

Staying Alive

5th Monitoring & Evaluation 2012
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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FOREWARD

I remember the day in 2005 clearly. I sat in the visitors' gallery in the Lok Sabha watching the debate on the PWDVA. With me was Asmita Basu, the then coordinator of the Women's Rights Initiative. Every few minutes the usher would come and watch us eagerly leaning over the railing. He would tell us to uncross our legs as it was disrespectful to the Parliament, never mind that the MPs could not even see us, high above them. The excitement of the debate was punctured by our having to leave every half hour, as the pass was valid for that length of time - and then return with a new pass.

On that day, every political party fielded a woman MP to speak on the bill, for which there was unanimous support, except that some MPs said that the provision for live-in relationships was destroying Indian values of keeping the family intact. The highlight of the proceedings was a speech made by Jaya Prada on behalf of *Samajwadi* Party, for which absent MPs came running back to the house. All we wanted to see was a vote on the Bill, which would make it a law. And the vote came. It was an unforgettable moment as we saw the votes being cast. I looked at Asmita and said, "Our life's work is done". We congratulated ourselves and celebrated with the Lawyers Collective team.

It took a whole year for the law to come into force in October 26, 2006, when the President gave his assent. I then told my Trustee, Norma Alvares, that I was quitting the Lawyers Collective's Domestic Violence Initiative. Her response took me aback and forced me to rethink my plans. She said it was my solemn duty to ensure that the law was properly implemented, at least "for sometime".

This was the beginning of my journey to monitor and evaluate the law every year. The first report was submitted on October 26, 2007. This year, it is the fifth report. Half a decade is long enough time to ensure that the law is understood and implemented in letter and the spirit. Surely, I have kept the promise made to Norma about us, at Lawyers Collective, monitoring the law at least "for some time"?

This year we have noticed a marked improvement in the functioning of the Act. Judges have understood the law better, Protection Officers have been used by courts in fact finding to give orders and most importantly, women in large numbers have used the law to their benefit. For me, one of the most heartening things about the Act is the humble "protection order".

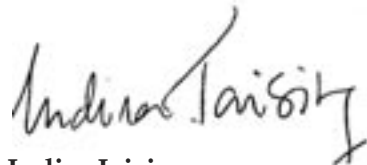
Often I have found that all a woman wants is the right to be left alone, free from violence. This simple "stop violence" order gave the woman space and time to re-negotiate her relationship within the domestic realm, and often leave it with dignity. The right to reside in the shared household has found shape in the hands of judges, giving women the security of a home.

This year's report shows that there are several challenges ahead – structural and attitudinal. The delays in courts can only be addressed by a reform of the judicial system as a whole. Implementation of the Act requires the state to allocate funds. An attitude of zero tolerance to domestic violence needs to be cultivated by all stake holders. Most importantly, women need to know and believe that there is a life beyond a violent relationship, and work towards being economically empowered to support themselves. While there is a law, a world free from domestic violence seems far off, still.

My colleagues and I hope this report is a source of inspiration for others to monitor the law in the years to come. In the ultimate analysis, a law is only as good as the use to which it is put.

Monitoring is a tool of accountability. Evaluation enables us to test results and outcomes against the human rights standards we set for ourselves. Our commitment to CEDAW and non-discrimination based on sex requires that we pledge ourselves to zero tolerance of domestic violence in theory and practice.

This report is an effort in that direction and we hope it has served its purpose.

A handwritten signature in black ink that reads "Indira Jaising". The signature is written in a cursive, flowing style.

Indira Jaising
Executive Director
Lawyers Collective
Women's Rights Initiative

ACKNOWLEDGMENTS

This report was conceptualised by Indira Jaising and under her guidance, jointly compiled by the Lawyers Collective Women's Rights Initiative (LCWRI) team and the International Center for Research on Women (ICRW) team guided by Ravi Verma and Mary Ellsberg.

The report contains contributions from many individuals and organisations. Thanks to all of them.

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ABBREVIATIONS

AP	Aggrieved Person
C.A. No.	Criminal Appeal Number
C.C. No.	Criminal Case Number
CAW Cell	Crimes Against Women Cell
CDPO	Child Development Project Officer
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
COVA	Confederation of Voluntary Associations
CrI.M.C.	Criminal Miscellaneous Case
CrPC	Criminal Procedure Code, 1973
CSS	Centrally Sponsored Scheme
D.V.C. No.	Domestic Violence Case Number
DEVAW	Declaration on the Elimination of Violence against Women
DIR	Domestic Incident Report
DPA	Dowry Prohibition Act, 1961
DV	Domestic Violence
DWCD	Department of Women and Child Development
FCC	Family Counselling Centre
Fifth M&E Report	Staying Alive: Fifth Monitoring & Evaluation Report 2010
FIR	First Information Report
First M&E Report	Staying Alive: First Monitoring & Evaluation Report 2007
Fourth M&E Report	Staying Alive: Fourth Monitoring & Evaluation Report 2010
GR	Government Resolution
GRC	Gender Resource Centre
HAMA	Hindu Adoptions & Maintenance Act
HVR	Home Visit Report
HUF	Hindu Undivided Family
ICDS	Integrated Child Development Scheme
ICRW	International Center for Research on Women
IDI	In-Depth Interview
IEC Activities	Information, Education and Communication activities
IO	Investigating Officers

IPC	Indian Penal Code, 1986
JA	Junior Assistants
JMFC	Judicial Magistrate First Class
KAP	Knowledge Attitudes Practices
KI	Key Indicator
LCWRI	Lawyers Collective Women's Rights Initiative
M.A. No.	Miscellaneous Application Number
M.C.C. No.	Miscellaneous Criminal Case Number
MCD	Municipal Corporation of Delhi
MF	Medical Facilities
MSSK	Mahila Suraksha Evam Salah Kendra
MWCD	Ministry of Women and Child Development
NFHS	National Family Health Survey
N.I. Act	Negotiable Instruments Act, 1881
NCW	National Commission for Women
NGOs	Non-Governmental Organisations
OCS	Other Contractual Services
OOS	Other Office Expenses
PO	Protection Officer
PPO	Protection cum Prohibition Officer
PWDVA	Protection of Women from Domestic Violence Act, 2005
PWDVR	Protection of Women from Domestic Violence Rules, 2006
RTI	Right to Information
RUWA	Rajasthan University Women's Association
Second M&E Report	Staying Alive: Second Monitoring & Evaluation Report 2008
SH	Shelter Home
SHO	Station House Officer
SLSA	State Legal Service Authority
SP	Service Provider
TA	Travel Allowance
Third M&E Report	Staying Alive: Third Monitoring & Evaluation Report 2009
TISS	Tata Institute of Social Sciences, Mumbai
UT	Union Territory
WCD	Woman & Child Development

EXECUTIVE SUMMARY

The United Nations General Assembly defines "violence against women" as *"any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."* The 1993 Declaration on the Elimination of Violence Against Women noted that this violence could be perpetrated by assailants of gender, family members and even the "State" itself.

Domestic violence has many forms, including physical aggression or assault (hitting, kicking, biting, shoving, restraining, slapping, throwing objects), or threats thereof; sexual abuse; emotional abuse; controlling or domineering; intimidation; stalking; passive/covert abuse (e.g., neglect); and economic deprivation.

Violence against women is a universal phenomenon.¹ According to this report, women are subjected to different forms of violence – physical, sexual, psychological and economic – both within and outside their homes. The rates of women experiencing physical violence at least once in their lifetime vary from several percent to over 59 percent, depending on where they live. Current statistical measurements of violence against women provide a limited source of information, and statistical definitions and classifications require more work and harmonisation at the international level. In many regions of the world, long standing customs put considerable pressure on women to accept abuse.

Worldwide, governments and organisations are working actively to combat violence against women through a variety of interventions. A UN resolution designated November 25 as the International Day for the Elimination of Violence against Women.

History

In 1979, the United Nations General Assembly adopted an international Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was described as an international bill of rights for women. It came into effect in September 1981.

The CEDAW - for the first time - explained the term 'discrimination against women' to mean any differentiation made on the basis of sex which adversely affects the recognition, enjoyment or exercise by women of human rights and

¹ The World's Women 2010: Trends and Statistics. United Nations Statistics Division.

fundamental freedoms in the political, economic, social, cultural, civil or any other field. In 1993, the UN adopted the Declaration on the Elimination of Violence Against Women, as mentioned above.

Closer home, in 1950, the Constitution of India, guaranteed the right to life, including the right to live a life with dignity and a right to live a life free from violence, to every citizen under Article 21. It also empowered the State to take affirmative measures for women under Article 15, which makes special provisions for women and children. Article 15 has been widely resorted to and the courts have upheld the validity of special measures in legislation or executive orders favouring women.

However, it took India fourteen years to enact its first law directly relating to violence against women. In 1961, the Dowry Prohibition Act (DPA) was passed, penalising the act of giving and taking dowry. However, the enactment of the DPA could not prevent the demand for dowry or the act of giving it.

Violence Against Women in India

The issue of violence against women in India was publicly highlighted for the first time in the mid – 1970s, through the campaign against dowry and related violence.

The campaign led to the Criminal Law (second amendment) Act in 1983, which introduced Section 498A in the Indian Penal Code. Under this provision, 'cruelty' to the wife by the husband or his relatives was made a cognisable, non-bailable offense punishable with imprisonment up to three years and a fine. Cruelty was defined as including both physical and mental cruelty, *and* any harassment associated with the demand for dowry.

However, criminal law, by its very nature, requires the State and its agencies to activate it, which means it necessitates the police to act, to make an arrest, to investigate and to prosecute. Hence, more often than not, the law was defeated by sheer inaction which soon came to be institutionalised all over the country along with the policy of 'counselling, conciliation and mediation'.

Similarly, Section 304B was introduced in the Indian Penal Code (IPC) in 1986 which created a new offence of 'dowry death', making it possible to prosecute the husband and in-laws of a woman, if she died as a result of burns or any other injury within seven years of marriage under suspicious circumstances, and if it could be shown that she was subjected to cruelty or harassment by the husband/ in-laws in relation to the demand for dowry.

Moreover, Section 498A included cases of everyday violence against women in the home within its ambit, but Section 304B could only be used when the violence and the eventual death were linked with dowry. Moreover, only married women facing violence at the hands of the husband or their families could claim relief under Section 498A. Other forms of violence faced in non-matrimonial relationships were not included in these provisions.

For example, it did not protect women from violence in natal relationships or in relationships that have not received the legal sanction of marriage. The definition of 'cruelty' also posed difficulties when one tried to include issues of sexual violence, economic violence or even threats of violence within the ambit of the same. Additionally, when the issue of support systems for affected women came into play, the criminal law itself had little to offer with respect to taking care of the woman's immediate needs of protection, shelter and monetary relief.

The PWDVA

The Protection of Women from Domestic Violence Act (PWDVA) was intended and passed to address the gap between the guarantee of the Constitution of equal rights and the problems faced in existing laws. It provided comprehensive definitions and effective civil reliefs, while incorporating a criminal element which comes into play on the breach of civil order by a perpetrator, which leads to imprisonment and fine. It saw domestic violence as a criminal and civil law issue.

The Act was an innovation over the conventional understanding of domestic violence as it did not limit the protection against violence solely to '*marital relationships*'. It introduced the concept of '*domestic relationship*' which included all relationships based on consanguinity, marriage, adoption and even relationships which were '*in the nature of marriage*'.

