometimes, the judge is on leave, other times my husband is not present. It's only me who is waiting in long corridor taking leave from office."

An aggrieved woman from Rajasthan

Enforcement of Orders

- What is the predominant method of enforcement as evidenced from the orders?
- Do the courts include specific directions for enforcement/implementation of the orders?
- The predominant method of enforcement in the cases examined from Delhi and Maharashtra (Gujarat has been excluded for the purpose of this analysis as there were no orders passed by the courts in a majority of cases, except recording the terms of the settlement) were filing of complaints under Section 31 of the Act.
 - The interesting aspect of the complaints filed under Section 31 and the orders passed by the courts in Delhi under this provision was that the courts appear to be initiating proceedings for breach not only of Protection Orders but also other kinds of orders, when combined with the former. There is one specific instance from Delhi where the orders passed were for protection and residence in favour of the AP. On non-compliance of the orders, a complaint under Section 31 was registered and the trial court directed the SHO to treat the affidavit of the AP regarding the breach as the FIR and begin investigation. On appeal against this direction of the trial court, the Appellate Court refused to interfere with the decision as it was a criminal matter and the investigation had already begun.
 - o four cases each of breach under Section 31 were found in the orders from Delhi and Maharashtra. In a majority of the cases, the court directed the Police to register an FIR, treating the breach as an offence under the Act. In one particular case, the breach was treated as an offence under Section 498A IPC on the face of it. In a case from Maharashtra, the court ordered the Respondent to undergo imprisonment for six months and imposed a fine of INR 10,000/-.
 - In all four cases from Delhi, the first step taken by the court upon receipt of the complaint under Section 31 was to direct the PO to ensure compliance with the order.
- With regard to whether specific directions to the PO or Police for compliance or implementation are included in the orders by the courts, the general trend across the two states is that in a majority of cases, no directions for implementation are usually included in the order itself. Even in cases, where such a direction is provided by the court, it is worded in broad terms and does not provide details as to how they are to be enforced. Significantly, because in most of the cases, more than one

Promising Practice: Execution of Orders

In Kolhapur district in most of the cases, it has been observed that where the courts restrain the Respondent from committing any act of domestic violence, they further direct Respondent to execute personal bonds of INR 10,000 to 15,000 approx. In addition to this, an undertaking for good behaviour including the clause that he will not engage in acts of domestic violence is also required. The order also states that if the Respondent fails to obey the Protection order, he shall be liable for penalty under Section 31 of the Act.

order is granted and each order has a separate enforcement mechanism, the need to provide specific directions for implementation cannot be over-emphasised. In fact, this may be one of the reasons why the AP resorts to the use of Section 31 in the event of non-compliance of orders.

- In general, where directions are included in the orders, the courts in both states direct the PO to ensure implementation of the order, and in most cases require the police to assist in such implementation. (See Segment on Role of the PO and Police for details).
- The other common instances of implementation/enforcement of orders directed by the courts are that of requiring the PO to restore the AP to the shared household, return of *stridhan* etc. The common direction to both the POs and Police are also to provide protection to the AP and her children.

Towards a Jurisprudence on Domestic Violence

The final segment of this Chapter attempts to map certain significant aspects of how the courts in the identified states have interpreted the PWDVA and the principles that have been applied. However, it must be clarified at the outset that what the LCWRI has attempted in this Report is to make a beginning in analysing whether the court orders across the country have made a contribution to developing domestic violence jurisprudence. The hypothesis that the LCWRI has started with, has already been described in detail in the segment on Methodology and Indicators in Chapter 3. It is however, not possible to ascertain or even find any observable jurisprudence at this stage of the implementation of the Act. It is hoped that in the next three years through an intensive analysis of the orders from a maximum number of states across the country, some conclusions and analysis of the principles and jurisprudence will be possible.

Reasoning of the Court

An analysis of the reasoning of the court in grant or denial of orders has already been provided in the segment on Nature of Reliefs and Reasoning for Grant/Denial. This kind of analysis must be looked at along with the judicial attitudes towards the legal as well as implicit social issues with regard to this Act as well as domestic violence in general.

This year's Report merely maps the judicial attitudes with regard to domestic violence, women's place within the home and various "grey areas" under the PWDVA. An indepth analysis of the attitudes and how they impact the final process and outcome of litigation under the Act will be undertaken in the future.

Mapping of Judicial Attitudes – Social and Legal

"..the Act has got a human rights connotation attached to it as it is a result of systemic subordination of women aimed at the preservation of structural hierarchy between sexes, and therefore the response in combating domestic violence is not limited to crime control but needs to be comprehensive where women can get out of their subordination and realise their worth."

- Order of a Delhi Court

Some of the more interesting and significant observations or rationale applied by Judges during litigation from the three states as recorded in the orders received by the LCWRI are provided below:

The PWDVA has been enacted in consonance with Article 15 (3) of the Indian Constitution, and in discharge of our obligation to eliminate VAW both in the private and public spheres under International human rights instruments such as the CEDAW, the Declaration on the Elimination of Violence against Women and the Beijing Platform of Action. Accordingly, the Statement of Objects and Reasons of the PWDVA acts as the Preamble of the Law, and provides guidance as to the approach that ought to be adopted in its interpretation and implementation by stakeholders. The Judiciary is therefore, required to look at the Statement of Objects and Reasons for guidance on understanding the provisions of the Act.

In fact, the courts in Delhi appear to have incorporated this understanding of the Statement of Objects and Reasons in making observations while referring to the intent and object of the Act. Hence, many of the orders refer to the human rights connotation of the Law, as incorporated in the Statement of Objects and Reasons. In a few orders, the courts have clearly reiterated that the PWDVA has been enacted to prevent the destitution of women, and their systematic subordination. This clearly reflects the attitude of the courts, by and large, in effectively drawing the relation between domestic violence as a human rights violation and the consequences that may result from. The courts clearly understand and acknowledge that violence in intimate relationships is located within the broader situation of systematic historical subordination of women. Similarly, in Maharashtra, although explicit reference to the rights-based approach of the Act is not made by the courts, there are specific orders where the courts have granted reliefs, stating that women will not take this extreme step unless they were not subjected to domestic violence and had not exhausted all other options.

It may be said that once the courts are able to appreciate the underlying social connotation of domestic violence, and they realise that the interpretation of the PWDVA must be undertaken from a human rights based approach, the orders automatically reflect this sensitivity.

The sole testimony or the statement of the AP as to the fact of domestic violence has been considered sufficient by the court to grant an order under the Act in a total of

Promising Case Study: Sensitivity of the Court

In one of the cases from Maharashtra, on an application filed by the wife, husband contended that his second marriage was permitted by the spiritual leader of the Bohri community to which the parties belonged. There were additional counter allegations that the AP refused to fulfil her duties. The court dismissed the above contentions and held that a spiritual leader does not have the legal authority to permit a second marriage, which amounts to desertion and domestic violence under the Act. In addition, the court showed sensitivity in understanding the wife's position and observed that "a woman who has lived with her husband for 25 years cannot level allegations without reasonable cause, particularly when she doesn't have independent income." Therefore, the court granted residence and maintenance orders keeping in view the hardship that the AP and her children will go through in case the same is not granted.

Promising Case Study: Sensitivity of the Court

In one of the orders from Delhi, the Respondents had contended that a civil suit for declaring the marriage void had been filed against the a.p. as she had not observed the iddat period, and hence, she is not entitled to reliefs under the PWDVA as there was no domestic relationship. The court dismissed this contention as impacting upon the case under the PWDVA. The court also noted that filing a civil suit would impact on the interest of the children.

5 orders from Maharashtra and 3 from Delhi; in a case from Maharashtra, the court however, refused to grant relief only on the testimony of the AP. In a few of these cases, the court showed sensitivity to the particular characteristics of domestic violence as a wrong as opposed to other more "public" forms of violence by observing that it may be difficult for a woman, in particular deserted women, to obtain documentary evidence, and evidence from the relatives and friends of the husband to strengthen her case.

In a significant number of cases, the courts have clearly acknowledged that unless the domestic violence perpetrated by the husband and in-laws is acute and systematic, no woman would wish to leave her matrimonial home and reside with her parents. This is a clear acknowledgment of the reality of women's lives, who consider leaving the matrimonial home as the very last step, when all her attempts at conciliation fail. Again, in a few instances, the courts have successfully drawn the linkage between financial dependence and the inability to take a decision and leave the matrimonial home on any "trivial issue." Therefore, any such step by the woman acts as prima facie proof of violence. In one Delhi order, the court observed, "She has stayed with the Respondent for more than five years. In such circumstances of the case, the destitution of the petitioner is imminent if she is not provided with necessary care and therefore, she may suffer irreparable injury." However, the other side of this sensitivity demonstrated by the court is the danger of often taking a protectionist approach towards women in their decisions. For instance, in a few of the cases in Maharashtra, the courts have upheld the contentions of the aggrieved woman and passed orders based on the fact that "No Hindu lady will dare to make such an extreme step of filing complaints against the husband and his relatives. She will think hundred times before taking that step. When it becomes unbearable then only she will take criminal action against her husband and his relatives." In another order, the court goes on to observe "...In Indian culture, the wife does not go to the extent of leaving her matrimonial home unless and until the ill-treatment becomes unbearable." The consequence of adopting such an approach, for the woman may be said to be positive in that the court grants the requisite reliefs. However, this leads to stereotyping of the woman's role and her position within the family and society, which in the ultimate analysis, often proves detrimental in developing a gender sensitive jurisprudence.

- A woman's evidence and affidavit is usually considered to be sufficient for a finding
 of domestic violence and grant of interim order of relief under the Act.
- The courts have also, by and large, rejected the contention of the husband that despite his efforts to bring her back to the matrimonial home, the AP refused to return. In a large number of orders, the courts have observed that such an intention

must be *bona fide* and should not merely be to create evidence in his favour before the court. The courts have also pointed to the apparent conflict between the contention of the husband that he desires to co-habit with the AP on the one hand, and the filing of a civil suit for divorce on the other. In such cases, the courts have clearly observed that this shows the *mala fide* intention of the Respondent.

Promising Case Study: Looking at Attendant Facts & Circumstances

An important instance of sensitive attitude of the judiciary is demonstrated in an order from Delhi. The Respondent had produced photographs of the AP with his family etc. to contend that there was no apparent dispute, and she was trying to misuse the Law. However, the court after a careful perusal of submission of both parties as well as the Home Visit Report came to the conclusion that there was domestic violence. The court observed that "...the statement of the wife is sufficient to presume that acts of domestic violence have taken place. A person even if upset would still portray to be happy in front of the society as it is the norm of our society." The court went on to say that she will not acknowledge the truth of the relationship "unless their disputes come in the open and parties are before the court."

- In some of the orders from Delhi, the court has emphasised the need to examine the facts and circumstances of the case in totality, rather than take a myopic approach of considering the complaint as a singular incident of violence. There is in this approach, a clear vindication of the argument that domestic violence does not take place as isolated acts of abuse but parts of a continuum, of various forms of abuse over a sustained period of time.
- Maintenance Orders, both interim and final, have been passed by courts based on a combination of legal and social reasons. While time and again, there is reference to the fact that maintaining the wife and children is a moral obligation of the husband and the denial of the same is itself an act of violence, the courts have also relied on the established legal principles of "same standard of living to which she is used to" to decide the quantum of maintenance. In a couple of cases, the courts in Delhi have displayed a very good understanding of the ways in which women's rights are sought to be defeated through litigation, and have taken proactive measures particularly with regard to enforcement of maintenance orders. In one such instance, the court opined that it understands the various ways adopted by husbands to deny maintenance by giving false representation of income, and hence, rejected the Respondent-husband's contention that he will pay the school fees of the children to the school directly. Instead, the court directed that the payment be made to the woman. In general, the courts seem to be following the principle that quantum of maintenance ought to be verified through independent means such as the Home Visit Report of the PO and not the income disclosed by the Respondent in his written statement.

"It is true that the applicant is unable to state the exact date, month or year of every incident. It is important to note that the marriage took place 10 years before. Applicant is an uneducated lady. It is not expected from her to state the date, month or year of each and every incident alleged by her. This does not mean that she has not suffered any type of domestic violence."

- Order passed by Court in Maharashtra

- As far as Residence Orders are concerned, the courts have adopted varying approaches in interpreting the ratio of the judgment in <u>Batra v. Batra</u>. However, as noted in the previous M&E Reports, it is heartening to note that the trend of distinguishing the facts of the case from that of <u>Batra v Batra</u> has continued this year as well. Furthermore, the courts appear to have become more innovative in the arguments and reasoning advanced to distinguish the facts of the case. (See Segment on 'Right to Reside' above.)
- Once it is accepted that the parties are or have been living together in a domestic relationship and have children from the relationship, the courts do not deny reliefs under the Act on the basis of "relationship in the nature of marriage." Of course, a prima facie case of domestic violence has to be established in such cases.
- In one case, while explaining the reasoning for granting the orders prayed for, the court referred to the "frustration of the woman in fighting for her legal rights and the immense mental trauma she faces" in appearing before the court with a case of domestic violence. Such instances are a clear indication of the sensitivity of the Judge in understanding the various forms of pressure that are faced by a woman and the struggle that she has to undertake in order to fight for justice.
- The issue of misuse has come up many a time in the orders examined from the identified states. Sometimes, the courts appear to consider filing of multiple cases or cases where the issue is that of jurisdiction as misuse of the Act. There are specific instances where a finding of abuse of the Law is based on what the court views as "trivial issues" raised by the APs. These are the predominant forms of arguments rendered by the courts when they refer to misuse of the Act.
- In Maharashtra, these appear to be the common grounds cited by the courts in arriving at a finding of misuse. The question of jurisdiction seems to have been referred to by many Judges in holding that the issue is actually a civil dispute and the AP is attempting to make good a civil claim by misusing the Act. This argument is advanced particularly in cases where the dispute is in relation to the property. On the other hand, some of the instances where courts have dismissed the application or refused to grant reliefs on the ground that the AP has filed the application on trivial issues are as follows:
 - o In two of the cases of alleged misuse, the Magistrate was of the opinion that the application was filed with the sole objective of harassing the Respondent(s).
 - In a particular case, the court severely criticised the AP for colluding with her own husband and filing an application under the Act only against her in-laws, where the dispute in question was clearly regarding the property and not with regard to right to residence. A similar finding was arrived at in one of the Delhi orders.
 - o In a curious case of problematic assumptions, the court opines that since both the parties are well educated, they should attempt reconciliation. However, this was despite an unambiguous statement by the Respondent that he is unwilling to reside with his wife. In the instant case, the court ought to have made this observation only with regard to the Respondent as he was the unwilling party but it sought to put the onus of resolving the dispute on the aggrieved woman as well. This appears to reiterate the implicit expectation of society that it is the woman's responsibility to ensure that the matrimonial relationship does not break, at any cost.

- In conclusion, it can be said that the heartening aspect of this year's analysis has been the finding that more and more orders seem to reflect a gender sensitive attitude of the Judiciary. It is not clear whether this is a result of increasing interventions in the form of training programmes with the Judicial Officers that are being undertaken by various SJAs and other institutions or a reflection of greater confidence of the Magistrates in using and interpreting this Law. The courts appear to be more at ease in referring to the constitutional tenets of equality and good conscience as well as acknowledging the guidelines provided in the Statement of Objects and Reasons. The courts appear to be increasingly applying their general understanding of society and the problems of dowry and violence to the cases at hand. These however, are certain preliminary observations that the LCWRI has been able to gather from an analysis of the orders received from the three identified states. It is only through an in-depth examination of similar trends from orders from other states in the future, that a definite conclusion as to the same can be drawn.
- The other factors that may also impact the attitudes and social and legal reasoning provided by the courts are shaped by particular characteristics and the judicial structure of the state. For instance, is the fact that the Mahila Courts in Delhi are occupied by women Judges and dealing only with disputes that affect women of any consequence to an analysis of attitudes in case of a gender specific Law or is a more gender sensitive attitude of the Delhi courts a reflection of a more rigorous emphasis on gender sensitivity in judicial training programmes and orientation of the Judges? Similarly, is there a distinction in the approach adopted by the courts in Mumbai as opposed to the attitudes of the Judges in the other districts of Maharashtra; in the former case, is there an emphasis on sophistication of arguments and reasoning as well as accuracy of procedures as opposed to a more flexible attitude of the courts in the latter? An interesting observation was from a couple of cases in Gujarat where the compromise deed had already been filed before the court. In one case, the court directed the Police to provide protection to the AP in the future whenever necessary. In the other case, it set another date of hearing to verify whether the terms of the settlement were being complied with by the Respondent(s). This in itself is significant to understand whether the courts in the state demonstrate sensitivity and understanding of the underlying concerns of women, even within the limited role that they are required to play in cases where reconciliation is arrived at between the parties.