The most important aspect of the Bill was the concept of '*right to residence*' which protected women from being pushed out of the house. It also introduced the concept of '*shared household*' which was more appropriate since women in non-matrimonial relationships were also covered by the law.

This fifth monitoring and evaluation report of the Lawyers Collective Women's Rights Initiative (LCWRI) presents a national picture of the status of implementation of the PWDVA in India, through an analysis of infrastructure provided by different states, budgetary allocations, orders passed by the Magistrates and judgments of the higher judiciary, and interviews conducted with key stakeholders under the Act.

Findings of the 2011 Survey

The 2011 survey was a collective exercise of the implementation of the PWDVA in three states by the LCWRI, the International Center for Research on Women (ICRW) and the Centre for Budget and Governance Accountability (CBGA).

It looked at the shifts and changes in knowledge, attitudes, practices (KAP) and procedures. A significant part of the annual tracking of the law has been the collection of primary evidence in three states - Delhi, Maharashtra and Rajasthan - to document changes from a baseline point (2009) to the endline point (2011) on select indicators.

In each of these states, a number of districts were selected to gather data based on pre-determined criteria. The overarching criterion was districts where the LCWRI had conducted capacity building workshops. In Maharashtra - Mumbai, Thane and Sangli were selected; in Delhi all districts were covered. In Rajasthan, one primarily urban district (Jaipur, which is also the capital, and thus similar to Mumbai) and one primarily rural district (Jodhpur) were selected for the study.

The tracking of shifts in KAP of key stakeholders under the PWDVA provides a valuable evidence base to understand the implementation of the PWDVA, the gains and continuing challenges. The survey found:

Awareness

Many stakeholders are not sure of their mandate and if they are, they are not carrying it out effectively. The Act provides for several stakeholders: Protection Officers (POs), Service Providers (SPs), the police, judiciary, and Medical Facilities (MFs) and Shelter Homes (SHs).

Protection Officers

The POs, according to the PWDVA, are a mechanism to coordinate between the victim and the court. They have to assist women when preparing a Domestic Incident Report (DIR), filling an application under the Act, and if required, accessing SPs, MFs or SHs and implementing court orders. The survey reveals that POs do not have exclusive charge of their work. They are located in police stations, where they could be influenced by the authority of the police. They do not have the privacy to carry out their work, are overworked and are not clear about the protocol of their appointment.

The survey found an increase in positive attitudes on gender and domestic violence of POs across the three states.

There is confusion around the definition of domestic relationship and whether women can be first respondents or not. While there is great knowledge of

the reliefs and provisions provided under the Act, an equally high number erroneously continue to think that the division of property and divorce are reliefs that can be claimed under this Act. Among the POs, the understanding of the “*right to reside*”, has improved as improved to their earlier understanding of the same.

Service Providers

SPs are mostly non-governmental organisations, (NGO)s especially those which are already providing services to women in a situation of violence. The Act sees the SPs as a key implementing agency, with the power to facilitate access to SHs and MFs, and to receive complaints from the Aggrieved Person (AP) in the form of a DIR, which can then be forwarded to the magistrate. However, there is no uniform protocol for SPs on the action to be taken when they are approached by an Aggrieved Person (AP), and they have no links to the POs and the police.

In 2011, only SPs in Karnataka assisted the POs in the enforcement of orders, attended court proceedings, collected orders from the court and handed them to the protection officers.

Police

The police remain the first point of contact for women who are victims of domestic violence. It is alarming that even with increased training initiatives by the concerned departments, the police continue to ‘*counsel*’ and ‘*settle*’ cases at the Police station, without taking appropriate legal action.

In most cases, the survey reveals, the police do not provide adequate information to the AP regarding her options under various Acts. They continue to discourage her to file an FIR under Section 498A of the IPC, and do not provide her with alternatives. This apart, the police are reluctant to help POs and SPs with enforcement and breach of orders, and say their hands are tied without specific directions from the court. They have, however, rendered help in serving of notices even without specific directions from the court.

Judiciary

The judiciary is responsible for making the Act a reality for the domestic violence victim and interpreting the various provisions of the PWDVA such as reliefs, among others. In the previous monitoring reports, it was seen that judges had some difficulty in understanding the basic purpose and objective of the Act. However, some of this has changed.

The 2011 analysis of orders suggests that judges are readily passing stop violence and residence orders. This is a major step forward in empowering women. Courts have also passed protection orders on prima facie evidence of domestic violence.

Women seeking Protection Orders have repeatedly said that it has given them the much needed space to negotiate a violence-free relationship. The Residence Orders as well as the provision for directing respondents to provide for alternate accommodation is being used by Courts, as and when needed.

The most common form of relief granted to women who have faced domestic violence is monetary relief for economic abuse. Compensation orders are being passed in cases of severe emotional and/or physical traumas. Interim and *ex parte* maintenance orders have also been passed. In some states, particularly in Himachal Pradesh, which has a tradition of *Nagar Panchayats*, it has been noticed that there are a large number of 'compromises' in courts.

None of the Courts have been able to achieve the PWDVA provision of a timeline of 60 days for passing of orders and this creates delays in justice. Judges have no definitive practice regarding accepting applications with a DIR by a PO. Some do, others do not, and some direct a DIR by the PO.

The LCWRI welcomes the trend of courts to accept applications under Section 12 without a DIR from a PO, as it enables direct access to courts for women who are clear they need a judicial remedy. The LCWRI believes that Section 498A and the PWDVA are both needed, as they play separate and complementary roles, leaving it to the woman to decide which remedy best suits her needs.

The Judicial magistrates need intensive training under the PWDVA and other related laws so they can pass appropriate orders and grant relief to APs. The new inductees to the judicial services must also be trained to deal with cases of domestic violence during their induction programme. As India is a signatory to the CEDAW Protocol, judges must be aware of the provisions of this international protocol.

Significant and controversial judgements

Two significant controversies arose in 2011: One was the judgment of the Supreme Court on '*live in relationships*' which recognised that such relationships exist and need protection. Second was the judgment that led to controversy where women in '*live in relationships*' were referred to as '*keep*', betraying entrenched patriarchal mindsets and the existence of negative stereotypes. The judgment clarified that women can be respondents, laying at rest once and for all, the confusion around this issue.

Lack of knowledge and clarity

A lack of knowledge and clarity about the Act and its implementation has been recorded in the 2011 survey. For example, the police, the POs and the SPs lack a clear understanding of the difference between the right to property and the right

to residence under the PWDVA. They also erroneously conclude that the division of property and divorce are reliefs that can be claimed under this Act. It is critical to clarify these misunderstandings, as these are likely to influence responses towards the women facing Domestic Violence.

In Delhi, over time, few POs seem to mistakenly believe that the DIR and the home visit report are the same. In Maharashtra, initially there was some confusion on this but in 2011, this significantly reduced. However, courts must distinguish between a 'home visit' and a 'DIR', as the latter does not necessarily need a home visit. Home visits may be required only to clarify disputed facts at the stay of passing orders.

Who is absent?

MFs and SHs, which under the PDWVA, are to help victims of domestic violence to access medical help and shelter services are absent. Medical professionals are the first port of call for many women – who receive injuries due to violence faced at home. However, over the years, health professionals and medical institutions have been absent in the implementation of the PWDVA, and in trainings organised by LCWRI government agencies.

The Legal Services Authority are also absent in the implementation of the PWDVA and no stakeholders have been able to use their services effectively. This has been a consistent observation since the Act has been enforced and is shocking, since women are entitled to free legal aid under the Legal Services Authorities Act, 1987.

Lack of data

The primary hurdle in assessing the status of implementation of the Act is lack of data. The nodal departments, which are responsible for getting the data from the notified health centers under the Act, have not done so. They are also responsible for issuing a circular to all stakeholders in a particular jurisdiction, specifying the role of each stakeholder within the Act, other information, and ensuring all stakeholders are linked to each other for better implementation. A uniform reporting system needs to be developed to collect data from all stakeholders under the Act.

Working together

Over the last few years, the LCWRI has been emphasising the need for all agencies to work together to implement the Act effectively, and help the aggrieved women access justice. Towards this, all training must be conducted jointly with all stakeholders present, so there is a common platform to interact with each other, share best practices, discuss issues and find solutions, in carrying out their duties under the Act.

Gender sensitisation

The survey finds and suggests that all stakeholders must receive gender sensitisation training by their respective departments from time to time.

Monitoring and evaluation of the Act

Monitoring and evaluation are essential tools to ensure accountability of the state for the effective implementation of the law. All states, through their agencies, must collect the necessary data on implementation of the Act and publish annual monitoring and evaluation reports.

Budget for the PWDVA

When the PWDVA became operational in 2006, the central government did not provide a budget for its implementation. In the absence of this, some state governments made allocations for the Act. Of the 33 states and Union Territories, 13 states have a "Plan Scheme" for implementing the PWDVA. Nineteen states do not have a scheme. No information was received from Lakshadweep and the CBGA did not file the RTI in Jammu & Kashmir.

Bihar, Jharkhand, Rajasthan and West Bengal have not committed resources for the PWDVA, though according to the third round of the National Family Health Survey (NFHS), they are also states that report a higher incidence of violence.

Many states have allocated funds for training, capacity building and awareness generation, and information, education and communication (IEC) activities of different stakeholders. These are extremely important components for the Act to function effectively. Kerala and Bihar deserve special mention due to certain interventions initiated by them. However, support to SPs is neglected. Madhya Pradesh is the only state that has budgeted funds for SHs run by private organisations.

The total budget for the effective enforcement of PWDVA would be around Rs. 1,522 crores, as a rough estimate. This includes all essential personnel and expenses infrastructure to ensure that the PWDVA is implemented in the spirit in which it was created.

The 2011 survey, which forms the basis for this year's report, concludes there has been some progress and some digression in the implementation of the Act. It documents and reports on good practices, the lacunae, and makes recommendations on changes needed.

CHAPTER 1

Introduction

The Protection of Women from Domestic Violence Act (PWDVA) of 2005 is a landmark legislation in the history of law making in India. While drafting the law the existing legal framework and international legal instruments were used as a basis for ensuring effective relief to women facing domestic violence.

How and why did the PWDVA come about?

The Global Situation

It started with the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) – an international convention adopted in 1979 by the United Nations General Assembly. Described as an international bill of rights for women, it came into force on September 3, 1981.

The CEDAW – for the first time - explained the term ‘discrimination against women’¹ to mean any differentiation made on the basis of sex which adversely affects the recognition, enjoyment or exercise by women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The CEDAW, *vide* Articles 2 and 3,² casts an obligation on the state parties to legislate and take all appropriate measures to end violence against women and to ensure full development and advancement of women in all walks of life.

In 1993, the United Nations General Assembly, in its Declaration on the Elimination of Violence Against Women³ (DEVAW), defined ‘violence against women’ as any act of gender-

¹ **Article 1:** For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedom in the political, economic, social, cultural, civil or any other field.

² **Article 2:** States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay, a policy of eliminating discrimination against women and to this end, undertake:

- a. To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;
- b. To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- c. To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions, the effective protection of women against any act of discrimination;
- d. To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- e. To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- f. To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- g. To repeal all national penal provisions which constitute discrimination against women.

³ A/RES/48/104, 85th plenary meeting, 20 December 1993.

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.

The Indian Situation

Closer home, the Constitution of India, which came into effect in 1950, under Article 21 guarantees every citizen the right to life, including the right to live a life with dignity and a right to live a life free from violence.

At the same time, the Constitution empowers the state to take affirmative measures for women under Article 15.⁴ This particular article, which permits special provision for women and children, has been widely resorted to and the courts have upheld the validity of special measures in legislation or executive orders favouring women. The provisions of the equality and non-discrimination based on the grounds, *inter alia* sex, has driven the state to enact various laws to deal with the phenomenon of violence against women.

After independence in 1947, the nation took fourteen years to enact its first law relating to violence against women. The Dowry Prohibition Act (DPA) was enacted in 1961 to penalise the act of giving and taking of dowry. However,

the enactment of the DPA could not prevent the demand for dowry or the act of giving it.

Violence Against Women in India

The issue of violence against women in India was highlighted for the first time in the mid – 1970s, through the campaign against dowry and related violence.

The campaign led to the Criminal Law (second amendment) Act in 1983, which introduced Section 498A in the Indian Penal Code (IPC). Under this provision, 'cruelty' to the wife by the husband or his relatives was made a cognisable, non-bailable offense punishable with imprisonment up to three years and a fine. Cruelty was defined as including both physical and mental cruelty, *and* any harassment associated with the demand for dowry.

Similarly, Section 304B was introduced in the IPC in 1986 which created a new offence of 'dowry death'. This provision made it possible to prosecute the husband and in-laws of a woman, if she died as a result of burns or any other injury within seven years of marriage under suspicious circumstances and if it could be shown that she had been subjected to cruelty or harassment by the husband/in-laws in relation to demand for dowry.

⁴ States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Although criminal law is a powerful tool and its very objective is to act as a deterrent, violence against women did not disappear with the enactment of Section 498A. Criminal law, by its very nature, requires the state and its agencies to activate it, which means it necessitates the police to act, to make an arrest, to investigate and to prosecute. Hence, more often than not, the law was defeated by sheer inaction which soon came to be institutionalised all over the country, along with the policy of 'counselling, conciliation and mediation'.

Moreover, Section 498A included cases of everyday violence against women in the home or within its ambit, but Section 304B could only be used when the violence and the eventual death were linked with dowry. Secondly, only married women facing violence at the hands of the husband or their families could claim relief under Section 498A. Thus, a lot of other forms of violence faced in non-matrimonial relationships were not included in these provisions.

For example, it did not protect women from violence in natal relationships or in relationships that have not received the legal sanction of marriage. The definition of 'cruelty' also posed difficulties when one tried to include issues of sexual violence, economic violence or even threats of violence within the ambit of the same. Additionally, when the issue of support systems for affected women comes into play, the criminal law itself has little to offer with respect to taking care of the women's immediate needs of protection, shelter and monetary relief.

The PWDVA

The PWDVA was designed and passed to address the gap between the guarantee of the Constitution of equal rights and the problems faced in existing laws. It provided comprehensive definitions and effective civil reliefs, while incorporating a criminal element which comes into play on breach of civil order by a perpetrator which leads to imprisonment and fine.

Some Highlights

Definition of domestic violence

The Act has a fairly broad definition of domestic violence and includes a range of harms, injuries and threats that degrade and/or terrorise women. **The definition includes physical, sexual, verbal, emotional and economic abuses, with each aspect further defined with illustration.**

Domestic relationships

The Act was an innovation over the conventional understanding of domestic violence, in that it did not limit the protection against violence solely to marital relationships. It introduced the concept of '*domestic relationship*' which included all relationships based on consanguinity, marriage, adoption and even relationships which were 'in the nature of marriage'.

The inclusion of relationships outside the marital context was much needed since there was an urgent need not only to recognise that unmarried women faced violence from their natal

families, but also to protect women in bigamous or fraudulent marriages and women who were in relationships in the nature of marriage. These women had been ignored by the laws existing so far and needed the same protection as women in 'legal' marriages.

Right to residence and shared household

The most important aspect of the Bill was the concept of '*right to residence*' which protected women from being simply pushed out of their homes. The objective of the law was to provide a right to reside in the shared household and 'due process' protection to the women in domestic relationships.

The Act also introduced the concept of '*shared household*' which was more appropriate since women in non-matrimonial relationships were also covered by the law. The PWDVA gave the women the right to reside in the '*shared household*', even in the absence of a formal title over it. The Act does not create a substantive right over property but a right of residence and is a safeguard against dispossession.

Protection Officers

The office of Protection Officers (POs) was created to provide a link between the aggrieved women and the legal system. The role of the PO was seen as assisting the woman in accessing the court and other support services (such as legal aid, medical facilities, shelter homes etc.) and assisting the court during the course of the proceedings and in the enforcement of orders. The

PO are often termed as the 'face of the PWDVA'.

Reliefs provided

In keeping with the objectives of the law and the rights recognised, the Bill provided civil reliefs in the form of protection orders or *stop violence* orders, residence orders and others, including orders restoring the woman to the shared household, preventing dispossession, restraining the respondent from entering the shared household etc., orders for monetary reliefs including maintenance, compensation orders aimed at providing damages for the mental injury suffered by the aggrieved person, and temporary orders for custody of the children. The civil nature of the reliefs was deemed appropriate in recognition of the fact that a woman facing domestic violence requires holistic support, which cannot be met through a criminal proceeding or a divorce petition.

Challenges to Implementation of the PWDVA

Although domestic violence has now become a legally recognised category in the Indian legal framework, the phenomenon of violence against women within the confines of a home continues.

The law and its implementation face new challenges every day. In the count of law the issue of forced sexual relationships within marriage has taken a long time to be recognised as violence. The inclusion of 'relationships in the nature of

marriage' continues to be debated, with some questioning the morality of such inclusion while others pose questions of practical aspects of such a relationship. Magistrates across the country have struggled to interpret this law with a purposive approach and provide effective reliefs to women approaching the courts.

The mandate of disposal of cases within 60 days remains far from being achieved, with the case loads of magistrates increasing every day. The nodal departments of the state governments are still developing practices for the stakeholders in their respective states to facilitate the implementation of the law.

Encouraging Practices

While there have been hurdles in the implementation of this law, there have been encouraging practices in various parts of the country.

This fifth monitoring and evaluation report of the Lawyers Collective Women's Rights Initiative (LCWRI) brings together a national picture of the status of implementation of the law in India through a detailed analysis of infrastructure provided by different states, budgetary allocations, orders passed by the magistrates and judgments of the higher judiciary,

and interviews with key stakeholders under the Act.

The law essentially performs a normative function, where it indicates what behaviour is unacceptable. A law on domestic violence has put in place the norm that violence against women is unacceptable and the norm is backed by state sanctions. But, having a norm will not by itself end violence. Material resources are necessary to facilitate access to justice.

The true spirit of any legislation is recognised only through its effective implementation. The PWDVA not only identifies specific stakeholders and assigns them roles to facilitate access to justice for an aggrieved woman but also endows the government with specific obligations⁵ to ensure successful implementation of the Act.

The LCWRI, which had been instrumental in the enactment of the PWDVA, took a step further by monitoring and evaluating the implementation of the Act annually since 2007. This was with the goal that at the end of five years of monitoring and evaluation, the government would institutionalise and develop mechanisms to conduct the same process.

⁵ Duties of Government: The central government and every state government shall take all measures to ensure that — (a) the provisions of this Act are given wide publicity through public media including the television, the radio and the print media at regular intervals; (b) the central government and state government officers, including the police officers and the members of the judicial services, are given periodic sensitisation and awareness training on the issues addressed by this Act; (c) effective co-ordination between the services provided by concerned ministries and departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted; (d) protocols for the various ministries concerned with the delivery of services to women under this Act, including the courts, are prepared and put in place.

The data for this report has been collected by LCWRI and its partners, the International Center for Research on Women (ICRW) and Center for Budget and Governance Accountability (CBGA).

Chapter 2 of this report explores the allocations made by the different state governments across the country - in the form of infrastructure and budget. It analyses the information, highlights the shortcomings in the system, and makes recommendations to bridge the existing gaps and bring together best practices from across the country.

Chapter 3 presents surveys and interviews with key stakeholders in select states of the country, revealing the experience of the stakeholders as they deal with the PWDVA on a daily basis. While some interviews and responses have been disappointing,

others have shown signs of great progress since 2006. Observations made around knowledge, practice and attitudes (KAP) of stakeholders in this chapter tell us how the Act works at the ground level.

Chapter 4 is an analysis of the Orders and Judgments passed by the higher judiciary in 2010 – 2011 and highlights the conclusive judgments delivered on issues that have led to debates, in the courts and in society.

Chapter 5 presents conclusions and recommendations of the 2011 survey.

This fifth report of the LCWRI attempts to present the national situation on the implementation of the PWDVA, shares practices from different states, and formulates recommendations to the government for better implementation of the Act.

CHAPTER 2

Implementation of the PWDVA

SECTION A. Infrastructure for the Implementation of the PWDVA

Under the PWDVA, the central responsibility of infrastructure development was given to state governments and partly to the central government.¹

This section examines the progress of each state in terms of infrastructure created for the key stakeholders appointed under the Act. It further discusses initiatives taken for starting a multi-agency response system and efforts at the state level for training and generating awareness about the PWDVA.

In 2011, the LCWRI noted a gradual decline in participation in states across India. For this report, only 15 states provided information as compared to the first and second Monitoring and Evaluation (M&E) Report, for which almost all states sent information. From this year's analysis, the trends in infrastructure are consistent. For this reason, the trends have not been dealt with in detail, they have been summarised, and references from the previous years' report have been given. For this report, the section will highlight the changes and shifts.

Methodology

The nodal departments of different states are responsible for providing

adequate infrastructure under the PWDVA. The respective departments are in charge of appointing POs and notifying SPs, MFs and SHs and organising training and awareness programmes related to the PWDVA.

1. Methodology for 2007 – 2010 reports

Since 2007, the LCWRI has used various methods to collect data on infrastructure. In 2007, it sought information from the nodal departments of states, but since the Act was in its first year of enforcement, very few states were able to respond.² In 2008, the LCWRI and its partners visited about twenty states.³ In the third (2009) and fourth (2010) years of monitoring and evaluation, the LCWRI organised meetings with nodal departments of the states and also visited select states.

2. Methodology for the 2011 report

2.1 Pre-Conference meeting for Women and Child Development

In keeping with the methodology followed in the previous years, the LCWRI, in collaboration with the National Commission for Women (NCW), organised a pre-conference meeting on August 26, 2011 for all state nodal departments.⁴ The invitation for the meeting was sent out by the NCW. The response received from state governments was low, with representations only from Chandigarh, Madhya Pradesh, Gujarat, Karnataka,

¹ Section 11 PWDVA, 2005

² Lawyers Collective, "Staying Alive: First Monitoring & Evaluation Report on the Protection of Women from Domestic Violence Act, 2005" (2007). Available at <http://www.unifem.org.in/PDF/Complete.pdf>.

³ Lawyers Collective, "Staying Alive: Second Monitoring & Evaluation Report on PWDVA (2008): available at http://www.unifem.org.in/PDF/Monitoring_and_Evaluation_Report.pdf.

⁴ Meetings held on August 17, 2011 at the Constitution Club, New Delhi.

Meghalaya, Uttar Pradesh, Assam, Tripura, Haryana, Maharashtra and Orissa.