Chapter 10

INTERPRETATION OF THE PWDVA BY HIGHER JUDICIARY: ANALYSIS OF JUDGMENTS

In this chapter, an analysis of the judgments passed under the PWDVA by the higher Judiciary, i.e. the High Courts and the Supreme Court, is undertaken. This is a continuation of the endeavour in the Second M&E Report and we hope that with this continuing effort, a better picture of the development of the Law in the hands of the higher judiciary will emerge.

Between November 2008 and August 2009,¹ approximately 19 judgments under the PWDVA were passed by various High Courts. There were no judgments passed by the Supreme Court under the Act during this period.

These 19 judgments have been categorised in the following manner:

- Challenge to constitutionality of the PWDVA
- Substantive law definitions, coverage, rights under the Act
- Right to reside and interpretation of "shared household" under the PWDVA
- Procedures, mechanisms established, and enforcement of the Act

As with the analysis of the Trial Court orders, the judgments of the High Courts are being analysed keeping in view the equality norms within the Indian Constitution and a human rights perspective. The ultimate purpose of the analysis is to understand whether the objectives of the PWDVA are being furthered by the higher judiciary, as evidenced in the judgments discussed here.

The indicators for this analysis are drawn from the gender specific nature of the Law and the intent as expressed in the Statement of Objects and Reasons of the Act. It must be noted, that the objective of the PWDVA is to ensure and uphold the right of every woman to live a life free of violence, and towards this, the Act provides various reliefs of a civil nature and envisages an elaborate mechanism to ensure that the reliefs can be accessed by women. At the same time, there is an implicit assumption in the Law that the procedures must not be allowed to defeat the substantive right to be free from domestic violence. Hence, the deliberate incorporation of the provision in Section 28 (2) of the PWDVA that allows the courts to follow their own procedure. This analysis of judgments seeks to examine whether the higher Judiciary interprets the PWDVA keeping in mind this gender sensitive understanding of the Act.

¹ The time period for the section on Analysis of Higher Court Judgments has been computed differently in order to maintain continuity with last year's analysis of judgments, which ended in October 2008.

Challenge to Constitutionality of the PWDVA

In the Second M&E Report, reference was made to the fact that 6 petitions challenging the constitutionality of the Act had been filed before various High Courts, with judgment being rendered in one case. This year, the High Court of Madras rendered its judgment in the second of these petitions.

1. <u>Dennison Paulraj and Ors v. Union of India, rep. by Secretary, Ministry of Law and Justice and Ors²</u>. (Decided by K. Ventakataraman, J.)

This writ petition challenged the constitutionality of Sections 12, 18, 19 and 23 of the PWDVA. The main ground for this challenge was:

• It is biased as a wife can file an application alleging domestic violence whereas the husband cannot file an application under the Act. Hence the law discriminates in favour of the wife and affects the right to life and liberty of the husband and his family members under Articles 19 and 21 of the Constitution.

The Court dismissed this challenge and held that "giving certain preferential treatment to the wife and treating them as a special category cannot be termed as violative of either Article 14 or Article 16 of the Constitution of India." The Court referred to Article 15(3) which allows the State to discriminate in favour of women and children. Several landmark judgments of the Apex Court were cited in order to conclude that "sex" constitutes a sound basis for classification, and although there cannot be any discrimination on that ground alone, the specific mandate of Article 15(3) allows for such preferential treatment. Finally, the Court relied upon the judgment of the Delhi High Court on the same issue last year, in *Aruna Parmod Shah v. UOI*.³

With this judgment of the Madras High Court, it appears that the issue of challenge to constitutionality of the law on the ground that it is gender specific has been conclusively decided. The Court in this case, did not hesitate to reiterate the established principles for examining the constitutionality of gender specific laws. However, there are still a few pending challenges regarding the Act in other courts on other issues and the interpretation of some of the specific provisions. It is crucial that the High Courts deal with the challenge to the issues in a sensitive manner, in order to bring the debate on the constitutionality of the Act to an end.

Substantive Law

Coverage: Definition of Respondent

- 2. <u>Alfzalunnisa Begum v. The State of A.P.</u> rep. by its Public Prosecutor, High Court of A.P. and Nuzhathunissa Begum; and
- 3. <u>Umesh Prasad Maharana, Harihar Maharana and Bhubaneswari Devi v. The State</u>

² MANU/TN/09757/2009; Writ Petition No. 28521 of 2008

³ WP (Crl.) 425/2008, High Court of Delhi, (Decided on 07.04.2008)

of A.P. rep. by its Public Prosecutor, High Court of A.P. and Munum Maharana⁴ (Decided by A. Gopal Reddy and K. C. Bhanu, JJ.)

The above mentioned criminal revision petitions under Section 482 of CrPC against the decisions of the lower Court orders were combined and taken up by the Division Bench of the Andhra Pradesh High Court. The question that arose in both the petitions was whether 'Respondent' as defined under Section 2 (q) of the PWDVA includes a female person/ relative of the husband or male partner. The petitions were originally before a single Judge bench, who after hearing the arguments of the parties, and in light of the earlier decisions of the High Court of Madhya Pradesh as well as that of its own High Court, held that female members cannot be made Respondents under the Act.

In both cases, the application under the PWDVA before the Trial Court was filed by the daughter-in-law against the husband and in-laws, including the mother-in-law. The afore-mentioned contention was raised in both cases, citing the judgments of the Delhi High Court in <u>Ajay Kant v. Alka Sharma</u>⁵ and the unreported judgment of the AP High Court, <u>Smt. Menakuru Renuka and Ors. v. Smt. Menakuru Mona Reddy and Ors.</u>⁶

The Court examined the definitions of "Respondent," "Domestic Relationship" and other relevant provisions under the Act, and in seeking to arrive at a conclusion referred to the Statement of Objects and Reasons. It was held that the definition of 'Respondent' makes it clear that it can only be an adult male person. However, the proviso, which has an expanded meaning, says that an aggrieved wife or female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner. The Court went on to state that "The proviso deals with complaint against two categories of persons i.e., (1) a relative of the husband or (2) the male partner. If we restrict the meaning only to male persons, a relative of the husband will become redundant." The Court further observed that except in case of Residence Orders under Section 19 (1) (b), the Magistrate can pass any other order against the relatives of the husband including a female person.

The Court then went on to refer to Section 31 (3) which authorises the Magistrate, while framing charges under Section 31(1) to also frame charges under Section 498A IPC or any other provision of IPC or the Dowry Prohibition Act 1961 (DPA), as the case may be, if the facts disclose the commission of such an offence. The High Court interpreted this gender neutral provision to clearly show that the Magistrate can always frame charges against the female relatives of the Respondent who have committed an offence under Section 498A or any other provision of IPC or the Dowry Prohibition Act. It was on this rationale, that the Court arrived at a finding that women are not excluded from the coverage of "Respondent" in a proceeding initiated under the PWDVA.

This judgment is a clear vindication of the intent of the Act to not exclude relatives of the husband, who are very often the perpetrators of violence within the home.

⁴ MANU/AP/0206/2009, Criminal Petition No. 7160 and 8495 of 2008

⁵ 2008 Crl. L.J. 264

⁶ Crl. P. No. 4106/2008

Furthermore, the High Court of Andhra Pradesh accurately arrived at the conclusion that because the provisions under the Act are in addition to criminal provisions like Section 498A IPC and the DPA, it is essential to interpret its definitions in consonance with those of the existing law. Finally, the clear and unambiguous broadening of the definition of "Respondent" through the proviso was correctly understood and pointed out by the Court in this judgment.

4. Archana Hemant Naik v. Urmilaben Naik and Anr.7

In this criminal revision petition before the High Court of Bombay, a similar contention as to the inclusion of female relatives within the definition of "Respondent" under Section 2(q) was raised.

The Court upheld the maintainability of action under the PWDVA against female relatives of the husband or the male partner. The Court based its decision on the argument that the proviso to Section 2(q) carves out an exception to the general provision that a Respondent can be only an adult male person. It provides that an aggrieved wife or female living in relationship in the nature of marriage may also file a complaint against any relative of the husband or the male partner. The Court observed, "It is important to note that the proviso refers to a relative and not to a male relative."

The Court went on to state the difference in applicability of the proviso by explaining that "a wife or a woman to whom the proviso is applicable is compelled to seek Residence Order in respect of a shared household only as against the male relatives of her husband or male partner, as the case may be, the order under Section 19 of the said Act will be completely ineffective in as much as the female relatives of the husband or the male partner occupying the shared household will continue to disturb possession of such wife or such female of the shared household, or may continue to prevent entry of such aggrieved wife or female to the shared household. On plain reading of the proviso to section 2(q) it is clear that a relative referred to in the proviso is not only a male relative. The main section specifically uses the word male. Even the proviso refers to male partner. Therefore, whenever the legislature intended, the word male has been used in the main section and its proviso. In case of two domestic relationships covered by proviso to section 2(q) viz; (i) relationship between wife and husband and (ii) a relationship in the nature of marriage between a female and her male partner, the Respondent can be any relative of the husband or male partner. It cannot be the intention of the legislature that the relative in the proviso can only be a male relative."

The Court further interpreted the intent of the Legislature from a reading of the proviso to Section 19 (1), and held that this very fact shows that an order under other clauses of section 19 (1) can be passed against a woman. The Court specifically held that "If a narrow interpretation is put to proviso to Section 2 (q) to the effect that the relative referred to therein is only a male relative, the aforesaid proviso to sub-section (1) of Section 19 becomes meaningless."

⁷ Criminal Revision Application No. 590 of 2008.

Therefore, on this basis the Bombay High Court reiterated the position that the definition of "Respondent" under the Act includes female relatives of the husband or male partner. This judgment assumes significance in light of the fact that the Court looks to the intention of the legislature as well as attendant provisions of the Act in order to reach a conclusion, instead of using a narrow interpretation of the main provision of Section 2(q).

5. Rema Devi v. State of Kerala⁸

In this revision petition filed against the order of the Sessions Court deleting the name of the female relative as a Respondent, the Madras High Court reiterated the position taken by the High Courts in the afore-mentioned judgments. The Court clearly held that the proviso to Section 2 (q) enables an aggrieved woman to file a "complaint against a relative of the husband or the male partner", and such a relative of the husband or the male partner need not necessarily be a male relative.

The Court also referred to the proviso to Section 19(1), providing an exception to women Respondents in relation to a Residence Order passed under Section 19(1) (b) of the PWDVA. The Court held that the only embargo against the passing of a Residence Order while disposing of an application under Section 12(1) of the Act is that if the Respondent is a woman, the Magistrate shall not direct such woman to remove herself from the shared household. The High Court clearly stated that "A different interpretation may render the provisions of the Act as meaningless and unworkable."

Hence, with the decisions of the various High Courts, it appears that the issue of whether female relatives of the husband or male partner can be included as Respondents ought to be settled. However, in the absence of a conclusive judgment from the Apex Court, it is likely that the issue will be raised by the Respondents before other High Courts as well; it is however expected that any such Court will rely upon the overwhelming number of decisions in favour of this interpretation in future cases.

6. Rajesh Kurre v. Safurbai and Ors⁹ (Decided by T.P. Shama, J)

In this petition before the High Court of Chhattisgarh, the legality and propriety of the judgment passed by the Sessions Judge, partly modifying the amount of maintenance awarded under the Section 20 (1) (d) of the PWDVA has been challenged by the Appellant-Respondent. The contention of the Respondent was that although, while granting Maintenance Orders under the PWDVA, the Courts are required to apply the principles under Section 125 CrPC, the Trial Court in failing to do so, has committed an illegality.

The High Court after going through the contentions of both parties as well as the order of the lower Courts held that the Trial Court did not commit any illegality in granting maintenance to the AP.

⁸ I (2008) DMC 297

⁹ MANU/CG/0119/2009

The Court used the rule of interpretation that the words of a statute must prima facie be given their ordinary meaning. Accordingly, the words used under Section 20 must be considered to be clear and unambiguous in providing that Maintenance Order is an independent remedy under the PWDVA, and is in addition to any other remedy available to the AP under a legal proceeding before any other Court. In fact, the Court went on to note that the provisions under the Act are not dependent upon Section 125 CrPC. Hence, it was held that "...the Court is competent to award maintenance to the aggrieved person and child of the aggrieved person in accordance with the provisions of Section 20 of the Act, and the aggrieved person is not required to establish his case in terms of Section 125 of the Code."

In this case, the High Court of Chhattisgarh adopted an extremely significant approach in distinguishing the scope of awarding maintenance under Section 125 CrPC from that of Maintenance Orders under Section 20(d) of the PWDVA. Although it is true that the principles used in granting maintenance under Section 125 CrPC may be used by the Courts as a guidance in passing Maintenance Orders under Section 20(d) of the Act, it is also necessary to reiterate that it is not necessary for the AP to meet all the requirements of Section 125 CrPC in order to succeed in her claims under the PWDVA. This very subtle differentiation which may in certain cases have the effect of denying a woman her entitlement under the PWDVA was aptly pointed out by the Court in this case.

7. Mrs. Mary Cedric Pinto v. Mr. Cedric Francis Pinto & Anr, 10 (Decided by A.S. Oka, J.)

This writ petition before the Bombay High Court was decided based on the facts of the case. The petitioner is the wife, who had filed for interim custody of their three children under the PWDVA. The Trial Court granted interim custody to the petitioner-wife which was however, altered by the Sessions Court to the effect that the custody was to be shared between the parties every alternate month on the ground that the children had expressed a desire to stay together with both parents. It was on this decision that the wife appealed to the High Court.

The High Court in the course of arriving at a decision directed the parties to explore the possibility of reconciliation and also obtained the opinion of the children. On failure of the parties to come to an agreement, the Court examined the facts of the case and the grounds on which the Sessions Court had altered the Trial Court order. The High Court upheld the order of the Trial Court, based on the fact that the act of disturbing the custody of the children every alternate month in accordance with the Sessions' Court order will only "cause mental trauma to the minor children." It was observed that "in a case where there is a dispute between the parents over the custody of minor children, the custody has to be retained with one of the parents with visitation rights and/or right to have temporary custody for few days reserved in favour of the other parent." On this basis, the Court set aside the order of the Sessions Court. However, the Court

¹⁰ Criminal Writ Petition No. 353 of 20808

did not uphold the order of the Trial Court granting temporary custody to the wife either; the Court observed, that because the children were already in the husband's custody before the initiation of proceedings under the PWDVA, the status quo should be maintained with the wife being able to meet them at regular intervals. However, the Trial Court was directed to dispose of the application for custody under the PWDVA, preferably within a period of three months.

This judgment of the High Court can be considered to have both a positive and negative impact on custody issues brought under the PWDVA. While on the one hand, the High Court appropriately observed that it is the welfare of the children which is of utmost importance, and hence, alternating their custody between the parents every alternate month will unsettle them. However, on the other hand, this judgment directing status quo by the Court may have adverse implications on future cases, where reliefs under the Act may actually be allowed in favour of the Respondent i.e. the husband in this case. It would have been appropriate for the Court to clearly state that this is not a general principle to be applied to all cases, and should be based on the facts and circumstances of each case.

Right to Reside under the PWDVA

8. Neetu Mittal v. Kanta Mittal and Ors. 11 (Decided by Shiv Narayan Dingra, J)

This appeal before the High Court of Delhi was filed by the daughter-in-law against the decision of the appellate Court that allowed an appeal by the in-laws. The appeal was against the order of civil judge that refused to grant a permanent injunction under order 31 CPC in favour of the in-laws, against their son and daughter-in-law. The applicants had been living separately from their son and daughter-in-law. The AP and her husband had agreed to shift to a different house under a compromise arrived at the police station but refused to do so by asserting that she had a right to stay in her matrimonial home and that the other house was not habitable. The Respondents in response filed a civil suit to restrain the woman and her husband from forcibly entering and disturbing the peaceful possession of the Respondents. In the instant case, the in-laws also cited the Supreme Court judgment in <u>S.R. Batra v. Taruna Batra</u>¹² to support the contention that their house could not be considered as the shared household of the daughter-in-law.

Upholding the contentions of the in-laws, the Court demonstrated sensitivity and understanding of the reality of the situation to hold that the son can live in the house of parents as a matter of right only if the house is an ancestral house, in which he has a share that can be enforced through partition. However, "when the property is self-acquired, the son has no legal right to live in the house, irrespective of his marital status. Merely because the parents have allowed him to live in the house so long as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout the life."

¹¹ MANU/DE/1415/2008 equivalent citation 152(2008)DLT691

¹² Supra note 8. See M&E Report 2007 for a detailed analysis of the judgment.

It was further observed that there is no legal liability on the parents to continue to support a disobedient son or a son who becomes liability on them or a son who disrespects or disregards them or becomes a source of nuisance for them. This was an acknowledgment by the Court of a common issue that has received very little attention in the public domain; that of harassment caused to the aged parents at the instance of the son for a share in the property, and not solely by or at the instance of the daughterin-law as is commonly understood. Although this was a case of permanent injunction under the CPC and not directly under the PWDVA, the parties did rely on arguments of right to reside as well as interpretation of the Supreme Court in the Batra judgment. This judgment may be considered to be a good example where the Court was able to undertake a balanced examination of the facts and circumstances of the case, and given that the son had already taken a separate residence, and the relations between the parties were admittedly not in a state in which they could be expected to stay together, decide the case in favour of the in-laws. Also, it must be noted that there were no allegations of violence or cruelty made against either the son or the in-laws by the daughter-in-law.

Procedures, Mechanisms Established and Enforcement of the Act

Procedures under the Act

9. Anilkumar & Ors v. Sindhu & Ors 13 (Decided by V. Ramkumar, J)

Two issues were discussed by the Kerala High Court in this revision petition:

- Whether the Chief Judicial Magistrate court can be said to be a Judicial Magistrate of the first class within the meaning of Section 27 of the PWDVA?
- Is it permissible for any Magistrate to exercise judicial powers of inquiry or trial under the PWDVA, in respect of a cause of action occurring outside such local jurisdiction?

On the first jurisdictional issue, it was held that in a non-metropolitan area, the Court of the Chief Judicial Magistrate is not a separate class of Court but is only a Court of JMFC in accordance with Section 12(1) r/w Section 6 of the CrPC. Hence, the Court concluded that the CJM has the territorial jurisdiction to entertain and decide applications filed under Section 12 of the PWDVA.

On the second issue however, the Court answered in the negative. This was based on the fact that Section 28(1) of the Act clearly mandates that all proceedings and an offence under Section 31 shall be governed by the provisions of the CrPC Hence, it follows that the provisions in the CrPC relating to jurisdiction for enquiry of offences are also applicable to the cases under the Act. It was also observed that the power to define the territorial jurisdiction of the CJM lies with the High Court, a condition

¹³ MANU/KE/0157/2009, equivalent citation; 2009(2) KLJ152

of jurisdictional requirement that was not met in the instant case. In fact, the Court distinguished between the unrestricted power of a CJM to take cognisance of a matter irrespective of territorial limits with that of conducting of "Trial or enquiry." The Court held that as "Chapter XIII CrPC dealing with the jurisdiction of the criminal Courts with regard to enquiries and trials is applicable to the proceedings under Act, therefore, accordingly, the CJM has no jurisdiction to conduct any inquiry or pass or grant any protection or other order under the Act." On this basis, the High Court set aside the order of the Sessions Court, and directed that the case be presented before the appropriate Court.

This decision of the Kerala High Court is based on sound reasoning and understanding of the procedural requirements. The PWDVA extends the scope of jurisdiction of domestic violence cases to allow ease of access to justice for women. But given the fact that the trial procedures are regulated by the CrPC, certain general rules and limitations about territorial jurisdiction of criminal courts that do not necessarily have an adverse impact on women's access may apply to cases under the PWDVA as well.

10. Nand Kishor v. Kavita and Anr. 14 (Decided by R.Y. Ganoo, J)

In this appeal before the High Court of Bombay (Nagpur Bench), the question before the Court was whether the report of the PO has to be looked into before passing an interim order.

In this instance, the wife of the applicant had filed an application under Section 23 of PWDVA in the Court of learned Chief Judicial Magistrate, Amravati. The Trial Court passed an order directing the applicant to pay maintenance of a sum of INR 1200 to the wife and INR 600 to the son, i.e. the non–applicant number 2. This order was challenged by the applicant stating that the report of the PO was not called for in the Sessions Court, which dismissed the said appeal. Hence the appeal was filed in the High Court of Bombay. It was argued by the applicant that the Trial Court passed the Maintenance Order without calling for a report either from the PO or the SP as required under Section 12 of the Act.

The High Court dismissed the appeal, stating that no report from the PO is required to pass an interim order. The Court relied upon the pervious Judgment of the Bombay High Court in <u>Vishal Damodar Patil v. Vishakha Vishal Patil.</u> hwherein it was observed that there is no need to file separate application for interim relief under Section 23 of the PWDVA (discussed in detail below). In the instant case, the Court held that it is not necessary in each and every case to obtain report from the PO or SP to decide application for interim relief. If on the basis of record before the Court, the Court is in a position to arrive at a just and proper conclusion, it will be open for the Court to do so and decide the matter accordingly. In the present case, the applicant had filed a reply to the application filed by non applicants and, therefore, necessary material was before the learned Trial Judge to decide the question whether the interim relief should be granted.

¹⁴ MANU/MH/0957/2009, Criminal Application No. 2970 of 2008.

^{15 2009} Cri LJ 107.

The judgment of the Bombay High Court reiterates that procedural technicalities must not be allowed to act as a barrier to access to justice, particularly where the facts of the case prima facie establish the rights of the AP. The Court emphasised the fact that an order will not suffer from infirmity where "the Court is in a position to arrive at a just and proper conclusion", which is essential as the intent of this law is not to punish the perpetrator, but to ensure efficacious and effective remedy to women facing violence.

11. Vishal Damodar Patil v. Vishakha Vishal Patil (Decided by A.S. Oka, J.)

In this case the issue raised was whether interim relief can be granted to any AP without a separate application or prayer for the grant of such a relief under Section 23 of the PWDVA. This appeal was filed by the husband-Respondent before the High Court of Bombay, against the order of the Sessions Court dismissing his appeal and affirming the Trial Court order granting maintenance and Residence Order to the wife under the Act.

The main contentions of the husband were as follows:

- The application under Section 12 filed by his wife (AP) did not contain any specific prayer for interim relief, and there was no separate application filed under Section 23(1) for interim relief, along with the main application.
- It was further contended that the Residence Order is more in the nature of final order and that cannot be granted without giving the Respondent an opportunity to be heard.

The Court examined in detail Sections 12 and 23 of the Act, in addition to the different provisions for reliefs, in order to arrive at a conclusion on the afore-mentioned issues. The Court held that in view of Section 23, pending the final disposal of the application under Section 12, the Magistrate is provided the jurisdiction to pass an order of interim relief in terms of Sections 18, 19, 20, 21 or 22 of the PWDVA. Hence, it can be concluded that every relief provided under the Act, including Residence Orders under Section 19 can be awarded as part of interim reliefs in accordance with Section 23. The Court went on to refer to Section 28(2) of the Act which empowers every Magistrate to lay down its own procedure for disposal of an application under Sections 12 or 23(2). Based on this power granted to the Courts by the PWDVA, the High Court came to the conclusion that there is no requirement of filing a separate application for grant of interim relief under Section 23 of the Act. The Court further proceeded to state that the Magistrate should consider the nature of reliefs sought in the main application under Section 12 (1) of the Act while considering the grant of ex parte ad interim or interim relief. It was observed that the Magistrates can grant ex - parte ad interim relief based on an affidavit in Form III as prescribed by the Rules. However, it was reiterated by the Court that before granting any interim relief, Respondent should be provided with an opportunity of being heard.

¹⁶ Ibid

Hence, this judgment of the Bombay High Court decidedly addressed a contention that has been raised before other Courts on the procedural issue of whether an interim order can be passed without filing a separate application under Section 23 of the Act. In fact, an analysis of the Trial Court orders in the first two years act as witness to the fact that at the ground level, a number of prayers for interim reliefs were being denied by Courts on the ground that the technical requirement of a separate application under Section 23 was not filed. Although this year's order analysis appears to demonstrate that the Magistrates are becoming more sensitive and granting interim orders without a separate application, this judgment puts to rest this contention.

12. Smt. Leelavathi S. v. Shri. Murugesh and Ors. 17 (Decided by Jawad Rahim, J.)

In this appeal before the High Court of Karnataka, the decision of the Sessions Court setting aside the order passed by the Trial Court, granting maintenance and separate residence to the wife (appellant) and restraining the husband and his relatives from committing any act of domestic violence, has been challenged.

The Sessions Court set aside the Trial Court order in favour of the appellant on the basis that the procedure prescribed in the CrPC to conduct the trial under Section 12 of the PWDVA was not followed. It has been contended by the appellant that the learned Magistrate followed his own procedure to conduct the enquiry in accordance with Section 28 (2) of the PWDVA, by giving sufficient opportunity to the Respondents to present their case and perusing the materials submitted by both parties in detail. The appellant also contended that the Sessions Court failed to pass any order with regard to the interim maintenance that was awarded by the Trial Court.

While deciding the issue of whether the Trial Court followed the appropriate procedure, the High Court in this case, sought to examine Sections 28 (1) and (2). According to the Court, it is clear that under Section 28 (1) of the PWDVA, the Courts must examine the procedure "prescribed under CrPC while conducting the enquiry for the offences punishable under sections 12, 19, 20, 21, 22 and 23." At the same time, it was noted that the Court is not prevented from laying down its own procedure under sub-section (2). The words "laying down its own procedure" was explained by the High Court to mean that the Court has to lay down clearly, its own procedure to be adopted for such proceedings. On this basis, it was held that in the instant case, it is not disputed "that no such procedure has been laid down by the Court and hence in such instance the Code of Criminal Procedure becomes applicable and the accused becomes entitled to all relief that is available under the Code of Criminal Procedure applicable for Trial Summons case under the Summary trial." Therefore, the Court came to the conclusion that as the Trial Court did not grant any relief in accordance with the CrPC to the Respondents who were treated as accused, and hence there is no illegality or infirmity in the order of Sessions Court, setting aside the grant of reliefs under the PWDVA by the Trial Court.

This judgment poses a major concern for women litigants as well as Courts themselves because of the manner in which Sections 28(1) and (2) of the Act have been interpreted.

¹⁷ CRL R.P. 402/2009

The Court appears to have ignored the formulation of Section 28(2), which provides that "Nothing in sub-section (1) shall prevent the Court from laying down its own procedure...." Hence, the PWDVA clearly provides a choice to the Courts to either adopt the procedure under Section 125 CrPC, as provided under Section 28(1) read with Rule 6(5) of the PWDVA, or "lay down its own procedure." The object behind allowing the Court to lay down its own procedure is to enable easier access and efficacious reliefs to women facing domestic violence, in recognition of the fact that given the civil nature of the reliefs provided under the Act, it may not be feasible to adopt the CrPC procedure in all cases.

Hence, the Act sought to provide some flexibility to the Court in use of procedures, given the intent and object of the law. The Court has interpreted "its own procedure" to mean that the Magistrate in such instances must in a sense, invent a new procedure and lay it down clearly. However, it must be noted that the scope of Section 28(2) procedure is more in the nature of allowing the Courts to use procedures other than that of Section 125 CrPC, if the need arises. This includes using procedures under the CPC as well as practices such as giving an opportunity to be heard to both parties, and arriving at a decision based on the material on record and prima facie proof of domestic violence.

It is submitted that in the instant case, the Trial Court did fulfil these requirements and granted the interim relief based on a prima facie finding, as required by Section 23 of the Act. Also, the Court in referring to the fact that the accused are entitled to all reliefs under the CrPC seem to have not taken into consideration the civil nature of this Act.

13. Praveen Cariappa v. Mrs. Birdy Aiyappa¹⁸ (Decided by K. Ramanna, J.)

The main contention in this appeal before the High Court of Karnataka was whether the PWDVA allowed for the passing of *ex parte* interim orders. However, before the Court was able to take this issue up for consideration, it was submitted by both parties that the case had reached its final stage before the Trial Court, and was posted for arguments. The Court therefore, refused to interfere with the order passed by the Magistrate, considering that the trial had already come to an end and was expected to be disposed of within a short period.

14. <u>Rajkuman Rampal Pandey v. Sarita Rajkumar Pandey</u>¹⁹ (Decided by Daga V. C., J.)

This appeal before the Bombay High Court discussed the question of maintainability of an application filed under Section 26 by the AP seeking a Residence Order. The Court, after examining the contentions of the parties, held that Section 26 provides that any relief available under Sections 18, 19, 20, 21 and 22 can also be sought in any legal proceeding, before any other Court that affects the AP and the Respondent, whether such proceeding was initiated before or after the commencement of this Act. Hence,

¹⁸ MANU/KA/0219/2009, Criminal Revision Petition No. 234/2009

¹⁹ MANU/MH/1295/2008, equivalent citation, 2008(6)BomCR831

it was concluded that a relief available under Section 19 of the PWDVA can also be claimed under Section 26 of the Act.

This judgment reiterates a clearly settled issue with regard to the use of the provision under Section 26 of the Act.

15. <u>J. Thilagavati v. M. Rajkumar</u>²⁰ (Decided by M. Jaichandren, J)

This petition was filed before the Madras High Court (Madurai Bench) by the AP to transfer the case to her place of residence and the Court allowed the same. The AP, living at her natal home, apprehended physical danger to herself if she travelled outside, and hence made the prayer for transfer of the case.

Hence, this judgment dealt with a routine procedural matter, which was favourably decided upon by the High Court.

Mechanisms established under the Act

16. <u>Sou. Ratnabai Jaising Patil v. The State of Maharashtra</u>²¹ (Decided by Ranjana Desai & R.G. Ketkar JJ.)

This judgment of the Bombay High Court is a landmark in the implementation of the PWDVA because of the proactive approach adopted by the Court in addressing the ineffective enforcement of the law.

In this appeal, taking note of the issue of increasing instances of bride burning and offences against women, the High Court of Bombay provided a number of directions to the Government of Maharashtra for effective implementation of PWDVA in the state, as one of the crucial legislations to address violence against women. The following directions were given by the Court, which in arriving at its decision examined the various statistics and resources available and also engaged two eminent persons as amicus curiae:

- One of the social workers that have earlier been appointed in each of the 20 Counselling Centres (or Special Cell) for Women and Children shall be notified by the Government of Maharashtra as a Protection Officer under the PWDVA, and the other social worker shall be registered as Service Provider under the Act within four weeks of the passing of this order.
- The Government of Maharashtra shall further establish at the district level, within
 the jurisdiction of each Police Headquarter, a Special Cell for Women and Children
 as per the provisions contained in the relevant Government Resolutions within 12
 weeks of the passing of this order. One of the social workers to be appointed in
 each of the newly established Special Cells shall be notified as a Protection Officer

²⁰ MANU/TN/0338/2009, Tr. C.M.P. No. 86 of 2008

²¹ Criminal Appeal No. 359 of 2008

and the other social worker shall be registered as Service Provider under the Act within eight weeks of their appointment.

- The Home Department, Government of Maharashtra and the Superintendent or Commissioner of Police, as the case may be, shall provide for each Special Cell the following for its smooth functioning:
 - i) An independent room with some space as waiting area for clients
 - ii) Postal help to reach letters to clients, and access to wireless and control rooms
 - iii) Adequate furniture and stationery
 - v) Facility for a telephone line and vehicles as required for home visits
 - vii) Every social worker to be provided with an Identity Card /authority letter so that they can visit the police station, access records, jails, lock-ups without any difficulty
 - viii) At least one police personnel to be deputed or appointed to assist the social worker in implementing the PWDVA
- The State Government shall appoint full-time Protection Officers at all levels, including the taluka levels, under the Act by creation of a cadre for the state, as far as possible within two years.
- A Steering Committee that had been previously constituted by the state Women and Child Development Department was given the responsibility to monitor and make recommendations to ensure comprehensive implementation of the Act, including decisions as to financial management of the implementation process, review of programmes of the implementing agencies, multi-agency coordination within the government and periodic monitoring of implementation of the Act.
 - The High Court Division Bench directed the state Judicial Officer's Training Institute to introduce in its curriculum topics related to violence against women. Similar directions were also issued by the Court to the state Police Training Academy.
 - The Government of Maharashtra was also directed to create more Counselling Centres (Special Cell) for Women and Children at the taluka (sub-district) level in a phased manner.

These directions were based on the understanding that if the PWDVA is effectively implemented, the incidence of offences against women will be reduced in the state to a significant degree. The Court clearly observed it is due to the absence of full time POs and SPs at district levels and taluka levels that there is no effective implementation of the Act. It disagreed with the additional charge given to existing government functionaries for implementing the law, and reiterated the need for creation of a full-time cadre dedicated to ensure its effective implementation. These directions provided by the Bombay High Court therefore, have set an important precedent by taking cognisance of the failure of states to create the infrastructure for implementation of laws that play a crucial role in women's lives. This judgment assumes additional significance as it is the first time that the higher judiciary has taken an active interest and steps to ensure effective implementation of the Act. This judgment might also act as an example for other High Courts as well as state governments to take appropriate steps in this regard rather than setting up an infrastructure that remains largely ineffective.

Enforcement of the Act

17. <u>Abhijt Bhikaseth Auti v. State of Maharashtra & Anr.</u>²² (Decided by Abhay S. Oka, J.)

In this appeal filed before the Bombay High Court by the husband against the decision of the Sessions Court partly allowing the appeal preferred by the wife with regard to the Trial Court granting a limited relief of interim Protection Order but refusing to grant an interim Residence Order, the following issues were raised:

- Whether an order passed on an application made under Section 23 of the PWDVA is subject to appeal?
- Whether an appeal will lie under Section 29 of the Act against every order passed by the learned Magistrate in proceedings initiated on the basis of application made under Section 12 of the Act?
- What is the scope of appeal under Section 29 of the Act?