Apart from these states, Kerala, West Bengal, Andhra Pradesh, Bihar and Rajasthan had sent information by post and email. To get data from each state, detailed questionnaires were developed by the LCWRI, in consultation with ICRW and circulated four weeks before the pre-conference meeting. State nodal departments were requested to complete the questionnaire which sought detailed information on the POs, SPs MFs, SHs and training and awareness initiatives. These questionnaires were later collected at the meeting and this data is the primary source of information in this section.

2.2 Meeting of the Non-Governmental Organisations

Similar to the methodology followed in 2010, a meeting was also organised for NGO representatives from different states.⁵ The objective of the meeting was to see if and how the PWDVA was being implemented at the grassroots level.

The states represented at the meeting were: Tamil Nadu, Assam, Nagaland, Kerala, West Bengal, Madhya Pradesh, Orissa, Goa and Gujarat. The important issues highlighted during the discussion are in this section.

2.3 Limitations and challenges

In preparation for the pre-conference

meeting, the LCWRI faced many difficulties in coordination with officials of the nodal departments.

Many states did not respond to the invitation for the pre-conference meeting. Also, due to lack of a systematic method of data collection in their respective states, many states were unable to provide complete and detailed information. When asked for clarifications from the WCD representative, they were unable to explain the data provided, particularly those related to the number of Domestic Incidence Reports (DIRs) filed by the POs.

Some states had not adhered to the reporting period specified in the questionnaire and gave blanket figures from 2007 to 2011, instead of reporting for July 2010 – June 2011. This made it difficult to determine if new developments had taken place. The goal was to have a WCD meeting followed by the NGO meeting, to gauge ground realities. However, this was not possible.

The coordination and the meeting with the NGOs were more organised, although there were few state representatives at the meeting.

Stakeholders Under the PWDVA

The major stakeholders in the implementation of the PWDVA are POs, SPs and MFs and SHs.

⁵ Meeting held at the India Islamic Cultural Centre, New Delhi.

1. Protection Officers

The POs are an integral link in facilitating an aggrieved woman's access to justice. The Act recognises that women who face domestic violence have special needs. With this in mind, the Act created POs as a mechanism to coordinate between the victim and the court.

According to the Act, POs are under the control and supervision of the magistrate and the government. The POs have to perform the duty imposed on them by the Magistrate.⁶ Beyond this, POs are obligated to assist women when preparing a DIR, filing an application under the Act, and if required, accessing SPs, MFs or SHs and lastly, implementing court orders.⁷ Most importantly, the POs primary role is to minimise the victim's exposure to additional violence.⁸

1.1 Appointment of the POs

The PWDVA bestows the state government with the responsibility of appointing POs.

The state government by notification shall determine the number of POs to be appointed along with the jurisdiction of the appointed POs. A detailed guideline under the Protection of Women from Domestic Violence Rules, (PWDVR) 2006 states that the POs may be drawn from among the

government cadre or members of the NGO.⁹

The Act also requires the state government to provide necessary office assistance to the protection officers for the efficient discharge of their responsibilities under the Act.¹⁰

Table 1 (in Annexures) details the state wise appointments of POs. More specifically:

- **Tripura:** Till recently there were only 4 POs. In 2011, the Tripura government appointed 60 more POs, of which 4 are women from local NGOs, working with nodal departments of the state.
- **Madhya Pradesh:** *Vide* directions given by the Department of Women and Child Development (DWCD) on July 29, 2011, an independent PO is to be appointed in every district, and housed in the family counselling centres in the district.
- **Maharashtra:** The state is in the process of appointing an independent cadre of POs. In the first phase, the state will be appointing 37 POs at the district level with two other supporting staff, which translates into 37 Assistant POs and 37 multipurpose workers, respectively. However, the representative from the nodal

⁶ Section 9(2) PWDVA, 2005

⁷ Section 9(1) PWDVA, 2005

⁸ Lawyers Collective "Handbook on Law of Domestic Violence", LexisNexis Butterworths publication, 1st Edition, 2009

⁹ Rule 3(1) PWDVR, 2006

¹⁰ Rule 3(4) PWDVR, 2006

Appointment of independent Protection Officers

Till 2010, independent POs were appointed in Gujarat, Delhi, West Bengal, Haryana and Tamil Nadu. In 2011, Karnataka and Kerala appointed independent POs. This indicates an increased preference for appointing independent POs.

However, the LCWRI has not been able to establish a clear link between independent POs and better access to justice. Its experience is that in many states, courts give more importance to POs who are government staff, as compared to independent POs.

POs with additional charges have an added advantage as they are provided with infrastructural facilities, in contrast to independent POs. As these POs work within the system, they can make quick referrals and inter linkages with different departments of the government. But, the appointment of government staff as POs also has its shortcomings. They hold additional charge, are not at liberty to do the work of POs only, and are not qualified social workers. The discussion between the appointments of independent POs as opposed to additional POs continues.

In Karnataka, *via* a government order, 47 independent POs were to be appointed (Order No. MNE 236 SJD 2010 dated 4 – 12 – 2010). Of these, 23 have already been appointed through departmental promotion and 24 officers will soon be appointed through Karnataka Public Service Commission. It is to be seen if an appointment on the basis of promotion can act as a major incentive. In Kerala, 30 probation officers were appointed as POs. However, from 2011, probation officers no longer work as POs. Instead, 14 posts of independent POs have been created. They are attached to the District Probation Offices and are availing the facilities available in that office.

department says that despite the advertisement of the post of independent POs, there were no takers. One reason for this is that the salary offered is Rs 15,000 per month, and no qualified social worker is willing to accept this salary. If the system of independent POs is to work, there has to be a commitment for better pay by the department.

1.2 Role of the POs

The Act contemplates that the PO will be the first port of call for a victim of

Domestic Violence (DV). Upon being approached, the PO, among its various other functions, has to assist the woman with the preparation of a DIR, to make an application under Section 12 to the magistrate and if the AP so desires, service of notice, and enforcement of orders.

1.2.1 Submission of DIRs

Section 2 (e) of the PWDVA defines Domestic Incident Report as a “report made in the prescribed form on receipt of a complaint of DV from an AP”. In other words, the DIR is intended to be a

record of the grievance made to the PO or the SP.

Proviso to Section 12 (1) of the Act states that before passing any orders on such an application, the magistrate shall take into consideration any DIR received by him from the PO or the SP. In the past two years across India, there has been no uniform practice followed by magistrates. In 2011, based on the analysis of the data provided, the trends persist. The chart below indicates the practice followed by magistrates in some states on submission of DIR along with application:

However, **Kerala** is the only state in which a shift is noticed – between 2010 and 2011 – from the magistrates accepting the DIR occasionally to always accepting applications without the DIR.

1.2.2 Applications filed by POs on behalf of the AP

The PWDVA imposes upon the PO to make an application in such a form and manner as may be prescribed to the magistrate, if the AP so desires.¹¹ In other words, it is mandatory for the PO to assist the AP, if she so desires, in preparing an application under Section 12 of the Act and file the same in the court of law along with a DIR.

For 2011, from the data provided by the nodal departments, the following observations can be made:

Haryana: The total number of DIRs recorded by the POs - when the victim approaches them directly - is more than the number of applications filed by the POs on their own. In 2010, a similar gap was noticed in Haryana's data. The outcome of the remaining DIRs that have not been filed in court

Compulsory submission of DIR along with application	Maharashtra
Sometimes accept DIR along with application	Andhra Pradesh, Bihar, Karnataka, Meghalaya & West Bengal
DIR along with application not insisted upon	Chandigarh, Haryana, Kerala, Orissa & Uttar Pradesh
No information	Madhya Pradesh, Rajasthan, Gujarat & Tripura

¹¹ Section 9 PWDVA, 2005

is not known. It is possible that the POs have gradually decreased filing DIRs in courts in all cases when a woman approaches them and instead, have been settling cases through counselling on their own or with the help of the SP.

Gujarat: The court insists on a DIR. If the DIR is not filed along with the application, the court instructs the PO to record the DIR.

Rajasthan: The POs have only filed the DIRs on the direction of the court during this period. To corroborate this, the findings of the survey conducted by the ICRW reinforces that the POs are only filing DIRs at the court's direction, as the magistrates in the state refuse to accept DIRs filed by the POs, in cases where the women approach the POs directly.¹² Interestingly, most of the DIRs in the state are being filed by the APs directly. The DIRs are also being recorded by the police.

West Bengal & Andhra Pradesh: Similar to 2010, the number of applications filed by the POs is equal to the number of DIRs recorded. This indicates that the POs are filing DIRs only if the AP agrees to file an application in court.¹³

Karnataka: There has been a gradual increase in the number of cases filed and this could be attributed to increased awareness among the public. However,

the LCWRI has not been able to establish a correlation between the rise in the number of cases filed and increased public awareness. The Registrar General, High Court of Karnataka, issued a circular to all magistrates to fix one day in a week/fortnight/month for the hearing of cases under PWDVA to ensure speedy disposal of cases. Lawyers, however, have found that this restricts access to courts.

1.2.3 Service of notice

Service of notice is the first stage of legal proceedings after the application is filed and before the trial begins. Once the date of hearing is fixed, the magistrate shall provide a copy of the notice to the PO. The PO, in turn, is conferred with the duty of serving the notice to the respondent to appear in court.¹⁴

Although Section 13 (1) of the PWDVA specifies that it is the responsibility of the PO to serve the notice, Rule 12 (2) (a) of the PWDVR explicitly states that the PO may direct "*any other person*" to serve notice on their behalf.

The first and second LCWRI M&E Reports showed that magistrates in most cases asked the POs to personally serve notice. It was also observed that the POs with additional charge were delegating their existing staff to serve notice on their behalf. At the same time, the independently appointed POs found it inconvenient to serve

¹² See Chapter 3

¹³ On examining the data collected from the WCDs of West Bengal and Andhra Pradesh this year, it was observed that in West Bengal, the number of DIRs filed from July 2010 – June 2011 is 2,732 which is equivalent to the number of applications filed in court. Similarly in Andhra Pradesh, the total number of DIRs filed during the same period is 1,516 and the number of applications filed in court is also 1,516.

¹⁴ Rule 12 (3), PWDVR, 2006.

notice due to lack of infrastructure and support staff.

The third LCWRI M&E Report showed a change in this trend, in that most state notices were primarily served through the police. The High Courts of **Andhra Pradesh and Delhi** had issued directions to the police and the Nazarat Branch¹⁵ to depute personnel for the service of notice and provide adequate protection to the PO whenever they served notice in person. The Directorate of Social Justice and Empowerment in **Himachal Pradesh** had also issued a circular stating that the PO was free to order the police to serve notice. These findings were echoed in the Fourth M&E Report.¹⁶ See Annexure (Table 2) for stakeholders who have been serving notices in states.

1.2.4 Enforcement of orders

There are no specific mechanisms for enforcement of orders under the PWDVA. The Act states that the enforcement procedure under Section 125 of the CrPC can be used instead.¹⁷ It further states that the magistrate can direct the PO to assist the court in the enforcement of orders.

The first two LCWRI M&E Reports established that the POs found it extremely difficult to enforce orders due to geographical limitations and

lack of infrastructure. POs in most cases required the assistance of the police to enforce orders.

In the Third M&E Report, **Andhra Pradesh** was accorded a special mention as it was the only state which had actively encouraged the POs to make a separate application under Section 19 (7) of the PWDVA for police assistance at the time of enforcement of orders.