The husband contended that no appeal lies against an interlocutory order the appeal preferred was not maintainable.

The High Court after examining the contentions of the parties concluded that an appeal under Section 29 of the Act lies against the final order passed by the Magistrate under Section 12(1) of the PWDVA. It was further held by the Court that an appeal under Section 29 will not be maintainable against purely procedural orders which do not decide or determine the rights and liabilities of the parties.

Explaining the scope of orders under Section 23 of the Act, the High Court observed that as per sub-section (2), the Magistrate is empowered to grant an ex parte ad interim relief in terms of Sections 18 to 22 of the Act while under Sub-section (1), interim reliefs in terms of Sections 18 to 22 can be granted. However, the Court also clarified that an opportunity to be heard is required to be granted to the Respondent before passing any order under Section 28(1).

On the issue of whether appeals lie from orders passed under Section 23, the High Court answered in the positive, but observed that while dealing with an appeal against orders passed under Section 23, the appellate Court cannot however, interfere with the exercise of discretion by the Magistrate. The Magistrate's order will be interfered with, only if it is found that such discretion has been exercised arbitrarily, capriciously, perversely or if it is found that the Court has ignored settled principles of law regulating grant or refusal of interim relief.

This judgment sets a good precedent with the Court clarifying the scope of appeals under both Sections 29 and 23 of the Act. Although it may be argued that appeals against interim orders ought not to be allowed at all in view of the fact that it may be used as a tool by the Respondent to protract the proceedings but without an amendment in the

²² MANU/MH/1432/2008 equivalent citation 2009 Cri LJ 889

law to this effect, the approach adopted by the Bombay High Court can be said to be progressive and sensitive in that it attempts to minimise the adverse impact of such appeals. The Court emphasises the fact that any order of the Magistrate should only be interfered with in case it is found to be arbitrary or where the Trial Court has ignored settled legal principles. Hence, in cases where the order, interim or final, is passed on the basis of the facts of the case, appeals should not be entertained by the Courts.

18. <u>Meena Choudhary v. Commissioner of Police and Ors.</u>²³ (Decided by A.P. Shah, C.J. and Neeraj K. Kaul, J)

This writ petition before the Delhi High Court was filed by the appellant to seek a writ or mandamus to direct the Police authorities to provide her full security of life, liberty and property. She also sought a writ of mandamus to restrain the Police authorities from preventing her from using the residential premises. Although the Court did not make any observations in this case as the appellant had filed a separate application under PWDVA, it directed the Magistrate to decide the application for interim maintenance as expeditiously as possible.

The appellant had also filed a previous writ petition under Article 32 before the Supreme Court, where the Court considered it appropriate to send it to the High Court of Delhi²⁴, to be treated as a petition under Article 226 of the Indian Constitution, without expressing any opinion on merits of the case. The High Court in the instant case similarly held that the Magistrate would be in a better position to deal with the petition which raises issues of fact rather than the law.²⁵ The Court therefore, dismissed the writ petition without expressing any opinion as to its merits.

19. <u>Sonia Mann v. State and Anr. AND Gaurav Mann v. Sonia Mann</u>²⁶ (Decided by S. Muralidhar, J.)

In this order, the Delhi High Court disposed 3 petitions arising out of a common set of facts in a single order. In the first petition, the wife challenged the modification made by the Session Court to the interim Maintenance Order granted by the Trial Court. In the second, the husband challenged the orders of maintenance and restoration to the shared household granted by the Trial Court as well as the order of the Sessions Court affirming the Residence Order on the ground that the impugned property was situated outside the jurisdiction of the Magistrate, which the Sessions Court also failed to notice. The third petition was filed by the in-laws of the woman against the Residence Order of the Trial Court.

²³ MANU/DE/1159/2009

²⁴ MANU/ DE/0024/2009

²⁵ It must be noted that while a writ petition under Article 32 before the Supreme Court can be filed only when the question of violation/infringement of a fundamental right arises, a petition under Article 226 of the Constitution can be filed before a High Court on two grounds: a. on infringement of a fundamental right, and b. on any other issue. However, "any other issue" specifically includes those issues of law or legal right of a person which entitles him/her to a writ of mandamus, habeas corpus, certiorari, quo warranto or prohibition. Hence, no writ can be filed only on issues of fact as the higher Courts deal only with issues of law or legal rights.

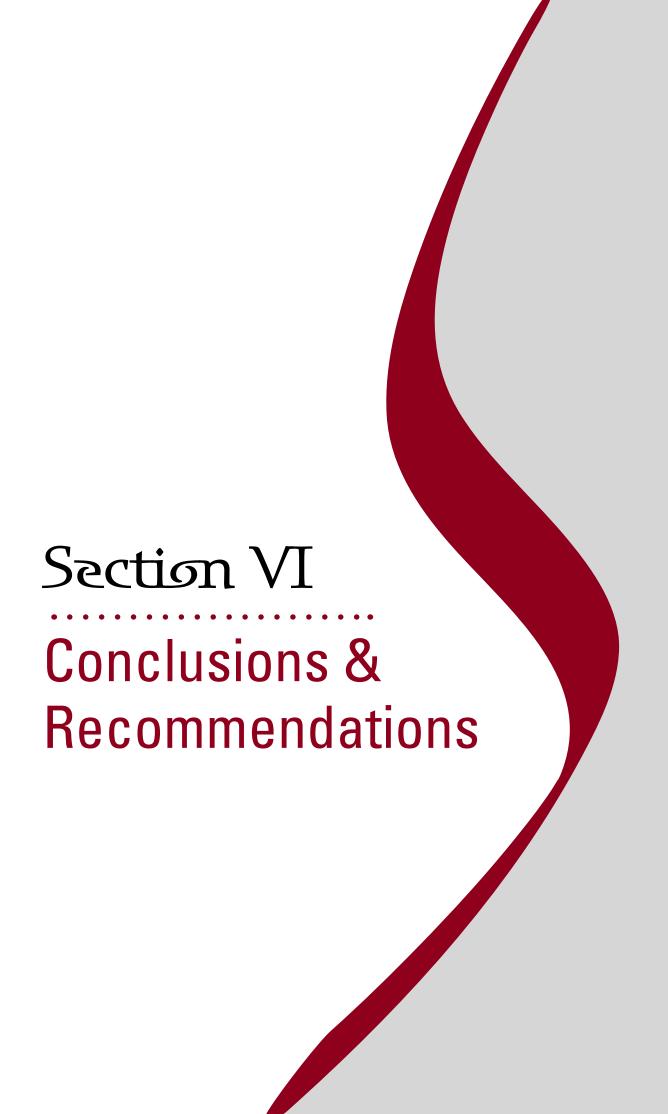
^{26 160(2009)} DLT385

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The wife had prayed for Protection Order, monetary relief and compensation for damages in addition to interim Residence Order restraining her husband and his relatives from alienating any portion of the property and disturbing her possession in any manner. During the proceedings, the husband had admitted to the right of the wife to reside in the matrimonial house, and accordingly, the Trial Court passed a restraining order in addition to maintenance of INR 10,000 per month. However, the Sessions Court altered this order to include the maintenance amount already granted to her under Section 24 HAMA in a civil proceeding.

The High Court in this judgment, upheld the Sessions Court order on the basis that the Trial Court had not computed the maintenance amount granted to her as temporary alimony under Section 24 HAMA while arriving at the figure of maintenance under the PWDVA. Hence, this figure has to be taken into account as per Section 20(d) of the Act. Further, the Court while deciding on the Residence Order also directed that a Court Commissioner should be appointed at the time of final disposal of the petition by the Magistrate. The High Court also allotted a specific part of the shared household for exclusive use of the petitioner, till the final disposal. The High Court finally directed the Magistrate to dispose the main application under the Act within six months.

Hence, through this judgment, the Court sought to resolve the disputes raised by all the parties in multiple appeals on the same issue in a sensitive manner, while leaving the decision on the facts of the case to the Trial Court. The Court in upholding the modification order of the Sessions Court under Section 25(2) accurately interpreted the provisions of the Act, taking into account the fact that certain reliefs under the Act may have already been granted in proceedings before other Courts. In such cases, the ends of justice may require the Courts to pass orders under the Act taking into account existing reliefs. At the same time however, the High Court resisted from laying it down as a general principle, recognising that whether such principle ought to be adopted may depend on the particular facts and circumstances of the case.



Chapter 11

CONCLUSIONS AND RECOMMENDATIONS

The M&E of the implementation of the PWDVA has reached another milestone in its third year. With the experience of having undertaken a nationwide evaluation of data with a primary emphasis on adequacy of infrastructure in the previous two years, the focus this year has shifted to a comprehensive assembling and analysis of the KAP of key stakeholders. Hence, in addition to finding continuing evidence of the need for effective and adequate infrastructure, the data analysed this year also points to the need to review certain aspects of the substantive and procedural law. Specific suggestions with regard to effective capacity-building of implementing agencies, towards ensuring adequate infrastructure, and creating a system of accountability for all the stakeholders have also been put forth.

Although a definitive conclusion as to the nature of amendments required in the PWDVA cannot be made at this nascent stage, recommendations highlighting the areas that require in-depth evaluation in the coming years have been provided in this chapter. In the next two years, LCWRI and ICRW seek to track these issues through data collection and analysis in order to suggest specific amendments to the PWDVA. The recommendations in this chapter have been provided with the understanding that the Law in order to be effective, ought to be responsive to the needs of its users and practices of the stakeholders.

Definitions and Coverage

Definitions

(1) There is a clear gap in the understanding of domestic violence as defined by the Law. While most stakeholders recognise emotional and verbal abuse as forms of violence under the Law, physical violence, which is visible in nature, appears to takes precedence over other forms. Sexual violence within marriage is clearly not recognised as a form of violence. This selective interpretation of domestic violence will and does influence the subsequent implementation of the Law by various stakeholders.

Trainings with stakeholders should be undertaken to clarify that domestic violence can take various forms and is not restricted to physical violence alone. The trainings must focus on sexual, emotional and verbal abuse as key components of the definition of domestic violence and undertake an in depth examination of these aspects so that women facing sexual, emotional or verbal violence receive as much attention from stakeholders as women facing physical domestic violence.

(2) Analysis of orders indicates that a combination of various forms of abuse are experienced and reported by the AP. This is consistent with our experience with

women who say that they face multiple forms of domestic violence, and is reiterated by the POs who say that domestic violence co-occurs¹. The most common forms of abuse seem to be economic and physical (either singly or in combination with others). The predominant form of economic abuse reported is dispossession or the threat of dispossession of the AP from the shared household and refusal to provide maintenance.

This trend strengthens the case for equitable distribution of matrimonial property and underscores the continuing relevance of the issue of dowry and the need to strengthen the Dowry Prohibition Act, 1961.

(3) The right to reside remains an area of major concern for women. There is much confusion amongst the implementing agencies as to the scope of the definition of right to reside. Many POs and Police officials were unable to distinguish between the right to reside and the right to share in the property. Many felt that the Act gives the AP a right of ownership over property, which it does not. The right to reside is most affected by the Supreme Court judgment in <u>Batra v Batra</u>. The analysis of orders show that this judgment has been used to deny Residence Orders to married women and widows by providing the reasoning that since the premises belong to the mother-in-law and father-in-law, and not the husband the home is not a *shared household*.

However, what is encouraging is that in both Delhi and Maharashtra, the courts have distinguished the facts of the cases before them from that of <u>Batra</u>. They have upheld the AP's right to reside, on the ground that in <u>Batra v Batra</u>, the husband's claim to have left the house of his parents was false and done with the intention of denying the right of the wife.

There appears to be a clear need to further explain the scope of "shared household" under the Act and the right to reside as providing a right of residence, irrespective of ownership, title, or interest in the premises.

Coverage: Aggrieved Person and Respondent

(4) As recorded in the previous M&E Reports, married women continue to remain the primary users of the PWDVA followed by widows. While the information gathered from order analysis shows that applications by daughters were limited, mothers have used the Law in a number of instances. However, by and large there appears to be a perception that the Act is predominantly a matrimonial law.

A fair level of misunderstanding exists with regard to key concepts such as the definition of AP² and of Respondent³. In the case of the AP, it arises mainly in the case of a mother-in-law wanting to file a complaint against her daughter-in-law. With regard to

¹ Findings from Order analysis and supported by findings from findings of the FGDs conducted with the POs.

² Sec. 2 (a), PWDVA- "...any woman who is, or has been, **in a domestic relationship** with the Respondent and...subjected to ...domestic violence..."

³ Sec. 2 (q), PWDVA- "...any adult male person..." and "...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 partner"

the Respondent, there seems to be general clarity that it is 'any adult male person;' the husband is shown to be the sole Respondent in a majority of orders examined. However, the confusion arises with regard to female relatives of the 'adult male' and is prevalent amongst the Judiciary as well.⁴

Whilst trainings and awareness creation can help reduce the confusion with regard to these definitions, there still remains a need to revisit these definitions in the PWDVA. Perhaps a clarification is needed, that, female relatives of the husband/male partner come within the purview of the Act

Practices and Procedures

Pre-Litigation

(5) Counselling at the pre-litigation and litigation stage of proceedings have completely different objectives and requirements, which are rarely understood by all the relevant stakeholders. At the pre-litigation stage, counselling should be provided to the AP to restore her self-esteem, provide emotional support and assist her in making an informed decision as to whether she wants to initiate legal proceedings.

As far as the Respondent is concerned, the focus should be on helping them acknowledge their past acts of violence and counsel them to stop further violence. The objective of court directed counselling at the litigation stage is mainly to prevent violence, and where the woman so desires, attempt settlement.

It is difficult to gauge who is providing counselling services at the pre-litigation stage. However, findings have made it clear that women need pre-litigation counselling in addition to pre-litigation advice as provided under Section 5 of the Act. The courts appear to continue to rely heavily on counselling and mediation. ⁵ However, the concern here remains whether the courts are able to distinguish between counselling, mediation and settlement⁶.

Therefore, there is a need to understand counselling as mandated by the Law and its intent, in order to counter practices that might work against that intent. Findings clearly indicate that the meaning and objective of counselling under the Law, by whom and at what stage, need further elaboration. Hence, counselling needs to be

⁴ As per order analysis findings

⁵ As per order analysis findings

⁶ **Mediation** is a legally defined concept where a prescribed procedure is followed; parties sit together to explore the possibilities of settlement or resolving the dispute, aided by an impartial mediator. This is an Alternative Dispute Resolution mechanism. The courts usually follow the practice of referring cases involving matrimonial issues to Mediation Cells or appoint experienced mediators. *Mediation does not involve counselling of the parties – it is a strictly legal procedure.* **Settlement** can be arrived at with the help of any third person or by the parties themselves without any external intervention at any stage of the proceedings. Settlement terms do not usually have legal validity unless recorded and passed as part of the order by the courts by. **Counselling** on the other hand is undertaken for a completely different purpose with regard to cases of domestic violence. The main aim is not to arrive at a settlement but to counsel the AP so as to restore her self-belief and dignity, support her decisions and help her deal with the situation and also to counsel the Respondent to stop the violence and to accept responsibility for past acts. Counselling therefore requires trained and qualified counsellors, and should not be attempted by POs, Police, Lawyers or Judges. Counselling can begin at any stage and can continue through the litigation process to help the woman emotionally to navigate the legal system.

defined and its objective at both the pre-litigation and litigation stages needs to be clarified through appropriate amendments to the provisions on counselling under the Act and Rules.

(6) The objective and purpose of the DIR, of serving as a documentary record/evidence of violence and simplifying the procedural requirements in accessing courts, has not translated into practice. Findings have indicated that POs neither fill out a DIR each time a woman approach them, nor do they maintain any other record of the woman's complaint or visit. This could have negative implications in case the woman decides to file a case in court at a later stage as no record of the history of violence would be available.

Better understanding with regard to the purpose of the DIR is required. Perhaps practice directions from relevant High Courts clarifying this issue would help achieve uniform interpretation and usage.

Litigation

(7) Findings from order analysis in Delhi lend credence to the fact that in the absence of a DIR to accompany the application filed before the court, it is the woman whose interest gets compromised. In practice, the courts appear to interpret the proviso to Section 12(1) of the Act to mean that a DIR needs to be recorded by the PO or that they must necessarily consider the information contained in the DIR before passing any order under the Act. This problematic interpretation by the courts may therefore make a difference between availability of speedy reliefs and delays in proceedings.

One of the most disturbing observations has been the lack of information/limited reference made to the role played by POs in the process of litigation.⁷

This finding needs to be tracked and verified in the coming years to develop a better understanding about the role of POs within the litigation process.

(8) In most states, the practice of POs seeking assistance from Police in the discharge of specific functions under the PWDVA is gradually emerging. However, usually, it is only upon court direction that such assistance is provided. This can be attributed to the common misconception amongst the Police that as the PWDVA is a civil law; they have a limited or no role to play in its implementation.

Therefore, clarity on the role of the Police in the implementation of the PWDVA, perhaps by way of trainings or directives is essential to ensure consistency in the nature of assistance provided by them. Both the Police Department and the Judiciary are ideally placed to provide such directions.

(9) As in the previous M&E Reports, reliefs that are most commonly sought and granted are Maintenance Orders, Protection Orders and Residence Orders, with Maintenance Orders being the most commonly granted, followed by Protections

⁷ As per findings from Order analysis.

Orders and then Residence Orders. The relief of maintenance sought is primarily on refusal to maintain the wife and children as well as desertion or dispossession from the shared household.

The number of *ex-parte/ad-interim* orders being granted is extremely low.⁸ This is a negative trend as it defeats the purpose of granting immediate relief to the woman facing domestic violence and extricating her from a violent environment.

Hence, it is strongly recommended that the courts do not hesitate to grant *ex-parte* or *ad-interim* orders where there is a prima facie case and where the denial can, and often does, lead to imminent harm or danger.

Interim orders are being granted in Delhi and Maharashtra and Maintenance Orders are the most frequently provided interim relief.

However, more emphasis needs to be placed on the significance of immediately granting interim orders. They should be granted as a matter of routine whenever the AP can prove a prima facie case in her favour, without going into technicalities of procedure.

(10) The PWDVA vests the Judiciary with discretionary powers with regard to procedure to be followed when dealing with domestic violence cases. This was done with the intention of allowing the Judiciary space for creative interpretation and initiative. However, in certain instances, it appears that this discretionary power is resulting in a lack of uniformity in procedures being followed.

Therefore, it may be recommended that there is a need for guidance with regard to procedures. In the absence of amendments to the Act, this could be provided by High Courts in order to address the confusion or delays but at the same time, care must be taken to ensure that the directions provided do not defeat the intention and object of the Law.

(11) By and large, the procedure being adopted by the court is that at the interim stage, decisions are based on affidavits in Form III while at the final stage, Section 125 CrPC procedure is followed.

A unique but disturbing trend of a large number of compromises or settlements has emerged⁹ in Gujarat. Although it was not possible to determine the reasons for this trend, perhaps in many of these cases compromises are imposed on women in the name of maintaining family, which in the process expose her to continued and/or even greater violence.

In view of the fact that a similar finding emerged in case of Himachal Pradesh in the Second M&E Report, it is essential to undertake a detailed analysis of this development in states where such high rates of settlement and compromise have been observed,

⁸ As per order analysis findings in Delhi and Maharashtra.

⁹ It is not clear if this was at the Interim or Final stage of the proceedings.

over a period of time, to understand the factors that encourage such high rates of settlements.

(12) Order analysis has revealed a trend where a majority of appeals are being preferred at the interim stage of the proceedings as opposed to being made against final orders. This is of concern as the execution of the interim order passed gets stalled during the appeal proceedings. Thus this practice should not be allowed and encouraged as it defeats the purpose of providing immediate reliefs to the woman in order to extricate her from the violent environment.

It is recommended that the Act should be amended to the effect that appeals are disallowed at the interim stage in domestic violence cases and are disposed of within a stipulated time frame so as to prevent prolonged proceedings that defeat the very purpose of immediate reliefs mandated under the Act.

Post-Litigation

(13) Filing complaints for breach under Section 31 the PWDVA remains the predominant method of enforcement of orders. However, one of the problematic aspects that require the immediate attention of the higher Judiciary as well as policy makers is that, in a majority of cases, no direction for enforcement/compliance of orders is included in the orders themselves. This acts as a barrier for the woman who must approach the court separately for such a direction.

It is recommended that a direction for enforcement be contained in the order and in addition the courts direct the Police to assist the POs in the enforcement of the order should the need arise. Further, a mechanism, to track orders passed by courts and their subsequent execution, needs to be set up.

(14) Findings¹⁰ indicated that the court is failing to provide updates to the POs regarding the proceedings of the case and copies of orders from the court are also not being forwarded to them. This acts as a barrier in the implementation of the PWDVA, as POs are expected to enforce orders.

Infrastructure¹¹

(15) There has been a gradual increase in the appointment of independent POs on a full-time basis over the past 3 years.

Whilst it is desirable that a cadre of independent, full-time POs with the requisite qualifications and gendered perspective be appointed, they would not be effective without adequate infrastructure and budget such as allowance for transport, mobile phone, private office space, and official letterheads and so on. Thus, what is needed is not merely infrastructural aid but institutional status¹² as well.

¹⁰ Findings from Survey conducted with POs.

¹¹ The term infrastructure includes additional personnel to delegate work, support staff, infrastructure for office including private space, telephone, vehicle, office equipment, Xerox, printer, and PO letter head, to name a few.

¹² This is the current practice in Delhi.

There is a need to review and perhaps ensure some uniformity in the qualifications of POs, particularly in view of the need to appoint a full-time cadre of POs to effectively implement the Law. However, a definitive conclusion as to what the qualification and role of the PO ought to be can only be arrived at following a separate study which includes comprehensive data collection and analysis of practices in this regard across the states.

Regular and systematic assessments and reviews should be undertaken by states with regard to the type of support being given to POs. This will facilitate an assessment of whether or not sufficient support is being given to the POs to enable them to perform the role that is envisioned under the Law. If it is the case that support is lacking, then this can be looked into and rectified. If it is the case that despite the support being given, the PO is still unable to perform his/her duty, then the state can consider what other types of support should and could be made available to the PO.

(16) Ambiguity surrounds the issue of who is to serve notice, the limitations faced by POs when they are required to do so, and the resultant difficulties faced by women litigants.¹³

Hence, there is a clear need to address this issue and provide the requisite personnel/assistance to POs or in the alternative, designate the Police/court process servers to undertake this responsibility. The High Courts of Delhi and Andhra Pradesh have set a good example by bringing clarity and consistency through their practice directions.

(17) The collation of national infrastructure data highlighted the fact that three years after the coming into force of the Act, nodal departments of most states were still unable to provide detailed information about the role of SPs, Shelter Homes and Medical Facilities as it is still not clearly visible.

Hence, there is a need for coordination between stakeholders and the adoption of a uniform practice of reporting to nodal departments regarding their structure and functioning, as discussed further in the Monitoring and Accountability section below.

Budgetary Allocations

(18) To date, it has been reported that 17 states have made budgetary allocations for the implementation of the PWDVA. However, there is no systematic basis for making these allocations, and much is left to the discretion of the individual states.

There is a definite need to increase budget for support and for allocation of funds to implement the Act. It is suggested that a scheme should be formulated to ensure a regular annual flow of a specified amount every year with ongoing financial monitoring.

¹³ Please refer to findings from interventions with POs and analysis of the orders.

Awareness Creation and Capacity Building

(19) The findings of this Report highlight the fact that knowledge of the Law and attitudes of the stakeholders hold equal importance as an imbalance of either can hinder or frustrate the objective of the Law. Further, it is clear that there are gaps in the understanding of the PWDVA and its coverage amongst Police, POs and Judiciary which need to be addressed. Trainings undertaken by LCWRI have demonstrated that there is a significant level of positive change that can be achieved even through limited (in terms of length and exposure) interventions, if there is comprehensive coverage of the Law and a gendered approach is adopted.

This leads to the assumption that for all stakeholders to be covered and for the impact to be sustained, there is a critical need for systematic and more intensive trainings. In order to achieve this, trainings must be institutionalised and the primary responsibility must vest with nodal departments and training academies.

As a first step, states should undertake systematic orientation training on the PWDVA, thereby having a trained and sensitised body of implementers of the Law from the outset. This should particularly be ensured every time a cadre of POs, new batches of Police Officers and Judges are inducted into their respective services. This ought to be followed up with special refresher programmes for in-service officers.

Professionals and persons with expertise in the area of gender and domestic violence should be invited to conduct these training programmes. In fact, the training interventions conducted with the Judiciary, made it clear that Judges respond well to professional experts such as medical professionals, Lawyers etc. At the same time, a specific component of gender sensitisation with a specialist exploring the attitudes of the Judges is crucial.

(20) The LCWRI model of capacity building or Training Interventions to bridge gaps and ensure effective implementation of the Law works effectively, as indicated by our findings.¹⁴

It is recommended and hoped that the participants trained will take on the responsibility of further training and sharing information and knowledge gained with their colleagues and juniors. However, this is an aspect that would require some time and tracking in the years to come.

(21) There are gaps in awareness and knowledge amongst the POs on specific procedures to be followed in general and with regard to the filling of DIRs, serving of notice and reporting of breach in particular. With regard to the Police, findings are clearly indicative of gendered perceptions. As the Police are often the first to be approached by women facing domestic violence, these gendered perceptions, if not addressed through appropriate training and sensitisation workshops can be impending barriers to women accessing the law.

¹⁴ As indicated in our findings from Pre and Post Questionnaires circulated to participants during LCWRI trainings.

Hence, training programmes with the POs, Police and other relevant stakeholders need to be conducted to address this issue in a comprehensive manner.

Monitoring and Accountability

(22) The existence of varied practices and lack of adequate infrastructure, budget and trainings across the states reiterates the need to institutionalise the M&E of the implementation of the PWDVA.

The State needs to adopt a comprehensive system for the monitoring and evaluation of the implementation of the Law on an annual basis as recommended in the First and Second M&E Reports.

(23) To date, there is no system of mandatory reporting to the nodal department by all stakeholders. In fact, the information provided by the nodal departments show that it is only the POs who report to them. Therefore, over a period of time, a misconceived assumption has developed; that it is mainly the PO who is responsible for the implementation of the PWDVA and that other stakeholders do not have much of a role to play.

Hence, there is an urgent need to ensure accountability through developing a robust system of mandatory reporting on specific indicators¹⁵ for all stakeholders, including the Judiciary. As the Judiciary follows a distinct reporting structure, it is recommended that there is regular sharing of information regarding the PWDVA between the higher Judiciary and the nodal departments.

(24) Currently, performance in cases filed under the PWDVA does not form a part of the criteria against which the Judiciary is evaluated. Provision of information as to the exact nature of the cases is left to the discretion of the individual Judge.

The issue of domestic violence should be given the priority and focus it deserves. Therefore, it is recommended that cases filed under the PWDVA should be included as part of the duty performance system of the Judiciary. A similar approach can also be followed in case of POs, with the development of an incentive-based performance and appraisal system to facilitate accountability and better implementation of the Law.

(25) A major obstacle in the identification of the total number of cases filed before the courts under the PWDVA, arises due to the existing system of registering and labelling cases. In some courts it is a miscellaneous application, while in some, it is registered as a criminal case or a domestic violence case.

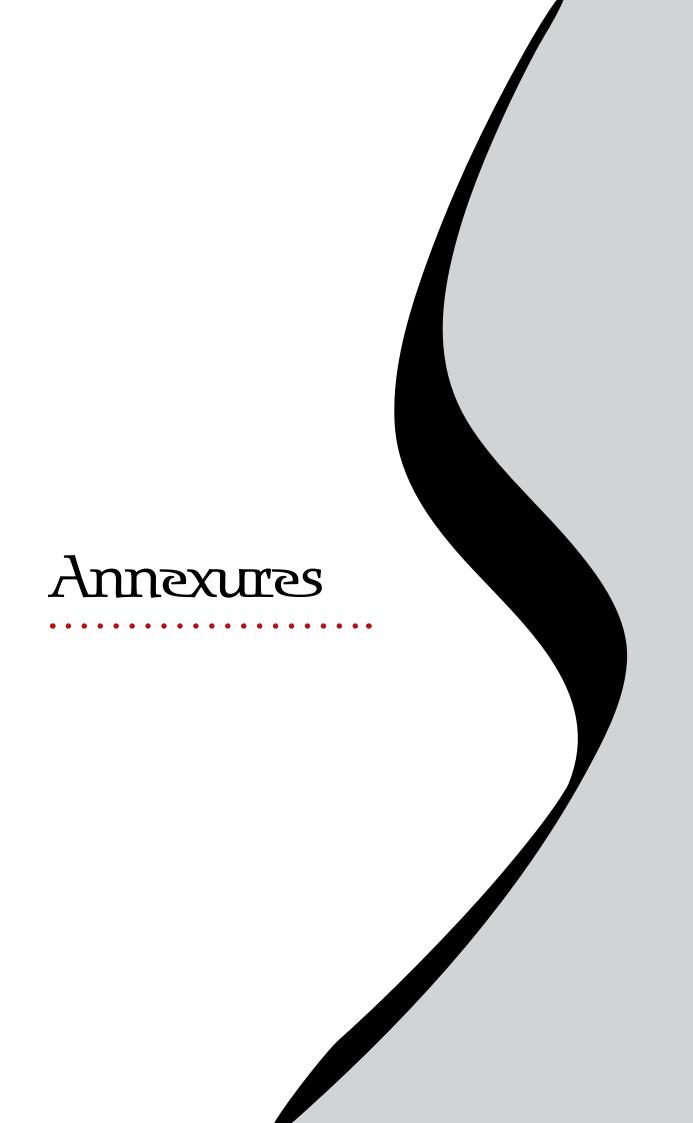
Uniformity in the description and registration of the cases under the PWDVA in the Court Registry is a much needed requirement.

¹⁵ Existing formats of reporting can be reviewed and a uniform one can be developed for each stakeholder.

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The First M&E Report identified three models of implementation of the PWDVA.¹⁶ This year's M&E Report has not been able to track the existence of these models, across all states due to the specific focus on a few states. However, these models continue to exist in the 3 states studied this year, Andhra Pradesh (Public Model), Rajasthan (Private Model) and Delhi (Mixed Model). Tracking these models continue to remain relevant in the years to come.

¹⁶ As discussed in Chapter 2



Annexure 1

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- Reddeppa Reddy, Member Secretary, APLSA

WCD

• Lalita, Superintendent of Section in Charge, Directorate of Women and Child Development

Police

- Ramulu, Sub-Inspectors
- Umapati Sattaru, DIG, Crime Investigation Department

Organisation/Individual

- Anjali, Extension Officer, Rangareddy
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Organisations/Individuals

- Nilanju Dutta, Project Associate, Violence Intervention Team, JAGORI, New Delhi
- Sulochana Vasudevan, Joint Director, National Institute of Public Training and Child Development (NIPCCD)

Maharashtra

Court/Judiciary

- Joshi, P.S. Chief Justice of Bombay High Court
- Kumar Joshi, P.S. Chief Justice of Bombay High Court

WCD

- Bajirao Jadhav, WCD Commissioner, Pune
- Shri Rahul More, DWCD Officer, Mumbai (PO)
- Shri Shrikant Sathe, DWCD Officer, Thane (PO)
- Rajesh Kumar, ICDS Commissioner, Navi Mumbai

Police

- Anil Dhere, Police Commissioner, Thane
- Gulabrao Pol, Police Commissioner, Navi Mumbai.
- Hassan Gafoor, Police Commissioner, Mumbai.
- Krishna Prakash, Police Superintendent, District Sangli.
- Pravin Dixit, Police Commissioner, Nagpur.
- S.M.Sayyed, Special Inspector General of Police, PAW Cell, Govt. of Maharashtra.
- Suresh Sagar, Police Superintendent, District Bhandara
- H. V. Deshabhrata, Police Superintendent, District Buldhana

Organisations/Individuals

- Special Cell for Women and Children, (Trupti Panchal and her team)
- Stree Mukti Sanghatana (Sharada Sathe and her team)

Kerala

WCD

- A Philipose, Secretary, Kerala State Social Welfare Board
- Biji S. Nair, City Probation Officer (PO)
- Geethakumari Amma S., District Probation Officer (PO)
- Girija Surendran, Chairperson, Kerala State Social Welfare Board
- Raghavan Unni, Joint Director, SWD
- Usha Titus, Secretary, SWD

Police

- Baby Amma, Deputy Superintendent of Police
- Suresh Kumar, Superintendent of Police

Organisations/Individuals

- Anjaly Aravind, Counsellor
- Ajitha Kumari, Service Provider (Help line Counsellor)
- Elias Thomas, District Probation Officer
- S. S. Laxmi, Advocate
- Leni, Legal Counsellor
- Soffee Tece, Counsellor, Family Counselling Centre
- Deepa S. Nair, Counsellor, Family Counselling Centre
- Kerala State Women's Commission
- Sandhya, Advocate
- Sakhi Resource Centre (Aleyamma Vijayan and her Team)

Gujarat

Organisation/Individual

- Gender Resource Centre, Ahmedabad
- Bharat Dave, Advocate, Gujarat
- Freelance Creation, Gujarat

Rajasthan

Court/Judiciary

• S.D. Tak, Registrar, Rajasthan High Court

WCD

- Sarita Singh, Secretary, Department of Women and Child Development, Rajasthan
- Mr. Sudhir Kumar, Consultant (Women Empowerment), Department of Women and Child, Rajasthan

Police

- Ashok Naruka, Superintendent of Police, North, Jaipur City, Rajasthan
- Biju George Joseph, Superintendent of Police, East, Jaipur City, Rajasthan
- Bipin Pandey, Superintendent of Police, Jaipur Rural, Rajasthan
- Joes Mohan, Superintendent of Police, South, Jaipur City, Rajasthan
- K.L. Bhairwa Additional Director General of Police CID (Crime Branch), Rajasthan
- MA Tariq, Additional Superintendent of Police, North, Jaipur City, Rajasthan

Attendees of the Pre National Conference Meeting

We also profusely thank all the attendees of the Pre National Conference Meeting held on 25th August 2009.