In 2010, all states reported that the police assisted the POs in the enforcement of orders. This year too, the same trend has been observed with the exception of Gujarat, as it is the only state reporting that the police did not provide any assistance whatsoever, in the enforcement of orders.

1.2.5 Breach of orders

According to Rule 15 of the PWDVR, an AP is required to submit a written report of a breach of order duly signed by her to the PO, who should then forward the complaint, along with a copy of the protection order, to the concerned magistrate.¹⁸ If the AP desires, she may also make a direct complaint of the breach to the police or the magistrate.¹⁹

In 2010, with the exception of **Maharashtra and Delhi**, all states

¹⁵ The Nazarat Branch is one of the organisations in the administrative set up of the Office of the Deputy Commissioner. The main function of Nazarat Branch is to look after the general administration and office management.

¹⁶ Lawyers Collective & The International Center for Research on Women, "Staying Alive: Third Monitoring & Evaluation Report on the Protection of Women from Domestic Violence Act, 2005" (2009).

¹⁷ Rule 6 (5) of PWDVR, 2006.

¹⁸ Rule 15 (3) PWDVR, 2006

¹⁹ Rule 15 (4) PWDVR, 2006

Special mention: Andhra Pradesh

Police in Andhra Pradesh are instrumental in the enforcement of orders. In 2011, it was reported that the police have not been co-operative in some districts in executing non-bailable warrants and implementing court orders like Residence & Protection Orders. In lieu of problems faced by the POs in execution of orders, the Andhra Pradesh government circulated a letter (Lr.No.765/B3/08, dated: 11.08.2010) to all the superintendents of police to issue directions/instructions to all the Station House Officers under their jurisdiction of the district concerned to assist the POs i.e., Project Director, District Women & Child Development Agency (DWCDA) of Women Development & Child Welfare Department (WDCWD), whenever they approach the Station House Officer (SHO) with a DV case along with court orders/ warrants.

reported that the police took immediate action on the receipt of a complaint of breach. In 2011, in most states, the police have been proactive in taking action in cases of breach. **Bihar and Gujarat are the only states where the police do not take action when a breach is reported.**

The reasons stated for this lack of initiative is the little coordination between the POs and the police officers. West Bengal, Maharashtra and Karnataka have also reported that police take action for a breach – a only when they are directed by the court. This year, Andhra Pradesh shared that if the PO files a contempt case when a breach of the court's order is reported, the police file a charge-sheet against the accused person. In Rajasthan, as reported in the Fourth M&E Report, directions with regards to the enforcement and breach have already been issued by the Director General of Police.

However, it has been difficult to determine the practices which have been followed throughout the country due to lack of information.

2. Service Providers

SPs are mostly NGOs, particularly those already providing services to women in a situation of violence. The Act envisages the role of the SPs as a key implementing agency; they have the power to facilitate access to SHs and MFs and receive complaints from the AP in the form of a DIR, which can then be forwarded to the Magistrate.²⁰ See Annexure (Table 3) for data on the SPs notified under the act.

2.1 Registration of SPs

Over the years, many states have notified organisations like Family Counselling Centres, SHs and special cells, which were receiving government funds through various schemes operating in the state. However, there

²⁰ Section 10 (2) PWDVA 2005

are some exceptions. **Andhra Pradesh, Chandigarh, Karnataka, Meghalaya, Rajasthan, Uttar Pradesh and West Bengal** have registered those NGOs - which are functioning without any government funding - as SPs.

The Fourth M&E Report noted that Madhya Pradesh and Maharashtra – which had primarily notified Family Counselling Centres - had also notified a few NGOs that had not been receiving any government funding. In 2011, it is observed that both these states have notified more such NGOs, indicating a retreat from this long-standing practice.

In March 2011, Gujarat had notified 236 SPs at the district and taluk level. Two legal counsellors with law degrees have also been made available to each SP. However, the state government has notified multi-purpose women centres which were already receiving funds from the government.

Unfortunately, under the PWDVA, no separate funds have been allocated to these SPs.

Allocation of funds under the PWDVA

Since 2009, the SPs in Kerala have been allocated funds by the Kerala State Social Welfare Board, specifically for the implementation of the PWDVA. The funds have been allocated as honoraria for legal counsellors and for psychological and medical services tendered to the victims of DV.

2.2 Role of SPs

The predominant role of SPs is counselling, medical support and providing shelter (See Annexure, Table 3). In the last four years, it seemed that SPs were somewhat unaware of their role under the PWDVA. However, this year's data shows that SPs in some states have gone beyond their role of counselling and are assisting the aggrieved women by filing the DIR and providing legal assistance.

While it's a gradual shift, it is a significant step towards achieving the objectives of the Act.

2.2.1 Domestic incident reports

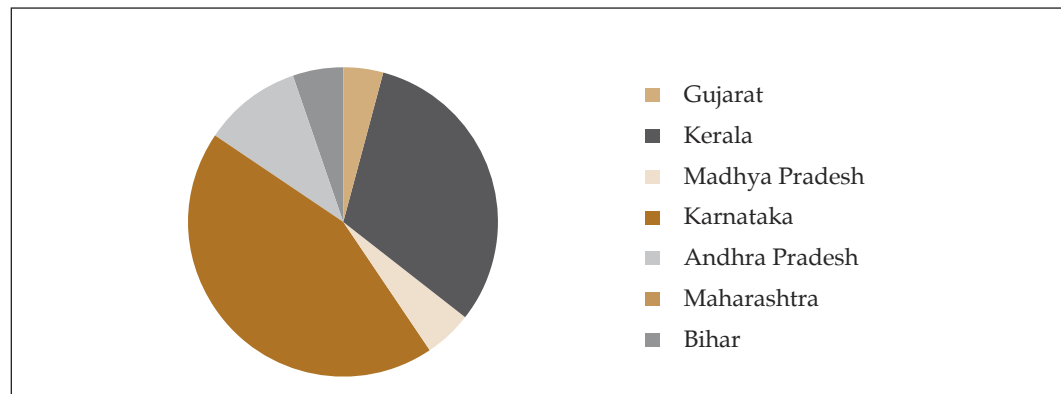
Within Section 10 (2) of the Act, a duly registered SP has the power to record a DIR if the AP so desires, and forward a copy to the magistrate and the PO, who has jurisdiction in the area.

In 2010, Assam, Karnataka, Maharashtra, Madhya Pradesh, Manipur, Mizoram and Tamil Nadu had recorded DIRs and provided legal assistance to the AP.

The Figure 1 indicates that the SPs in **Karnataka and Kerala** have been pro-active in implementing their duties as stated in the Act. This could be due to legal counsellors who have been appointed to assist the SPs in the state of Kerala, as well as, extensive awareness campaigns and trainings that have been conducted on the PWDVA, in both the states.

In **Gujarat**, unfortunately, the lower court magistrates believe that the DIR

Figure 1: States where SPs have recorded DIRs – 2011



filed by the PO carries more weight than the one filed by the SP. This could be because of the lack of acceptance among magistrates of the SPs work in the legal field.

2.2.2 Other duties

According to Rule 12 (a) of the Act, the PO can direct any other person to serve the notice on their behalf. **Karnataka, Madhya Pradesh and Andhra Pradesh** are the only states where the SPs have been assisting the POs in serving summons.

The POs in many states have been conducting home visits of the shared household for the purpose of a preliminary enquiry. Karnataka, Madhya Pradesh and Andhra Pradesh are the only states where the SPs have been assisting the POs by conducting home visits.²¹

In 2011, it is only in Karnataka that SPs have been assisting the POs in the

enforcement of orders. In addition, the Service Providers have been attending court proceedings, collecting orders from the court and handing them to the POs.

3. Medical facilities and shelter homes

Under the PWDVA, MF and SH have been notified to provide support services most needed by victims of DV. The Act makes it mandatory for the notified SHs to provide shelter to the AP.²² The MFs are obliged to provide medical aid to APs and are empowered to record DIRs based on the complaints made by the APs.²³ (See Annexure Table 4 for data on MFs and SHs by state).

Various states have continued to notify organisations as SHs that are already receiving support from the central or the state government. These SHs are mostly run under the *Swadhar*

²¹ There is no clarity on whether these home visits are being conducted at the court's direction or the visits are done prior to the case being filed in court.

²² Section 6 PWDVA, 2005

²³ Rule 17 (3) PWDVR, 2006

Scheme²⁴ and the Short Stay Home Scheme²⁵ sponsored by the respective state governments.

As seen in the previous years, in 2011, all government run hospitals and health facilities in most states have been notified as MFs.

However, the states of Maharashtra, Tripura, Orissa, Meghalaya, Bihar and the Union Territory of Chandigarh have not yet notified MFs. In Maharashtra and Tripura, directions have been issued to all hospitals to make available medical services to the aggrieved women.

Two key issues are the lack of awareness and negligible allocation of budget for the MFs, specifically for the PWDVA.

However, in **Haryana**, Awareness Generation Camps are organised by the Protection cum Prohibition Officers (PPOs) with nursing staff, Auxiliary Nurse Midwives (ANMs) and doctors in all districts. **Andhra Pradesh** has prepared and submitted a proposal to the government to allocate funds under the PWDVA for medical treatment to aggrieved women.

Multi Agency Coordination

The PWDVA envisaged many stakeholders in its implementation.

While the Act did not stipulate any particular reporting format for stakeholders, states have gradually recognised the need to establish a mandatory reporting format for effective implementation of the Act.

In terms of referrals, in 2010 and 2011, it was observed that the POs, SHs and MFs refer relevant cases to each other in Rajasthan, Tamil Nadu, Karnataka and Kerala.

A few states have also provided the number of cases that have been referred among the stakeholders. **Karnataka, Madhya Pradesh and Andhra Pradesh have the most effective referral system in place.** Chandigarh reported that a fresh notification has been circulated to all the SPs with instructions to approach the protection officers whenever they receive cases of DV.

1. Reporting by POs

The information provided by nodal departments of states show a reporting system is in place. The 2010 M&E Report stated that most states have been following a prescribed format forwarded to them by the central government.²⁶ As per the format, POs have to report to the nodal agency, and in turn the nodal agency reports to the Ministry of Women and Child Development (MWCD).

²⁴ *Swadhar* Scheme was launched by the MWCD during the year 2001 – 02 for the benefit of women/girls in difficult circumstances to provide the primary need of shelter, food, clothing and care to the marginalised women/girls living in difficult circumstances.

²⁵ The Government of India launched this programme in 1969 in the central sector to protect and rehabilitate those women and girls who are facing social and moral danger. The services extended in these homes include medical care, occupational therapy, education-cum-vocational training and recreational facilities.

²⁶ Lawyers Collective & The International Center for Research on Women, “Staying Alive: Fourth Monitoring & Evaluation Report on the Protection of Women from Domestic Violence Act, 2005” (2010), Annexure 12

It may be premature to state that the POs are reporting to the nodal department of their respective states on a regular basis. Moreover, till now, no monitoring system has been set up by the MWCD to supervise the work done by the nodal agency.

However, from the information provided, it can be said that the POs in all states have been notified to submit a monthly or quarterly progress report to their respective nodal departments. In some states, the POs have also been asked to attend meetings with the nodal department.

In **Haryana and Andhra Pradesh**, the POs have also been asked to attend quarterly meetings with their respective nodal departments, besides submitting a monthly report.

In **Gujarat**, POs have to attend a bi-annual meeting with the Director, Social Defence Officer & the Joint Commissioner, DWCD, besides the submission of a quarterly report.

In **Bihar**, POs have to attend a bi-monthly meeting with the Managing Director/Administrative Officer of the nodal department.

However, it is difficult to say what the outcomes or action as a result of these meetings are.

2. Reporting by SPs

To ensure that the law is being effectively implemented, periodic monitoring of other stakeholders by the nodal department is vital. According

to the Fourth M&E report, **Rajasthan** is the only state where a separate form for SPs to report has been issued. This year, there has been some change. More specifically:

- In **Kerala**, the SPs are reporting to the Kerala State Social Welfare Advisory Board. The Board, in turn, submits a consolidated report to its concerned department.
- In **Karnataka**, the SPs are maintaining records under the PWDVA and are submitting them to the concerned POs in their jurisdiction.

3. Reporting by other stakeholders

MFs and SHs are still not visible in the implementation of the Act: Four years after the enactment of the PWDVA, there are no proper reporting formats for these agencies. This is a major impediment in the coordination and the multi-agency response system envisaged under the Act.

States with reporting systems in place: In the Fourth M&E Report, it was found that **only Rajasthan, Tamil Nadu, Karnataka and Kerala** had a reporting system in place for both the MFs and the SHs. This year too, the nodal department of these states have continued to maintain records of the PWDVA cases dealt by them.

4. Coordination committees

States that have appointed Coordination Committees: Andhra Pradesh was

the first state to undertake positive initiatives to facilitate coordination, followed by Kerala, Uttarakhand, Maharashtra, Madhya Pradesh, Rajasthan, Himachal Pradesh and Karnataka.

Karnataka has shown constant progress in the area of effective implementation of the Act. The Third M&E Report stated that Karnataka had formed a committee at the state level. In 2011, Karnataka has reported that Coordination Committees have not only been constituted at the state level, but at the district and the *taluka* level and quarterly meetings are conducted. This year, three state level meetings have been held.

Gujarat: In 2011, this was the only state that reported that a Coordination Committee headed by the Deputy Secretary of the DWCD (chairperson) at the state level. The Committee has been monitoring the progress of the implementing agencies, identifying issues and addressing them through coordination. To ensure effective implementation of the Act, the Committee has also been conferred with the authority to create new systems within the department.

No Committee states: Many states have not formed Coordination Committees and where there are committees, the LCWRI has not been able to determine whether they have taken significant steps to bring about better coordination among the

different mechanisms. There is a lack of clarity on the mandate and powers of the Committee members.

Training and Awareness

The PWDVA lays down the central and state government's duties. These include media publicity of the Act and for government officers and members of the judiciary, periodic sensitisation and awareness training on the issues of the Act.²⁷

1. Training

Almost all state governments have organised trainings for various stakeholders under the Act. It is understood that the state government's efforts in implementing the Act will be successful if the stakeholders are aware of their roles and responsibilities. And, this requires extensive trainings on the PWDVA. States have undertaken the following activities in 2011:

- **Madhya Pradesh** reported a 3-day training programme for the Counsellors and the SPs on Counselling Ability, organised by the Academy of Administration and Management, Bhopal. This is an important training as there are many interpretations of counselling for victims of DV by the counsellors and SPs.²⁸ All counsellors coming into contact with women experiencing DV need such training.

²⁷ Section 11 PWDVA, 2005.

²⁸ Lawyers Collective & The International Center for Research on Women, "Staying Alive: Fourth Monitoring & Evaluation Report on the Protection of Women from Domestic Violence Act, 2005" (2010).

- **Andhra Pradesh** reported a two day State Level Workshop with all the legal counsellors and social workers working under the POs in the districts, organised by *Bhumika Women's Collective*.
- **Haryana** reported a training to review, reflect upon, and analyse the challenges and experiences faced by the PPOs while implementing the special cell, organised by the Tata Institute of Social Sciences (TISS), Mumbai.

Karnataka - impact assessment of trainings

The LCWRI, in its past reports, reported that states have not conducted impact assessments to measure the outcome of their training programmes. In 2011, Karnataka has initiated an impact assessment where participants give pre and post training feedback.

Kerala - induction training for the POs

In 2011, the newly appointed independent POs in Kerala attended an intensive 21 days induction training programme on the implementation of the Act, conducted by the organisation, IMG. The Act and rules and the handbook containing details of POs and SPs were distributed to the participants.

2. Awareness

In 2010, **Karnataka, Bihar, Tamil Nadu and Gujarat** came up with innovative and novel ways of reaching out to the remote and rural areas in their respective states. This year, **Kerala and Andhra Pradesh** have undertaken extensive efforts to create awareness. More specifically:

- **Kerala** has produced publications to create awareness. Literature published at the initiative of the state government was disseminated among all stakeholders. Recently, a book on laws related to women, *Sthreeyum Niyamaavum*, was published and 2.52 lakh copies printed and distributed; a booklet on the PWDVA and its rules and other related government orders/notifications has been printed; and the nodal department has printed a women's policy document titled *Vanitha Nayam*.
- **Andhra Pradesh** has had live TV panel discussions on the subject of DV and awareness campaigns with *Anganwadi* workers. The Project Director of DW&CDA, Hyderabad organised a "2K Run" programme against DV on women. The objective of the programme was to spread awareness about the PWDVA. Under this programme, the nodal department launched a website "www.pwdvhyd.ap.nic.in" where information about the Act and other related issues is provided.

Toll free helplines: Since 2008, many states have set up a 24 hour toll free women's helpline '1091' facility. In 2011, a women's helpline in Tripura has become operational for victims of DV. In Madhya Pradesh, the WCD Department is setting up a women's helpline at the Family Counselling Centres.²⁹

Observations from NGOS

The objective of collating state-wise data from the NGOs is to have an unbiased, holistic overview of the implementation of the PWDVA. The LCWRI organised a meeting of NGO representatives from various states to come together and share their experiences of working on the PWDVA.³⁰

Independent POs: Almost all representatives of all states recommended the appointment of an independent cadre of POs. They felt that the POs with additional charge are overburdened with work and are unable to perform their duties as POs effectively. They further suggested that the state provide these independent POs with infrastructural and other forms of support.

SPs not working: As in 2010, the representatives said that most of the notified SPs in states are not working on issues related to women and are unaware of their role within the PWDVA.

The NGO meeting brought many issues on the table. More specifically:

1. West Bengal: Discouraging women from filing applications

The POs in West Bengal have to report to the nodal department through submission of quarterly reports. However, according to the NGO representative, the reports are delayed. To make matters worse, the POs have been actively discouraging victims of DV to approach the SPs.³¹

Appallingly, the representative shared that in 2011 the POs have been charging the victims for their services, for preparing the DIR and other such reports. This had also been reported and highlighted in 2010 and could be a result of the poor infrastructure and meagre salaries provided to the POs in West Bengal. It is important that these issues are addressed by the state government as soon as possible through a grievance redressal mechanism.

2. Goa: Lack of counsellors

Counselling, under the PWDVA, continues to be a grey area. The representative from Goa shared that counselling is done only if directed by the courts. In addition, due to lack of counsellors in the state, the court refers the aggrieved person to private counsellors who have been

²⁹ For details see Annexures.

³⁰ The NGO meeting was held at the Constitution Club, New Delhi, August 17, 2011. Representatives from the states of Gujarat, West Bengal, Orissa, Madhya Pradesh, Tamil Nadu, Goa, Assam, Nagaland and Kerala attended the meeting.

³¹ Information from *Swayam*, West Bengal.

charging both, the aggrieved person and the respondent Rs. 8000 for 2 – 3 sessions.³² This is a unique practice that is not seen in other states. The **West Bengal** representative said that the courts are not directing any cases for counselling.

3. Gujarat: Service of notice

The representative from the state said that where the POs are not available, the magistrates have often been asking the aggrieved woman accompanied by a member of the Nari Adalats to serve the notice.³³ Of late, POs have been making ad hoc arrangements with the SPs, where the POs would provide a nominal amount of Rs. 250 to the SPs to serve the notice on their behalf.

4. Nagaland: Customary courts

The representative of Nagaland shared that DV cases in the state are mostly referred to the village courts run by the village headmen. The resolutions and circulars passed in these courts are not women friendly. In most cases, these courts lay emphasis on reaching a compromise,³⁴ without taking into consideration the facts of the case.

Conclusion

Despite the challenges mentioned, some states are gradually taking initiative to facilitate effective

implementation and have adopted unique practices to spread awareness about the Act. Some state governments have been appointing POs and SPs at various levels to ensure women's access to justice.

Most importantly, almost all states now, have a uniform reporting mechanism in place for the POs. Hopefully, this year's report will help states to learn from each other's experiences and incorporate these into their own state policies and practice.

Special Cells

Special Cells³⁵ and their origin have a history. Before the PWDVA, women went to police stations for assistance in dealing with domestic violence. The police saw their role as maintaining "law and order" refused to deal with the issue of domestic violence and often told the women to go home and sort out their own "family matters".

In the 1980s, the magnitude of incidents of "dowry deaths" was becoming a major concern. Mothers of dowry death victims and their relatives began to take cases to court, insisting that these were not accidents - as claimed by the police - but cold blooded murders of their daughters in their matrimonial home.

³² Information from *Saad Angaan*, Goa.

³³ Information from SWATI, Gujarat.

³⁴ Information from North East Network, Nagaland.

³⁵ For the purposes of this report, it is not our attempt to critique the functioning of the Special Cell as a model but only of the issue whether POs should be located in police stations within special cells.

Under the IPC, Section 498-A³⁶ was intended to penalise cruelty in the matrimonial home and therefore “save” the woman while she was still “alive”. So, Section 498-A and Section 304 -B in the IPC, which addressed death under suspicious circumstances in the matrimonial homes of women,³⁷ ensured that the police could no longer neglect cases of domestic violence as a “*gharaelu mamala*” (a domestic issue), but had to deal with it as a crime.

To deal with this new and emerging situation, several Police Commissioners took a decision to create “Special Cells” within the police for dealing with complaints made by women under Section 498-A. The police Special Cells were expected to “mediate”, “compromise” and attempt “settlements” before any criminal action was initiated.

Once Section 498-A was incorporated to the IPC,³⁸ in 1984 the Tata Institute

of Social Sciences (TISS)³⁹ evolved a programme of placing qualified social workers in police stations as the first point of contact with DV victims who come to the police station with complaints under Section 498-A. The objective of this programme, as seen by TISS, was to provide professional support services to women and children facing violence in the form of referrals to other specialised social service agencies, legal aid, and police assistance and ultimately rebuild the self esteem, self worth and dignity of such women.

The TISS social workers often called the husband and his family to the police station to attempt a “settlement” of the matter. The location of TISS staff in the Special Cells within police stations was intended to give them a strategic advantage in dealing with the perpetrator of the crime, by creating the aura of a police force dealing with them.

³⁶ Section 498A of the IPC: Husband or relative of husband of a woman subjecting her to cruelty: 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. 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.]

³⁷ 304B of the Indian Penal Code: Dowry death--

- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation: For the purposes of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

- (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

³⁸ Inserted by Act 46 of 1983

³⁹ Tata Institute of Social Sciences, Mumbai

Thus, the role of the social workers was clearly to build the confidence of the woman and help her mediate with the husband and his family. There was little or no interaction with the formal legal system and only when mediation failed did the police deal with the case under Section 498A. Records indicate that the lodging of an FIR by Special Cells was low.⁴⁰ Let us see how the Special Cells have worked in certain states.