- Albertina Almeida-Advocate & Monitor of Implementation of DV Act for Goa State Commission for Women, Goa.
- Aprajita Mukherjee-Gender & Development specialist, ICRW
- Ashish Kumar-Director, Department of Social Welfare, Bihar
- C.N. Marak-Assistant Director of Social Welfare, Directorate of Social Welfare, Meghalaya
- Dr. Ashwathas-Secretary, Women & Child Department, Karnataka
- G.S. Maur-Deputy Director, Department of Social Welfare, Chandigarh
- Gita Gupta-Information officer, UNIFEM
- Harish Sonawal-Principal Secretary, Assam Secretariat, Government of Assam
- Ira Tanwar-CDPO, Department of Social Justice & Empowerment, Himachal Pradesh
- Jigna Surkar-Programme Officer, Gender Resource Centre, Ahmedabad.
- Joydeb Thakur-Special Officer-I, Directorate of Social Welfare, West Bengal
- M.P. Nirmala-Directorate of Social Welfare, Tamil Nadu
- Mala Pathak-Deputy Director, Women & Child Development Department, Bhopal, Madhya Pradesh
- Nikhat Quassim-State Consultant, Bihar Department of Social Welfare
- Pushpa Marandi-*Director Social Welfare, Woman and Child Development, Jharkhand*
- R. Sharma-DPO, Ghaziabad
- R. Siva Paravathi-Assistant Director, Women's Development and Child Welfare Department, Andhra Pradesh
- R Patil-Deputy Commissioner, Women and Child Development Department, Maharashtra.
- Ranjana Protection officer, Manipur
- S. Chatterjee-*Member Secretary, NCW*
- S Tomar-Secretary, Women & Child Development Department, Gujarat.
- Seema Lata-CDPO cum protection officer, Department of Social Welfare, Chandigarh
- Sharmistha Sharma-Assistant Director, Women & Child Development Department, Delhi
- Sunil Sharma-Assistant Director, Department of Women and Child Development, Chhattisgarh
- Susanna Marak-Chairperson, Meghalaya State Women's Commission
- Usha K. Singh-Deputy CPO, Directorate Mahila Kalyan, Lucknow
- Usha Padhee-Director Social Welfare, Women & Child Development Department, Orissa
- Yogesh Gupta-Consultant, Women and Child Development Department, Haryana
- Yousa Lachenpa-Legal officer, Social Justice Empowerment & Welfare Department, Sikkim Key Features of the PWDVA

FINDINGS OF THE JUDICIAL TRAINING IN DELHI

Annexure 2

The primary data collected from the Judiciary is limited owing to inaccessibility of Judicial officers. However, this data does give us an opportunity to understand some of the underlying the practices adopted by the Judiciary under the PWDVA.

The pre-post training survey data from the training of Magistrates organised in Delhi provides us information on the levels of knowledge and attitudes that existed before the training, and the changes subsequent to the Trainings. The practice questionnaires have been analysed to indicate trends around actual implementation in Delhi.

A total of 27 Magistrates attended the training. Data is presented both in percentages and in whole numbers.

I. Attitude and Perceptions

In order to understand the attitude of the Magistrates, few statements on gender norms, violence and the law were given and participants were asked whether they agree, partially agree or disagree with those statements. A significant positive change was observed in most of the attitudes after the training, however on several of the indicators, there is still a substantial proportion that needs to move towards the desirable direction.

The content and methodology of any training intervention itself thus must be reviewed very carefully for maximum impact (Refer to Chapter 4 of this Annexure for further details)

There was a positive shift observed in the normative role ascribed to men and women after the training. 40 percent of the Magistrates disagreed to the statement 'the primary role of the man in the family should be that of the provider' compared to 15 percent before the training. Similarly, two third disagreed that 'the primary role of the woman is to take care of her children and other members of her family' after the training compared to 37 percent in the beginning. Though some change (10 percent) has happened after the training, substantial proportion of Magistrates (38 percent) feels that welfare of family should come before the rights of the women. The attitude towards violence too reveals that the training has had a positive effect; however, here too, lots need to be done to make Magistrates more gender sensitive.

This is evident from the fact that even after the training, around half of them still agreed fully or partially that 'predominantly poor men beat their wives', 'for a successful marriage, sometimes a man needs to discipline his wife', 'too much fuss is made

about domestic violence against women', and 'women in live-in relationships invite violence upon themselves by entering into illegitimate relationships'. At the same time, it is heartening to observe significant increase in proportion of Magistrates (Pre-53 percent, Post – 80 percent) who acknowledged the presence of sexual violence within marriage. They disagreed to the statement 'there is no such thing as forcing a wife to engage in sexual relations within a marriage'.

Two statements reflective of perceptions around the law were given – 'The PWDVA should address violence against men as well' and 'The PWDVA is a tool used to harass men and in-laws'. Little less than half of the Magistrates agreed that men should be included under the Law and similar proportion partially agreed that the Law is used to harass men and in-laws. Interestingly, when asked to choose one out of two options – The PWDVA is an empowering law for women because it helps women combat or a problematic law because it breaks up families – 95 percent considered it an empowering law.

Table 1

Statements		P	Agree	Partia	lly Agree	Dis	agree
		N	%	N	%	N	%
The primary role of the man in the family	Pre	12	44.4	11	40.7	4	14.8
should be that of the provider	Post	7	28.0	8	32.0	10	40.0
The primary role of the woman is to take care of her children and other members of	Pre	5	18.5	12	44.4	10	37.0
her family	Post	3	12.5	5	20.8	16	66.7
The welfare of the family should come	Pre	12	44.4	4	14.8	11	40.7
before the rights of the woman	Post	8	33.3	1	4.2	15	62.5
The primary reason for breaking up of families in India today is the growing	Pre	1	3.7	6	22.2	20	74.1
independence of women	Post	1	4.0	5	20.0	19	76.0
Predominantly poor men beat their wives	Pre	4	14.8	18	66.7	5	18.5
	Post	3	12.0	11	44.0	11	44.0
For a successful marriage, sometimes a man	Pre	5	18.5	7	25.9	15	55.6
needs to discipline his wife	Post	4	16.7	8	33.3	12	12 50.0
There is no such thing as forcing a wife to engage in sexual relations within a marriage	Pre	4	14.8	9	33.3	14	51.9
	Post	3	12.0	2	8.0	20	80.0
Beating one's daughter for her own good cannot be termed domestic violence	Pre	1	3.7	4	14.8	22	81.5
	Post	2	8.0	3	12.0	20	80.0
A daughter-in-law and mother-in-law must learn to live together because it makes life	Pre	8	29.6	14	51.9	5	18.5
easier for men in the family.	Post	7	29.2	2	8.3	15	62.5
Too much fuss is made about domestic	Pre	6	22.2	12	44.4	9	33.3
violence against women.	Post	6	25.0	7	29.2	11	45.8
Women in live-in relationships invite violence upon themselves by entering into	Pre	1	3.7	7	25.9	19	70.4
illegitimate relationships.	Post	2	8.0	9	36.0	14	56.0
There are times when a woman deserves to	Pre			1	3.7	26	96.3
be beaten.	Post	1	4.0	3	12.0	21	84.0

Statements		Α	gree	Partia	Partially Agree N % 5 18.5		agree
		N	%	N	%	N	%
A woman who is beaten by her husband because she has committed adultery should not be granted relief under the PWDVA	Pre	6	22.2	5	18.5	16	59.3
	Post	3	12.0	4	16.0	18	72.0
The PWDVA should address violence against	Pre	12	44.4	7	25.9	8	29.6
men as well.	Post	11	44.0	5	20.0	9	36.0
The PWDVA is a tool used to harass men	Pre	3	11.1	14	51.9	10	37.0
and in-laws.	Post	3	12.0	12	48.0	10	40.0

II. Knowledge of the PWDVA

The training conducted with the Magistrate aimed to enhance their knowledge of the provisions made under the Law. A substantial amount of time was spent explaining the various sections and sub-sections including who can file, against whom, what relief can be sought, who are the key stakeholders and what are their roles and responsibilities in the implementation of the law.

Definition of Aggrieved Person and Respondents

Most of the Magistrates (96 percent) informed that daughter can file a case against father, mother against her son and daughter-in-law against father-in-law. However, they appeared to be confusion particularly when respondent is a woman, e.g daughter against her mother and woman in live-in relationship against partner's mother. The training contributed in increasing awareness that even divorced woman can file a case against her husband (pre-52 percent to post – 88 percent) and woman in live-in relationship against partner's mother (pre-18 percent to post-48 percent). This issue needs to be clarified as in several instances appeals have been filed and accepted in courts around the category of respondents, leading to delays in interim orders.

Table 2

Eligible for filing a case under the PWDVA		Υ	es	ı	No	Uns	ure
		N	%	N	%	N	%
Daughter against her father	Pre	26	96.3	1	3.7		
	Post	24	96.0	1	4.0		
Daughter-in-law against father-in-law	Pre	26	96.3			1	3.7
	Post	24	96.0			1	4.0
Mother against her son	Pre	26	96.3			1	3.7
	Post	24	96.0			1	4.0
An adult unmarried sister against brother	Pre	19	73.1	6	23.1	1	3.9
	Post	19	76.0	4	16.0	2	8.0
Divorced woman against her ex-husband	Pre	14	51.9	9	33.3	4	14.8
	Post	22	88.0	2	8.0	1	4.0
Woman in live-in relationship against	Pre	5	18.5	17	63.0	5	18.5
partner's mother	Post	12	48.0	12	48.0	1	4.0

Eligible for filing a case under the PWDVA		Yes		No		Unsure	
		N	%	N	%	N	%
Daughter against her mother	Pre	9	33.3	16	59.3	2	7.4
	Post	6	24.0	18	72.0	1	4.0
Mother-in law against daughter-in law	Pre	4	14.8	21	77.8	2	7.4
	Post	3	12.5	20	83.3	1	4.2

Provisions of Relief under the Law

This relief is unique to the PWDVA and the basic aim is to ensure that no one can dispossess the woman from the shared household. It is, therefore, important that the person, who is expected to pronounce this relief, must have exact and precise knowledge about this provision.

There seems to be some confusion among few of the Magistrates around this issue. This is evident from the fact that 88 percent of Magistrates knew that the right to reside means that a woman in a domestic relationship has the right to reside in the shared household whether or not she has any right, title or beneficial interest in the same. According to 92 percent, this also means that the husband provides the wife with an alternate accommodation. However, even after training, 36 percent interpreted this as right to reside in the shared household only if the shared household is owned by the husband.

The right to residence was further expanded to get an idea about their understanding on who can sought this relief against whom. Clearly, the training has not been able to clarify whether unmarried sister has a right to residence against her brother. Only two-third of the Magistrates reported that unmarried sister can seek this relief against her brother.

Table 3

The guarantee of right to residence under the	Tr	ue	Fa	lse	Uns	sure
PWDVA means		%	N	%	N	%
A woman in a domestic relationship has the right to	24	88.9	3	11.1		
reside in the shared household whether or not she has any right, title or beneficial interest in the same.	22	88.0	3	12.0		
The husband provides the wife with an alternate accommodation	22	81.5	3	11.1	2	7.4
	23	92.0	2	8.0		
A woman in a domestic relationship has right to	16	59.3	10	37.0	1	3.7
reside in the shared household only if the shared household is owned by the husband.	9	36.0	16	64.0		
An adult unmarried daughter has a right to residence	23	85.2	1	3.7	3	11.1
against her father	23	92.0	2	8.0		
A secretary in the secretary secreta	25	92.6			2	7.4
A mother has a right to residence against her son	23	92.0			2	8.0
An unmarried sister has a right to residence against	17	63.0	6	22.2	4	14.8
her brother	17	68.0	7	28.0	1	4.0

Regarding the custody order, all but one Magistrate stated that the court can grant temporary custody of the child at any stage of the proceedings, while 88 percent reported that temporary custody would cease if/when parties' parental rights are resolved under other civil proceedings under their personal law. Magistrates seem to be divided on the statement – 'Temporary custody of the child should not be granted to the aggrieved person/mother if it disrupts the child's daily routine'. In the beginning, 29 percent of them considered this as true while 45 percent considered false. After the training, those who were initial unsure, joined the 'True' group making it 45 percent.

When asked about the situations that need *ex parte* order in the first hearing, all but one Magistrate stated that when there is an imminent threat of domestic violence to the woman and her children, and in cases of dispossession of the aggrieved person. Only 68 percent of them included case of custody (pre – 41 percent) and 43 percent added the case of maintenance (pre-33 percent) under this.

Situations when a judge should pass an ex parte Pre Post order in the first hearing Ν % Ν % 26 96.3 24 96 When there is an imminent threat of domestic violence to the woman and her children When the issue of custody of children is before the court 11 40.74 17 68 In case of dispossession of the aggrieved person 24 88.89 24 96 When the respondent is attempting to escape from 23 85.19 22 88 the jurisdiction of the court When there is plea for maintenance 9 33.33 10 43.48

Table 4

Procedures under the Law

Data indicates that majority of the Magistrates who attended the training were aware that relief can be granted on an application filed under the PWDVA even if the violence has occurred before the Act came into force, as long as the violence is continuing, which increased further after the training (Pre-85 percent, Post – 96 percent). However, one-fifth stated that DIR is mandatory for the court to accept applications under the PWDVA. With few POs with minimal infrastructure around, this notion can be detrimental for women approaching court via lawyers, which is dominant trend in Delhi.

All except 1 seems to understand the fact that the PWDVA is a mix of civil and criminal law and that the breach of court order is an offence. Even after the training, confusion on home visit report persisted.

Table 5

		True		Fa	lse	Uns	ure
		N	%	N	%	N	%
Relief can be granted on an application filed under the PWDVA even if the abuse/violence	Pre	23	85.2	3	11.1	1	3.7
has occurred before the Act came into force in 2006, as long as the violence is continuing.	Post	23	95.8	1	4.2		
The DIR is mandatory for the court to accept	Pre	12	44.4	14	51.9	1	3.7
applications under the PWDVA.	Post	5	20.8	19	79.2		
PWDVA recognises the breach of an order as an	Pre	25	92.6	2	7.4		
offence.	Post	23	95.8	1	4.2		
A home visit report is the same as a social	Pre	10	37.0	9	33.3	8	29.6
investigation report	Post	14	58.3	5	20.8	5	20.8

Pre- and post-training data on the purpose of home visit revealed that the training had positively influenced the knowledge on home visit.

Table 6

Purpose of home visit	Р	re	Post	
	N	%	N	%
To ascertain the standard of living of the respondent	20	74.07	23	95.83
To ascertain whether the shared household can be divided for residence of the aggrieved person	18	66.67	21	91.3
To make a preliminary enquiry if the court requires clarification in regard to granting an ex parte interim relief to the aggrieved person under the PWDVA	23	85.19	20	83.33
To ascertain facts on domestic violence mentioned in the DIR and application by talking to neighbors	20	74.07	21	87.5

Counselling

Under the PWDVA, provision of counseling is made with an aim to take an undertaking from the respondent(s) that the act of violence will not be repeated. When asked during the pre- and post training survey, 80 percent of them could specify this as an objective of counseling. More than 90 percent of the Magistrates added another objective, which is to save families from breaking down.

Key Stakeholders and their Role

The Magistrates were well aware that Protection Officers were the key stakeholder in the implementation of the law. Further, the training was successfully able to convey one-forth of the participants that there was a provision of multi-agency response and that Police, service provider, legal aid service authority, medical facility and shelter homes were also stakeholders for the implementation of the Law. With this knowledge, Magistrates could ask other stakeholders to support the POs in the implementation of the Law and hold them accountable.

All except one Magistrate, knew the primary role of Protection officers such as filling of DIR, service of notice and making home visit. However, they were divided on the role of POs in the enforcement of the court order. In the pre-training survey, 69 percent of them recognised the role of POs in this, which increased to 84 percent in the post-training.

Regarding the role of police, more than 90 percent of the Magistrates were aware of some of their supportive roles such as to accompany POs for service of notice and in cases of emergency, and to enforce protection order before the training. Surprisingly, 37-56 percent of the Magistrates did not envisage role of the police in breach of a court order, in confiscating weapon used by the respondent in domestic violence, or to inform women of their rights under the PWDVA. Significantly higher proportion of Magistrates reported these roles for police in the post training evaluation.