Maharashtra

Maharashtra, in particular Mumbai, has the longest existing Special Cells, which were established as early as in 1984, under the aegis of a field action project of TISS. Presently there are twenty cells within the state that are in strategic alliance with the Department of WCD and TISS.

After the passing of the PWDVA in 2005, the Special Cells were notified as SPs in 2007. They continued their functions, namely, to counsel and mediate in domestic violence cases from within the police stations. There does not appear to be any major difference in their role as “special cell workers” and as “SPs”. It is not known whether they filled DIRs in their capacity as “SPs”.

In 2009, the High Court of Bombay in the *Sou Ratanbai Jaising Patil v. State of Maharashtra*, Criminal Appeal No.359 of 2008 and the government resolution dated 8th December 2009, observed

that the effective implementation of the PWDVA required the appointment of qualified POs and issued guidelines which resulted in **Special Cell Workers from 16 districts being notified as POs** by a government resolution dated December 2009.

As a consequence of this notification TISS “Special Cell Workers” were now both SPs and POs located in police stations. POs have, however not been appointed in special cells in Mumbai because social workers have refused the offer, as they are dissatisfied with the salary being offered and because they are unfamiliar with court proceedings.

In 2011, the LCWRI conducted a study in Maharashtra to understand the working of the Special Cells. For the LCWRI interviewed three Special Cells workers working as SP in Mumbai, a team of one SP and one PO working together in the Special Cell in Pune, and SPs and POs working together in the Special Cells in Wardha, Jalgoan and Parbhani.⁴¹ The findings are:

1. Mumbai Special Cells, with no POs and only SPs⁴²

The functioning of “Cell workers” as SPs in the Special Cells was no different from what it was before they were designated as SPs under the Act. Their primary role remained counselling. However, due to their

⁴⁰ For details see Chapter 3.

⁴¹ Brief telephonic interview in these districts were conducted to further observe if the pattern of one SP and one PO sitting together in a special cell (as seen in special cells in Pune) is beneficial or not.

⁴² Cell workers had not been appointed Protection officers in Mumbai at the time the interviews were conducted

close coordination with the police, they had better access to the police for the purposes of summoning the husband and retrieving *streedhan* (gifts given to women during marriage) if necessary.

As SPs, they filled DIRs and forwarded the copies to the concerned police station. They did not forward copies of the DIR to the PO. and their coordination with the POs was minimal. They played no role in the post litigation phase and were not present in court for the hearings; they were sometimes asked to not remain present on court dates, and were asked to do court directed counselling, and make home visits. Individual initiative, however, did play a role and some Special Cell workers designated as SPs, were more proactive than others.

The SPs reported that they had assisted women in filing applications under the PWDVA in several cases. They shared how they strategised and tried to assist women in recovery of *streedhan* and child custody without moving the court. Most of their clients continued to remain in touch with them, and they had a definite idea of the kind of orders that were getting passed.

2. Pune Special Cells, with PO and SO

In contrast to the POs who were not part of the TISS Special Cells, POs from the Special Cells were getting bogged down with counselling. One PO interviewed shared that often when

a SP was on leave, the PO had to do counselling of all those who came to the cell. This meant that he could not leave the cell to assist the aggrieved woman for litigation. Referring victims to another SP for counselling was not done as they themselves were notified under the Act and thus, their roles were intermingled. He also clarified that even when the SP was available, both were seated close to each other in the same room (with not even a partition) and this meant that when the SP is counselling, he, as a PO knows exactly what has transpired in the case and is unable to have an impartial and independent view of the case.

The PO said that he filed a DIR only when the woman wished to file a case under the PWDV and not otherwise. He felt his role had not changed in any way after being appointed as a PO, and he continues to perform the original role as a "cell worker". He attempts to resolve the matter at the level of the cell, so that the aggrieved woman does not have to go to court. He conducted a home visit only in one case on the order of the court, to ascertain the financial status of the husband.

During the interview, the SP from the same Special Cell reported that since the PO sits in the same office, once the counselling process is complete and the woman wishes to file a case under the PWDVA, the matter is referred to the PO. Thereafter, the SP does not follow up on the case. She had been asked to do court directed counselling only in one case and her role is generally limited to the pre-litigation phase. Home visits

(court directed or otherwise) are sometimes conducted by the PO and the SP together as a team. The Pune interviews reveal that of division of labour among the POs, SPs and the police is diffused. Their functions overlap and predominantly when they function as counsellors.

3. Parbhani, Jalgaon and Wardha Special Cells

Special Cell POs from Jalgaon, Wardha and Parbhani reported that being appointed as POs has not released them from their primary role in the cell – that of being counsellors. Counselling is done in most cases. Only in the few cases where women approach them with the clear intention of filing a case under the PWDVA, counselling is not done by them. With the exception of the PO from Wardha, who has conducted court directed home visits, POs have not been asked to assist the courts in any other manner.

Service Providers from this area reiterated the fact that there was no division of work between SPs and POs. The SP from Wardha said that when the PO was not available, they had to do all the work of the POs' including serving of summons, filing of DIR etc. There was no well-defined division of responsibilities between their roles and POs and SPs in Special Cells perform the same functions - predominantly, that of counselling and mediating.

Haryana

Haryana, on the other hand, presents a very different picture, given that the TISS Special Cells in this state came into existence only after the DV Act came into force. The Special Cell was established in 2008 by the Haryana government, in collaboration with TISS in all districts.

The Department of Women and Children had appointed full time Protection cum Child Marriage Prohibition Officers under the PWDVA 2005 and Prohibition of Child Marriage Act 2006 (PCMA) Act, on contract basis, for each District.⁴³ The Department has also appointed one Consultant at the headquarters to coordinate the work of the PPOs and to ensure effective implementation of PWDVA and PCMA within the state.

Special Cells for women and children have been established in the Office of Superintendent of Police in each district, where the PPOs are located along with their subordinate staff to ensure effective implementation of PWDV Act and PCM Act.⁴⁴

In 2011, the LCWRI has conducted a study in Haryana to assess the functioning of the Special Cells. The exercise involved interviewing the PPOs and the police placed in the Special Cells. In addition, SPs and lawyers were also interviewed to assess the overall picture of the implementation of the PWDVA.

⁴³ It must be mentioned here that the PPO in Faridabad has the additional charge of PPO of Palwal.

⁴⁴ Circular No. MSK – 2005/C.R. 202 D – 2, issued by the WCD, Government of Haryana.

1. Protection cum Prohibition Officers

Initially, 20 PPOs were appointed in Haryana,⁴⁵ but in 2011, the posts of the PPO in some districts were vacant. In the interim, PPOs of adjacent districts have been given the additional charge.⁴⁶

The staffs of the PPOs include constables, both male and female, one data entry operator and one multi-purpose helper. The constables assist the PPOs in the service of notice and execution of orders directed to them under PWDVA and Prohibition of Child Marriage Act 2006. A data entry operator, as per the information provided, works as a data entry operator cum clerk while a multi-purpose helper assists the PPOs in all other office related work, such as maintenance and keeping office records.

During the interviews, most of the PPOs said they were satisfied with the location of Special Cells and found it convenient to work in close coordination with the police officers at the Women's Cell. However, they find themselves overburdened with counselling. Their main duties include

filling a DIR, counselling the parties,⁴⁷ helping women cases to file in court, conduct enquiries and submit reports and help to enforce the orders of the court directed to them.⁴⁸

An intriguing practice noted by LCWRI was that the PPOs in all the six districts in Haryana, except Faridabad,⁴⁹ are directed by the courts to submit an "opinion report" which is prepared after hearing both the parties. In fact, the PPO in Rohtak district has been asked to submit an "opinion report" instead of a DIR, the result being that only 20 – 25 DIRs have been filed in Rohtak district so far.

Apart from filing a DIR and an "opinion report," the PPOs are directed to submit other reports as and when required, such as the home visit report, the income report and the order execution report. They are often summoned to the court for clarifications where they are asked to comment upon the reports submitted by them, especially on the "opinion report".

The PPOs are occasionally directed by the courts to execute the orders such as restoring the woman in the shared household, retrieval of *Streedhan* and gaining custody of children.

⁴⁵ Fourth Monitoring and Evaluation Report, 2010 on the Implementation of the PWDVA, LCWRI, Page 29.

⁴⁶ The charge of Bhiwani, Ambala and Palwal districts have been given to the PPOs of Rohtak, Panchkula and Faridabad respectively, although list of the present PPOs has not been updated by the DWCD, Haryana as yet.

⁴⁷ Circular No. MSK – 2005/C.R. 202 D – 2, issued by the WCD, Government of Haryana. As per the Circular, the functions of the Special Cells include offering counselling services.

⁴⁸ In all the districts the PPOs have been enforcing the court orders unlike previous years where only few of them would enforce the orders; Fourth Monitoring and Evaluation Report, 2010 on the Implementation of the PWDVA, LCWRI, page 29.

⁴⁹ The PPO in Faridabad informed us that since submitting of an opinion report is not a part of her job she does not do it. One of the reasons for this could be that the Judicial Magistrate First Class (JMFC) in Faridabad is well versed with the provisions of the PWDVA and all the cases under PWDVA are sent to her court.

2. Police officers

To determine if the Special Cells have achieved their goal of building effective multi agency coordination, it's important to examine the functioning of police within the Special Cells.

The Women Cells in Haryana mainly deal with cases related to violence against women, particularly cases u/s 498A IPC and record an FIR, if necessary. In most cases, they refer the woman for counselling to the PPO, who will file a case under the PWDVA if mediation fails. It's pertinent to note, that neither the PPO nor the police refer the women to SPs for counselling. In effect, PPOs are performing the role of SPs and POs, collapsing the difference between the two.

Delhi

In Delhi in 2008, similar to the concept of Special Cells in Maharashtra and Haryana, a project titled 'Save the Home, Save the Family' was initiated by the National Commission for Womens (NCW) collaboration with the Delhi Police's Crime against Women Cell (CWC) and TISS, Mumbai.

The project was to bring about 'gender sensitisation amongst the police personnel and effective implementation of the PWDV Act, 2005'. The aim of the project was "to eliminate the indifferent

attitude of the police in gender related issues and allay all fears of the victim in approaching the police".⁵⁰ Under the aegis of this project, TISS conducted 13 training sessions for gender sensitisation in which 440 police personnel participated.⁵¹

The NCW maintains that the scheme has proved to be very successful.⁵² However, on examining the statistics put forth by the Delhi Police in Nanankpura under this project, it is clear that the number of cases referred for reconciliation is considerably high in comparison to the number of cases referred for registration under the PWDVA.⁵³ Furthermore, the figures also indicate a sudden rise in the number of cases reconciled from the previous year (see Figure 2 on next page). This may indicate that these cells have the tendency to settle the matter by counselling the victims and their families.

In the information provided by the NCW,⁵⁴ the introduction of this project has "facilitated professional intervention in marital disputes and DV and has shown positive results due to the non-judgmental, sensitive, and scrupulous attitude of the social workers resulting in eliminating the client's/victim's fear and apprehensions."