Table 7

Provisions under the Law	Very unfair		Somewhat Not unfair at all				
		N	%	N	%	N	%
Directing the respondent to remove	Pre	9	34.6	12	46.2	5	19.2
himself from the shared household	Post	5	20.8	10	41.7	9	37.5
Restraining the man from alienating or disposing off the shared household or	Pre	1	3.9	5	19.2	20	76.9
encumbering the same	Post	1	4.4	7	30.4	15	65.2
Restraining the man from renouncing his	Pre	2	7.7	6	23.1	18	69.2
rights in the shared household except with the leave of the Magistrate	Post	1	4.4	7	30.4	15	65.2
Pay rent for the alternate accommodation	Pre	1	4.0	6	24.0	18	72.0
of same level as enjoyed in the shared household	Post			4	19.1	17	81.0
Restraining the respondent(s) or his	Pre	3	11.5	8	30.8	15	57.7
relatives from entering any portion of the shared household where the aggrieved person resides	Post			8	36.4	14	63.6
Prohibition on alienating assets, operating	Pre	1	3.9	12	46.2	13	50.0
bank lockers or bank accounts held jointly or singly by the respondent	Post			8	36.4	14	63.6
Provide compensation and damages for the injuries including mental torture and	Pre	1	3.9	4	15.4	21	80.8
emotional distress caused by the act of domestic violence	Post	2	9.1	4	18.2	16	72.7

Amendments

In order to understand the opinion of the Magistrates towards the provisions mentioned under the Law, participants were given a list of provisions and asked to categorise those as very unfair, somewhat unfair and not unfair at all.

Around 83 percent of the participants expressed the need to amend the Law. Overall, training seems to have little effect on the amendments that the participants had suggested except the definition of violence.

Table 8

Amendments in the law	Pre	Post
Limit the category of respondents so as to cover only marital relationships	50.0	47.4
Limit the period for filing complaint of domestic violence	42.9	47.4
Limit the definition of violence	60.0	42.1
Decrease the scope of the right to residence	33.3	36.8
Decrease the scope of the protection order	15.0	26.3
Penalty for breach of the protection order should not be punishable by imprisonment	10.0	26.3

Training

Only one-third of the Magistrates had attended any training on the PWDVA before. When asked about the current training, 95 percent appreciated it and shared that this would help them perform their role better under the PWDVA.

FINDINGS OF THE POLICE TRAININGS IN DELHI AND MAHARASHTRA

Annexure 3

Self administered structured questionnaires were filled by all participants at the start and the end of the training. Differences in the percentage between the pre (before) and post (after) training percentages, on specific questions, thus reveals the extent of change that the training inputs could have brought about in the participants knowledge, attitudes and perceptions vis-à-vis violence and the Act. The total number of participants reached through the trainings were- 150 in Delhi and 350 in Maharashtra

A. Perceptions And Attitudes

The section on attitudes presented a number of statements to the training participants, to which they were to agree, disagree or partially agree. While the statements were a mix of positive and negative statements; the desired direction of change was similar, i.e. we hoped that more participants would disagree with the given statements after the training

In Maharashtra, there was no significant change in the agreement to perceptions around domestic violence after the training: *Domestic violence is a family affair* (pre-61.5 percent post 67.1 percent) and that *Domestic violence can be best resolved by counseling the woman* (pre-78.8 percent post 74.6 percent); and the percentage of participants agreeing to it was among the highest at the outset. Statements on who can seek relief under the PWDVA showed a positive trend, with significant increase in disagreement in both - *A woman who is beaten by her husband because she has committed adultery should not be granted relief under the PWDVA* (62.3 to 71.8 percent in post) and *Women in the live in relationship should not be covered under the PWDVA* (46.2 percent to 63 percent in post).

However, of concern is the fact that even at the end of the training, there are about 30 percent or more participants among the Maharashtra police, who continued to agree or partially agree with these statements. Additionally, this change is more from the category of 'partially agree', which indicates that participants who were unsure, undecided or confused have become more sure of their opinions, and in the desired direction, after the training, rather than a positive change in participants who had a firm belief to begin with.

Potentially, the knowledge of who all are covered under the Act (definition of the aggrieved persons) could also have contributed to this change. 'Beating one's daughter is not domestic violence' also shows a positive movement (61.4 to 74.9 percent), and the change is again from the category of partially agree. Similarly, though there is a significant increase in participants disagreeing that Women before filing a complaint

of domestic violence should consider how that would affect their children, appox half or 50 percent of the participants still agreed to this statement even at the end of the training.

A positive and interesting finding is that the popular notion of PWDVA being perceived as 'anti-men' as reflected in the statement- "PWDVA is a tool designed to harass men and in-laws" had a high degree of agreement even prior to the training, with over 80 percent participants disagreeing with this statement. On the other hand, the rationale for a gender specific law was very low, and continued to elude most participants, with only 17.6 percent participants disagreeing with the statement the PWDVA should address men as well, even at the end of the training, in spite of more than a 10 percent increase.

Table 1: Statements around perceptions and attitudes - Maharashtra (figures in percent)

			Agree	Partially Agree	Disagree
1.	Domestic violence is a family affair	Pre	61.5	14.0	24.6
		Post	67.1	5.6	27.3
2.	Domestic violence can be best resolved by counselling	Pre	78.8	17.9	3.3
	the woman	Post	74.6	16.1	9.3
3.	3. Beating one's daughter is not domestic violence		22.1	16.5	61.4
		Post	17.9	7.2	74.9
4.	The second secon	Pre	61.5	21.8	16.7
should consider how that would a	should consider how that would affect their children	Post	49.1	21.0	29.9
5.	A women who is beaten by her husband because she	Pre	22.4	15.3	62.3
	has committed adultery should not be granted relief under the PWDVA	Post	19.9	8.2	71.8
6.	The PWDVA should address violence against men as	Pre	81.0	12.5	6.4
	well.	Post	67.2	15.2	17.6
7.	Women in the live in relationship should not be covered	Pre	31.1	22.7	46.2
	under the PWDVA	Post	25.1	11.9	63.0
8.	The PWDVA 2005 is a tool designed to harass men and	Pre	5.5	11.3	83.2
in- laws	in- laws	Post	4.9	5.2	89.8

The data from Delhi shows a few fundamental differences when compared to Maharashtra. Disagreement on most of the statements, including the two around perception of domestic violence is much higher; and the proportionate increase in percentage points in the post data is also much higher when compared to Maharashtra, indicative a more positive impact of the trainings. The movement is primarily from the category of 'partially agree' in many of the statements.

The statement "A woman who is beaten by her husband because she has committed adultery should not be granted relief under the PWDVA" has a much lower disagreement in Delhi as compared to Maharashtra before the training, though the increase in Delhi with the training is substantial (48.5 percent to 67.6 percent), bringing the post training

figures of the two states closer together. Similarly, the statement that "Women before filing a complaint of domestic violence should consider how that would affect their children" shows a similar trend as Maharashtra, though the positive movement towards disagreement is more definite in Delhi (20 percent to 48.6 percent). Lastly, the perception of the "PWDVA as a tool to harass men and in-laws" was much higher in Delhi before the training at 50 percent, though the percentage change (from 50 percent to 66.2 percent) brought about by the training is much higher in Delhi when compared to Maharashtra.

Table 2: Statements around perceptions and attitudes - Delhi (figures in percent)

			Agree	Partially agree	Disagree
1.	Domestic violence is a family affair.	Pre	33.8	22.6	43.6
		Post	27.5	7.0	65.5
2.	Domestic violence can be best resolved by	Pre	44.6	29.5	25.9
	counselling the woman	Post	43.7	12.7	43.7
3.	Beating one's daughter is not domestic	Pre	18.4	7.4	74.3
	violence.	Post	12.2	3.6	84.2
4.	Women before filing a complaint of domestic	Pre	55.0	25.0	20.0
	violence should consider how that would affect their children.	Post	26.1	25.4	48.6
5.	A woman who is beaten by her husband	Pre	33.8	17.6	48.5
	because she has committed adultery should not be granted relief under the PWDVA.	Post	19.4	12.9	67.6
6.	The PWDVA should address violence against	Pre	64.5	18.1	17.4
	men as well.	Post	48.6	14.8	36.6
7.	Women in live-in relationship should not be	Pre	36.0	11.5	52.5
	covered under the PWDVA	Post	15.6	7.8	76.6
8.	The PWDVA 2005 is a tool designed to harass	Pre	15.4	34.6	50.0
	men and in-laws.	Post	16.2	17.6	66.2

Lodging a Complaint for Violence

For which acts of violence do the police feel they would be justified in lodging a complaint? Interestingly, prior to the training, acts such as scolding and slapping once in a while, were acts for which a maximum number of officers felt that lodging a complain would NOT be justified. Only in Delhi, threatening to throw the women out was also equally high. A remarkable drop in each of these in the post data indicates a positive impact of the training. Of equal significance is that fact that even after training, there were at least 20-30 percent officers who felt that these acts did into even justify a complaint at all.

It seems that acts such as *ridiculing* and *refusing to give the woman money* were perceived as most justified in attracting a police complaint and this notion increased further after the training. The act of banging her head repeatedly against a wall, where severe physical violence was alluded to, was most likely to be perceived as criminal as compared to other acts .

Table 3: Is it justified to lodge complaint for following acts? If yes, under which Act?

Delhi Maharashtra

None	498A	PWDVA				PWDVA	498A	None
39.6	5.2	55.2	Pre	Slapping the woman once in a while	Pre	40.9	5.2	53.8
6.3	2.8	90.8	Post		Post	73.4	5.4	21.2
37.0	10.4	52.6	Pre	Threatening to throw the woman out of the shared household once	Pre	72.9	20.4	6.8
2.8	4.2	93.0	Post		Post	87.8	10.0	2.3
47.1	103	42.6	Pre	The mother - in -law scolding the daughter -in-law	Pre	26.0	11.4	62.6
10.1	9.4	80.6	Post		Post	57.5	9.3	33.2
19.7	5.3	75.0	Pre	The husband forcing the wife to have sexual intercourse with him	Pre	70.0	8.6	21.4
3.6	3.6	92.9	Post		Post	88.6	7.5	3.9
11.9	9.0	79.1	Pre	Ridiculing the woman by calling her names	Pre	70.4	6.1	23.5
1.4	1.4	97.2	Post		Post	90.6	3.9	5.5
11.8	10.3	77.9	Pre	Refusing to give the woman money for running the house	Pre	76.3	8.4	15.3
2.1	4.3	93.6	Post		Post	91.1	6.7	2.2
2.2.	38.8	59.0	Pre	Banging her head against	Pre	52.4	43.2	4.5
3.6	35.0	61.4	Post	the wall repeatedly	Post	61.2	37.2	1.6

B. Knowledge of the PWDVA

Knowledge was assessed around definitions of key concepts in the PWDVA.

Definition of Aggrieved Person

The table below gives the data on the responses on who can file under the PWDVA from both the intervention states. There is high agreement on all the options, including the incorrect ones i.e. – daughter against mother and Mother-in-law against Daughter-in-law, indicating lack of clarity, even though agreement on these is not as high as on the other correct options.

Table 4: Who can file case under the PWDVA?

Delhi Maharashtra

DK	NO	Yes				Yes	No	DK
.7	2.2	97.1	Pre	Married woman against her husband	Pre	96.0	1.7	2.4
	.7	99.3	Post		Post	99.1	.9	.0
8.8	14.0	77.2	Pre	Daughter against her father	Pre	76.2	18.9	4.9
	6.5	93.5	Post		Post	90.0	7.8	2.2
17.3	26.3	56.4	Pre	Daughter against her mother	Pre	63.3	27.6	9.2
	42.2	57.8	Post		Post	67.3	29.2	3.5
9.0	15.0	75.9	Pre	Mother against her son	Pre	73.0	18.4	8.5
1.4	4.3	94.2	Post		Post	86.3	11.1	2.5
13.0	29.0	58.0	Pre	Mother-in-law against daughter -in-law	Pre	67.4	21.1	11.6
5.1	47.4	47.4	Post		Post	70.8	25.1	4.1

It was also asked that - If a woman is in a live-in-relationship then she cannot file for relief under the PWDVA to which 22 percent agreed in Maharashtra and 30 percent in Delhi . This dropped to 15 percent and 18 percent respectively after the training . There was more confusion around whether a woman already getting maintenance from her husband can file under the PWDVA or not. In Maharashtra, 35 percent and in Delhi 64 percent knew the correct answer prior to the training, which rose to 56 percent and 79 percent, respectively after the training. This also means that in Maharashtra, there are still close to half police officers who continue to have misinformation in this aspect.

Definition of Domestic Violence

For almost all the specific acts given in the table below, there was an increase in knowledge after the training, with over 80 percent of participants reporting correct knowledge in both states. In both states, the forms that had the least reporting prior to the training were preventing woman from leaving house or taking a job, and scolding.

Table 5: Which acts are defined as violence under the PWDVA?

Delhi Maharashtra

DK	No	Yes				Yes	No	DK
2.3	12.8	85.0	Pre	Slapping the woman	Pre	61.5	27.8	10.7
	5.8	94.2	Post		Post	88.1	10.6	1.2
9.3	22.5	68.2	Pre	Scolding the woman	Pre	44.0	39.5	16.5
	7.2	92.8	Post		Post	78.3	19.7	1.9
7.8	15.5	76.7	Pre	Forced sexual relationship	Pre	74.9	14.8	10.3
	7.2	92.8	Post	within a marriage	Post	89.3	8.2	2.5
8.6	21.9	69.5	Pre	Forcefully marrying the	Pre	75.9	17.0	7.0
2.2	9.6	88.2	Post	daughter against her wishes	Post	89.6	8.5	1.9
6.1	19.8	74.0	Pre	Name calling	Pre	63.0	24.1	13.0
.7	8.0	91.3	Post		Post	86.5	11.3	2.2
7.8	21.9	70.3	Pre	Refusing to give money to the	Pre	61.0	27.6	11.4
	5.1	94.9	Post	woman	Post	88.7	10.1	1.3
7.8	28.7	63.6	Pre	Preventing the woman from	Pre	62.2	25.5	12.4
1.4	8.0	90.6	Post	taking up a job	Post	88.5	9.6	1.9
9.1	21.2	69.7	Pre	Preventing the woman from	Pre	58.7	28.8	12.5
.7	7.2	92.0		leaving the house	Post	80.8	17.3	1.9

Types of Reliefs under the PWDVA

The pattern of responses for knowledge on the type of relief orders mirrors that described in the section on definition of the aggrieved person. In Maharashtra, on this core indicators, too, the there was higher agreement on wrong options of divorce and division of property as reliefs under the law, though the agreement on divorce as a relief that can be sought under the PWDVA is much lower when compared to the others.

In Delhi, though the agreement on these 2 options was much lower, at almost half when compared to Maharashtra, there were still substantial proportions, 50 percent

who still believed that division of property and 30 percent who believed that divorce can be sought as relief under the Law.

What is of more concern is that the training has not made a sufficient change in those who held the wrong information. The increase in the correct knowledge has been due to movement from the *Don't know category*.

Table 6: Types of Relief that can be sought under PWDVA

Delhi Maharashtra

DK	NO	Yes				Yes	No	DK
3.2	4.8	92.1	Pre	Protection Order	Pre	90.5	1.1	8.4
		100.0	Post		Post	98.1	.9	.9
16.1	34.7	49.2	Pre	Division of property	Pre	83.7	8.3	8.0
1.5	49.6	48.9	Post		Post	81.6	15.6	2.8
2.3	3.9	93.8	Pre	Right to residence	Pre	95.8	.7	3.5
	.7	99.3	Post		Post	98.8	.0	1.2
8.8	12.0	79.2	Pre	Right to custody	Pre	87.2	6.0	6.7
	8.0	92.0	Post		Post	96.3	3.4	.3
3.9	10.2	85.8	Pre	Maintenance order	Pre	80.1	12.7	7.2
	2.2	97.8	Post		Post	91.9	7.5	.6
15.8	46.7	37.5	Pre	Divorce	Pre	64.2	21.8	14.0
2.3	67.7	30.1	Post		Post	59.7	34.2	6.1
9.8	17.2	73.0	Pre	Compensation order	Pre	80.5	10.5	9.0
1.5	10.2	88.3	Post		Post	89.4	8.1	2.5

The Right to Residence

The data reveals a fair amount of confusion of s in both states, even though there are comparative differences in the absolute percentages.

Table 7: Meaning of Right to Residence under the PWDVA

Delhi Maharashtra

DK	No	Yes				Yes	No	DK
8.5	19.4	72.1	Pre	A wife has ownership right over the	Pre	85.7	10.4	3.9
	32.9	67.1	Post	shared household.	Post	85.9	12.2	1.9
4.7	14.0	81.4	Pre	A wife in a domestic relationship	Pre	97.5	.7	1.8
	22.1	77.9	Post	has right to reside in the shared household only if the shared HH is owned by the husband.		98.4	1.2	.3
11.4	17.1	71.5	Pre	A wife in the domestic relationship	Pre	89.6	4.3	6.1
2.9	12.3	84.8	Post	has the right to reside in the shared household whether or not she has any right, title or beneficial interest in the same	Post	95.4	2.2	2.5
14.4	21.6	63.2	Pre	The husband provides the wife with	Pre	73.5	10.2	16.3
.7	11.6	87.7	Post	rental accommodation or alternate accommodation	Post	90.4	4.5	5.1

Table 8: The civil-criminal nature of the law

Delhi Maharashtra

D.K	False	True				True	False	DK
22.8	47.2	29.9	Pre	There is no provision for arrest under	Pre	24.7	43.2	32.1
1.5	65.7	32.8	Post	the PWDVA	Post	42.2	47.4	10.4
29.7	20.3	50.0	Pre	The breach of a protection order is a	Pre -	58.0	16.3	25.7
2.9	61.3	35.8	Post	bailable compoundable offence	Post	52.9	41.0	6.1

30 percent officers in Delhi and 25 percent in Rajasthan had the misinformation that 'there is no provision for arrest under the PWDVA' prior to the training, and there was no significant change in this knowledge in Delhi after the training, while in Maharashtra, the numbers who believed this actually increased after the training. When asked whether 'breach of a protection order is a bailable offence, the knowledge increased in the positive direction, though even after the training 36 percent in Delhi and 52 percent in Maharashtra continued to have the wrong information. Further more than half the police officers in Maharashtra and over 30 when woman approaches Police for the first time percent in Delhi continued to believe that police can lodge and FIR under the PWDVA when woman approaches Police for the first time.

In response to the question- When would the police take action in the case of breach?, the response of police is again fairly confused, Though there is an increase in the percentage of officers who would take action on the sole testimony of the women, high reporting on the other options suggests that they do not consider it the only criterion, but many in fact wait for some other "evidence". The increase in the three options after the first indicates that either the word "only" has not registered in this self administered questionnaire, of the confusion has only increased after the training.

Table 9: Action Police will take in case of breach of the court order

Delhi Maharashtra

DK	NO	Yes				Yes	No	DK
11.2	49.1	39.7	Pre	Take action on the sole testimony of	Pre	83.5	11.2	5.2
.8	46.1	53.1	Post	the women	Post	75.2	21.9	2.9
13.9	37.4	48.7	Pre	Take action only after the woman	Pre	56.1	35.4	8.5
1.6	37.6	60.8	Post	shows copy of the order	Post	75.9	21.9	2.2
10.4	33.0	56.5	Pre	Take action only after the POs report	Pre	48.9	33.5	17.6
.8	31.8	67.4	Post	the breach	Post	56.3	39.3	4.3
11.0	38.1	50.8	Pre	Take action only after the woman has provided enough evidence to prove breach	Pre	55.3	29.1	15.6
2.3	57.8	39.8	Post		Post	60.7	35.7	3.6

Knowledge related to Role of Police and its Functions under the PWDVA

After the training, there is a sharp increase in the percent of officers who agreed that the PO is solely responsible for cases under PWDVA in Maharashtra, while in Delhi the increase is not significant among those to believe this. However, there is also an

increase, in Delhi of officers who have the correct knowledge, but this movement is from the don't know category. In Maharashtra, the pattern is in the wrong direction. On the whole, the majority of police officers do believe that they have a role to play in the PWDVA.

Table 10: Role of the Police

Delhi Maharashtra

DK	False	True				True	False	DK
22.0	44.9	33.1	Pre	Protection officer is solely	Pre	27.1	44.7	28.2
1.4	62.3	36.3	Post	responsible for cases under the domestic violence law.	Post	58.0	34.7	7.3
3.8	85.6	10.6	Pre	The police have no role	Pre	18.0	68.0	14.0
1.4	93.5	5.0	Post	under the PWDVA	Post	16.9	79.9	3.2

Observations of these trainings pointed to several issues that must be addressed to make a training effective. The importance of an interactive methodology, with a mix of methods cannot be stressed. The set-up of the training such as seating style etc. can also have a bearing on the absorption level of the participants. The assessment points to several critical areas of knowledge that need to be addressed in trainings, as well as the need to extensively discuss perceptions and attitudes.

Of the participants in these trainings conducted by LCWRI only 5.7 percent of the officers, who attended this training had received training on the PWDVA earlier in Maharashtra, compared to 9 percent in Delhi. Within the different aspects covered in the training, the participants reported that they liked the session on the Constitutional Law and the Role of Police most, followed by session on the Overview of the Act. There had been a deliberate effort to invite and involve the POs in the Police trainings, as a conscious strategy to enhance the multi-agency coordination system. Most of the police officers felt that combined trainings of POs and Police was helpful, and most rated the training as good across the two states.

ADDITIONAL OR INDEPENDENT PROTECTION OFFICERS

Annexure 4

Please find listed hereunder views expressed by the representatives of the nodal department of states at the Pre-Conference meeting on advantages and disadvantages of independent POs vis-à-vis officers with existing duties. The views were collected at the National Nodal Department Meeting.

Table 1: Protection Officers on an independent and additional basis

Independent Protection Officer Advantage

Advantages

- 1. Availability of the Protection Officer to victim.
- 2. Time factor Speedy Registration of cases , delivery of summons and compliance of court directions
- 3. Timely passing of interim orders
- 4. Time to create a conducive environment for the woman
- 5. Timely submission of Reports to nodal dept.

Disadvantages

- Additional financial burden in providing infrastructure and manpower support.
- 2. Problem in creating supervisory level officer for coordinating, monitoring and evaluation the work of the PO.
- 3. Same extent of network and contacts base not available to independent POs.

Advantages of having a Protection officer as Additional Post

Advantages

- 1. They have a good knowledge of the social legislation as they have been working on similar issues.
- 2. Good knowledge of women's welfare schemes run by Central Govt/State funds to be utilised for strengthening infrastructure.
- Existing status will help in coordinating with other govt. departments/facilities (e.g. Legal aid, police, medical, judiciary)
- 4. More accountability than contractual PO's.
- Existing infrastructure and personnel to delegate available to them

Disadvantages

- 1. Overburdened with other duties.
- Problem of prioritising their various other duties, which hampers quality and timely intervention required in DV cases.
- 3. No incentive by way of additional remuneration/transport/ staff.
- 4. No additional budget for functioning as POs, such as transport to conduct their various duties directed under the Law, photocopying of documents for submission in courts, etc.

Annexure 5

DELHI AND ANDHRA PRADESH HIGH COURTS – SERVICE NOTICE

No.	/DHC/\haz/G-X/2008
From	
	The Registrar(Vigilance),
	Delhi High Court,
	New Delhi.
Го	
	The District Judge I-cum-Sessions Judge,
	Delhi.
	New Delhi, dated the2008
	Sub: Service of Notices under "The Pro

Sub: Service of Notices under "The Protection of Women from Domestic Violence Act 2005"

Madam,

l am directed to say that Hon'ble the Chief Justice of this Court has been pleased to issue the following practice directions to the Metropolitan Magistrates with regard to issue and service of notices under "The Protection of Women from Domestic Violence Act, 2005":-

- The notices issued to the respondent or any other person under Section 12 or any other provision of "The Protection of Women from Domestic Violence Act, 2005" shall be handed over to the Protection Officer for service;
- Every such notice shall contain a clear direction that in the event of the Protection Officer seeking help of the Process Serving Agency of the Police or the Nazarat of District Court, the concerned Officer in-charge shall depute a process server for effecting of service of notice/notices on the respondent or any other person on behalf of the Protection Officer;
- Every notice shall be prepared in triplicate one copy of which shall be retained by the
 Protection Officer and remaining two copies shall be forwarded to the Process Serving
 Agency of the Police or District Nazarat for service, if the Protection Officer opts for
 service through them:
- 4. The process server so deputed to effect service of notice/notices shall return the notice-notices with a clear service report under his signatures to the Protection Officer, who after verification and satisfying himself about the correctness of report shall authenticate and submit the report to the Magistrate concerned:
- 5. Every notice shall contain a clear direction that in case the Protection Officer opts to personally serve the notice on the respondent but seeks protection of the Police, the officer in-charge of the Police Station in whose jurisdiction the service is to be effected shall provide the Protection Officer with adequate security.

I am therefore, to request you to please pring the above practice directions to the notice of all concerned Judicial Officers under your control and control of other District Judges for compliance, under intimation to this court.

Yours faithfully,

(R.K. Gauba)

Registrar (Vigilance)

Endst.No. /DHC/Gaz/G-X/2008 Dated: 19 November, 2008

Copy for information to:

The Assistant Director(Women Welfare), Department of Women & Child Development, 1,

Canning Lane, Kasturba Gandhi Marg, New Delhi.

2. Ms. Indira Jaising(Project Director), Lawyers Collective Women's Rights Initiative, 63/2,

Ground Floor, Masjid Road, Jangpura Extn., N.D.-110014.

(P.C. Jain)

Joint Registrar (Gazette)

CIRCULAR ISSUED BY THE GOVERNMENT OF HIMACHAL PRADESH – SUMMONS

Annexure 6

No:-14-111/2007-ICDS

Directorate of Social Justice & Empowerment

Himachal Pradesh

To

All the Distt. Programme Officers,

in Himachal Pradesh.

Dated Shimla-9. the

Subject:-Madam/Sir, Regarding serving of Summons through the Protection Officers.

04-07-09

It is informed that matter regarding serving of summons under Protection of Women from Domestic Violence Act, 2005 was taken up with the Law Department. As per the observations of Law Department, the Protection Officer is empowered to get the presence of the accused/ respondents by adopting or following the procedure of CPC or Cr. PC. Thus the delivery of summons can be effected as under:-

- Protection Officer may order the police to serve the summons on the person i). concerned.
- 11) Where the accused/ respondent does not live in the jurisdiction where case is pending in that event the summons can be got served by the Magistrate through the other Magistrate in whose jurisdiction the accused / respondents resides.
- The Protection Officer is also empowered to send the summons to the accused/ respondents by registered post.
- You are, therefore, directed to intimate all the Protection Officers accordingly within 2 days and compliance be sent to this office by 07.07.2009.
- 3. Further, Quarterly / Annual Progress Report due for June, 2009 on implementation of the Act, may also be sent to this office through return fax.

Yours faithfully,

Director,
Social Justice & Empowerment,

Annexure 7

FORMAT FOR REPORTING

The Protection of Women from Domestic Violence Act, 2005 Quarterly Progress Report on implementation

Year: Ja	nuary-March/April-	June/July Septen	ber/October-December				
Name of the St	Name of the State / Union Territory:						
Name of the Di	strict:						
1. Number of P	rotection Officers a	ppointed:					
Government	Servants:	Male:	Female:				
Members of	NGOs:	Male:	Female:				
2. Number of S	Service Providers re	gistered:					
3. Number of N	Medical Facility not	ified:					
4. Number of S	Shelter Home notific	ed:					
5. Number of c	omplaints of Dome	stic Violence:					
6. Number of I	Domestic Incident F	Reports (DIR):					
	Lodged wi	th Protection O	fficers:				
	Lodged wi	th Service Provi	ders:				
	Sent direc	t to Court:					
7. Number of I	OIR forwarded to M	agistrate:					
8. Number of A	Aggrieved Persons p	provided medical	aid by Medical Facility:				
9. Number of A	Aggrieved Persons p	provided shelter b	by Shelter Home:				
10. Number of	Aggrieved Persons	provided legal ai	d under Legal Service				

Authorities Act -1987:

11. Number of applications heard by Magistrate:

12. Number of applications disposed of by Magistrate:

13. Number of cases in which ex-parte order granted by Magistrate:

STATISTICS ON CASES FILED UNDER THE PWDVA, 2005 IN ANDHRA PRADESH

Annexure 8

Cases Registered Under Protection of Women from Domestic Violence
Act-2005 from January to August 2009

(POs appointed vide Go.Ms.No. 22 of Women Development, Child Welfare & Disabled Welfare Dept. Dt. 9.11.2006)

SI. No.	Name of the District	Total No. of petitions received under DV Act 2006	Total No. of compromised at counselling level	No. of DIRs filed	No. of Interim orders issued	Total No. of final Orders issued	Total No. of cases pending in Courts
1	Srikakulam	11	1	10	0	1	10
2	Vizianagaram	24	7	18	0	0	19
3	Visakhapatnam	58	8	50	5	12	33
4	West Godavari	11	14	12	0	3	9
5	East Godavari	125	19	37	0	0	38
6	Krishna	230	120	50	0	13	37
7	Guntur	87	31	60	4	2	54
8	Nellore	102	36	10	0	7	3
9	Chittoor	40	11	26	5	11	13
10	Kadapa	52	26	29	0	1	28
11	Kurnool	54	15	43	1	7	35
12	Anantapur	88	9	57	13	16	30
13	Prakasham	70	17	37	0	0	38
14	Adilabad	36	1	33	1	9	42
15	Nizamabad	44	7	21	0	0	22
16	Karimnagar	63	11	44	8	14	22
17	Khammam	37	68	1	0	0	13
18	Warangal	43	24	12	0	0	13
19	Mahaboobnagar	95	27	29	2	14	28
20	Nalgonda	104	44	55	5	12	38
21	Medak	35	10	5	29	0	3
22	Hyderabad City	135	1	132	18	17	112
23	Ranga Reddy	91	4	81	0	3	89
	Total	1635	511	852	91	142	729

Annexure 9

CIRCULAR ISSUED BY THE GOVERNMENT OF KERALA



Abstract

Social Welfare Department - Implementation of the Protection of Women from Domestic Violence Act 2005 - Constitution of Co-ordination and Monitoring Committees at State level and District Levels - Orders issued.

SOCIAL WELFARE (B) DEPARTMENT

GO(Rt) No.340/2007/SWD

Dated, Thiruvananthapuram, 29.06.2007.

Read: D.O. letter No.ICDS/B3/3583/07 dated 22.03.2007 from the Director of Social Welfare, Thiruvananthapuram.

ORDER

As per the letter read above, the Director of Social Welfare has submitted proposal for the constitution of Co-ordination and Monitoring Committees at State Level and District Levels as envisaged under Section 11 of the Protection of Women from Domestic Violence Act 2005. According to Clause (c) of the said Section, the State Government shall take all measures to ensure that effective co-ordination between the service provided by concerned department dealing with Law, Home affairs including law and order, health, human resources to address the issues of domestic violence shall be established and persistent reviews of the same shall be conducted.

2. Government have examined the matter in detail and hereby accord sanction for the constitution of Co-ordination and Monitoring Committees at State Level and District Levels as envisaged under Section 11 of the Protection of Women from Domestic Violence Act 2005 with the following Members.

1. State Level Co-ordination & Monitoring Committee

1) Minister of Social Welfare	Chairman
2) Chairberson, Women's Commission .	Member
3) Chairperson, Kerala State Women's Development Corporation	on .
	Member
At Chairperson, Kejala State Social Welfare Board	- Member
5) The Secretary, Law Department	Member
6) The Principal Secretary, Home Department	- Member
7) The Principal Secretary, Local Self Government Department	- Member
8) The Secretary, Health & Family Welfare Dept.	- Member
9) The Executive Director, Kudumbasree	-Member
_10) The Secretary, Social Welfare Department	- Convenor
11) Three representatives of women's organizations	
to be nominated by Government	- Members
12) The Director. Public Relations Department	- Member

II. District Level Co-ordination & Monitoring Committee



And the second of the second control of the	discrete transferring comments (1995) y merced to conferred to the comparement of the com
District Collector District Police Superintendent District Medical Officer (Health) District Women's Welfare Officer	- Chairman - Member - Member - Member
5) Kudumbasree District Mission Co-ordinat	or - Member
6) District Social Welfare Officer	- Member
 7) Chairperson of the Jagratha Samithi at 8) Superintendent of Shelter Home run by 9) Three representatives of women's organi 	Governent - Member
nominated by Government.	- Member
10) District Probation Officer	- Member & Convenor
11) District Panchayat President	- Member
12) Mayor of Corporation	- Member
13) Women MLAs from the District.	- Member

3. The State Level Co-ordination Committee shall meet once in three months and the District Level Co-ordination & Monitoring Committee shall meet once in a month to review the progress of the implementation of the 'Protection of Women from Domestic Violence Act 2005'.

By order of the Governor,

JOLLY GEORGE,

Additional Secretary to Government.

To

The Director of Social Welfare, Thiruvananthapuram.

The Members.

The District Collectors.

The District Police Superintendents.

The Director of Panchayat, Thiruvananthapuram.

The Principal Accountant General (Audit), Kerala, Thiruvananthapuram.

The Accountant General (A&E), Kerala, Thiruvananthapuram.

The Accountant General (DB Cell), Kerala, Thiruvananthapuram.

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Section Officer









Lawyers Collective, Women's Rights Initiative, 63/2 Ground Floor, Masjid Road, Bhogal-Jangpura, New Delhi - 110 014 Tel.: (91-11) 46866666, 24373904/24372923, e-mail: wri.delhi@lawyerscollective.org, website: www.lawyerscollective.org