Statistics provided by the NCW indicate that from March 2009 – February 2010, 1331 individual sessions with clients and

⁵⁰ Annexure II of the Centrally Sponsored Scheme (CSS) to provide matching assistance to State Governments for effective implementation of PWDVA, 2005 Retrieved from <http://ncw.nic.in/>

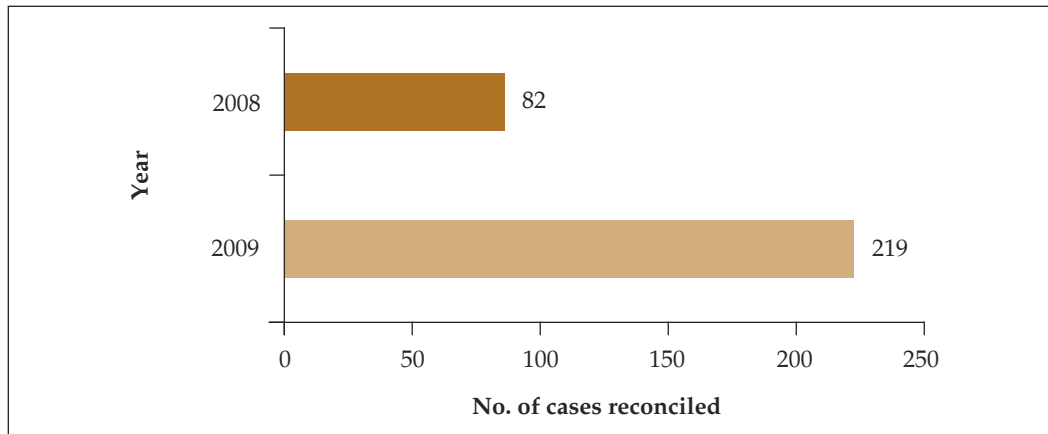
⁵¹ Ibid

⁵² Ibid

⁵³ Ibid

⁵⁴ Ibid

Figure 2: Number of cases reconciled



822 joint sessions with the families of the clients were undertaken. During this period, a total number of 354 cases were registered under the project, of which 98 were reconciled, 92 were referred for legal action, eight were mediated for separation, 41 were registered under the PWDV Act, and 58 other disputes such as those related to property and 57 on-going cases were recorded.

The object of the partnership is explicitly spelled out by the partners: which is, to “save the family.” It is hoped the agenda of “saving the family” is not at the expense of the safety of women, who would, only after suffering considerable DV, approach these cells.

Conclusion on Special Cells

After the PWDVA came into force, the social workers placed in Special Cells - as SPs or POs - have continued to perform, the same functions as the ones they were expected to perform, i.e. prior to the PWDVA coming into force

- of counselling and mediation and attempting to bring about a settlement between the parties. Significantly, the difference between the functions of the PO and the SP as envisaged under the PWDVA appears to have been erased. Often the PO is privy to all the discussions for mediation or otherwise, by the SP who is seated in the same cell and the PO is, therefore, unable to make an independent evaluation of the case.

While different models of Special Cells have emerged post the PWDVA, namely some with designated SPs only, some with SPs and POs and others with PPOs, essentially, they all appear to perform the function of “cell workers” and have continued to call themselves “cell workers”.⁵⁵ It is evident that the role played by them pre-PWDVA continues to impact the functioning of POs in the Special Cell, carrying with them the compelling need to counsel women. This diminishes their role as POs considerably.

⁵⁵ This is corroborated by the study conducted by LCWRI which states that POs continue to function as cell workers even under the PWDVA with some POs expressly stating, in no uncertain terms, that their roles have remained unaffected even after the PWDVA came into force. This is also a reflection on the fact that there is no differentiation of the functions of POs and SPs under the Act.

There is a clear distinction between the role of a SP and PO. While the SPs role may be to try and settle the conflict, the role of the PO is essentially to start the process of court proceedings and to assist the court in deciding disputes. **It is essential that this distinction be maintained for the proper implementation of the PWDVA.**

While there may have been some rationale for placing SPs in police stations prior to the enactment of the PWDVA, the placing of POs in police stations undermines their role as facilitators to access to justice and officers of the court.

It may therefore be safely concluded, that placing of POs in Special Cells, especially within police stations, does not in any way further the mandate of the PWDVA; which is to facilitate access to a civil court for effective and quick relief to the domestic violence victim.

While this is not intended to be an evaluation of the role and working of the Special Cells, it is obvious that the multi agency response visualised under the PWDVA is not intended to be focused on counselling within a police station, but intended to strengthen the courts in their justice delivery function.

There is grave concern about the fact that the placement of POs in the police station goes against the basic mandate of the PWDVA, which is essentially a civil

law, facilitating direct access to courts without the mediation of the police.

Prosecution is the function of the state through investigation by the police. To avoid dependency on the police as a gateway to the courts, the PWDVA was enacted to allow direct access to courts without the intervention of the police and without the need for 'counselling'. The police and any form of 'counselling' under the roof of a police station represents a barrier to direct access to courts, which the Act was intended to overcome.

The role of the police under the Act is limited to informing women of the availability of a civil remedy and assisting the PO in the implementation of court orders.⁵⁶

Placing POs in police stations presents the grave danger of undermining their role as facilitators of direct access to courts and converting them into gateways to justice. The very philosophy of the Act is compromised by placing the POs in police stations.

Scheme Proposed by the National Commission for Women

The National Commission for Women drafted a scheme titled, 'Centrally Sponsored Scheme for Providing Matching Assistance to State Governments for Effective Implementation of PWDVA, 2005'.⁵⁷

⁵⁶ Under Section 19(7) of the PWDVA, the magistrate may direct the police to provide assistance to the PO in implementation of the protection order if directed by the court.

⁵⁷ National Commission for Women (2011): Draft CSS to provide matching assistance to state governments for effective implementation of PWDVA, 2005. Retrieved from <http://ncw.nic.in/>.

The centrally sponsored scheme intends to establish Special Cells in the shortest possible time across the country to address a critical need to “ensure effective implementation of the PWDVA at the grassroots level.”

The proposal is to have the Special Cell located at each police station at Block Head Quarters. The structure of the Special Cells will consist of two social workers in each unit. One of them may be given the powers of Assistant PO by the state government to authorise them to file DIRs and perform the other functions of the PO under the law. The social worker will be a trained and qualified professional. The role of the social worker requires skills in undertaking simultaneous actions at multiple levels of intervention, as the issue of violence against women is a complex one. The Special Cell will share the police's infrastructure e.g., space, furniture, telephone, vehicle, and administrative support.

The functioning of the Special Cells and POs will be overseen by a state-level Monitoring Committee consisting of senior officials of the police, Departments of Home and Women and Child, and representatives of the women's organisation from the state.

The scheme seems to be inspired by the models adopted in Maharashtra, Haryana and in Delhi. All schemes are in collaboration with the TISS. Having already dealt with the fundamental objections to those schemes above, it is clear that the proposed scheme will suffer the same limitations and needs to be seriously reviewed before by

the National Commission for Women (NCW) before it is funded by the Planning Commission under the 12th Five Year Plan.

Concerns about the Scheme: While the Scheme acknowledges the need for the appointment of full time POs, rather than appointing public servants with additional charge at the block level, it fails to make a distinction between a PO as part of a civil justice delivery system and the Criminal Justice System which required the police to investigate and file FIRs. By locating POs in police stations, not only is the role of the PO consigned to being an adjunct to the police but also the police are not left free to perform their law enforcement function.

Women face frustration while lodging an FIR under Section 498A, in as much as they are diverted to counselling before any FIR can be filed. The PWDVA was passed to address the felt needs of women for a civil remedy. It would be unfortunate if they were pushed back into a police station before they can access the courts.

The civil law remedy addresses the issue of domestic violence without requiring that the police decide if the dispute should go to court. The decision must at all times be with the women, this is undermined by the way the police and now the POs placed in the police stations are functioning. The cycle of counselling and attempted reconciliation is not the way forward.

The scheme has been criticised by several women's organisations

working with women victims of domestic violence as reducing the gains of the PWDVA.⁵⁸

There are successful models for the appointment and location of POs in Delhi, where they are located in courts and there is no reason why this model cannot be replicated all over the country. In Andhra Pradesh, there is a successful model of coordination between the police and the POs. This is something the NCW could look into before recommending the scheme framed for acceptance by the Planning Commission.

Considering that the PWDVA was intended to bypass the police for those women who did not wish to approach the police, this proposal pushes them back to police stations without any rationale for the same.

The PWDVA is not a criminal law and placing POs in police stations will create confusion: in that between civil and criminal law, there is a sharp distinction, which needs to be maintained. One requires the intervention of the police to activate the law, and the other does not.

Criminal law and civil law function along separate pathways. **Domestic violence is both a crime and a civil wrong.** It is essentially for a woman to decide which service she chooses. The function of the two legal systems is separate and distinct. While criminal law aims to punish, civil law is

intended to provide relief in the nature of the right to reside, economic relief and civil protection orders.

We maintain that civil law plays an empowering role enabling a woman to activate the legal system without the intervention of the police or dependency on the police. While both systems are necessary for a civilised society, they cannot be collapsed into one system. Placing POs in police station presents the danger of disempowering the woman seeking justice, apart from delaying the entire process by diversion into counselling.

The success of the PWDVA lies in the fact that women are using it at their own will, through their own resources. The number of cases filed by women is itself a measure of its success.

In 2011, the LCWRI received more than 13,000 orders from 16 states for analysis, leading to the conclusion that the Act is accessible to women without the intervention of the police. The NCW proposal will be a setback for women facing violence and will represent a form of diversion from access to justice.

SECTION B. Budgeting for the PWDVA

The PWDVA became operational in 2006. At this time, the central government did not provide a budget for the enforcement of the

⁵⁸ Unpublished reports of Aman Network and SWATI.

Act. In the absence of this, some state governments made allocations for the Act.

This section highlights the budgetary trends of the PWDVA at the state level. It draws attention to the overall expenditures incurred and the specific components for which the allocations have been made. It shares a discussion of the proposed scheme for implementation of PWDVA drafted by the NCW. By analysing the state budgets, an estimation of the funding required to effectively enforce the legislation is presented. However, it must be noted that this estimation is preliminary and the details of several aspects are being worked out.

The information presented here is based on the applications under the Right to Information Act (RTI) filed in all 28 States and seven Union Territories.

Budgetary Trends at the State Level

In Table 1, of 33 States and Union Territories (UTs), 13 have a plan scheme for implementation of the PWDVA. The remaining 19 States have no scheme as yet (no information was received from Lakshadweep and an RTI was not filed in Jammu & Kashmir).

The 19 States and Union Territories (UTs) include: Andaman & Nicobar,

Table 1: States with a plan scheme for PWDVA (in Rs lakhs)

State	2008 – 2009		2009 – 2010		2010 – 2011		2011 – 2012
	B.E.	Exp.	B.E.	Exp.	B.E.	Exp.	B.E.
Karnataka	150	146.62	292.34	109.76	723.22*	348.2	530.22
Madhya Pradesh	292	108.76	250	85.3	309.98	95.96	221.79
Maharashtra	-	-	-	-	47.54	29.48	200
Kerala	100	99.97	115	114.63	250	168.24	200
Andhra Pradesh	99.82	99.6	98.4	98.4	61.28*	111.28	114
Haryana	25*	23.72	80*	NA	80	67.25	80
Assam	.01	Nil	84	84	76.5	76.5	50
Uttarakhand	50	Nil	50	Nil	50	NA	50
Manipur	-	-	0.45	0.45	8	8	45
Delhi	5	4.04	22	6	45*	40	40
Orissa	Nil	Nil	Nil	Nil	25	NA	25
Meghalaya	3.2	3.2	3.5	3.5	2.3	NA	2
Sikkim	10	0.51	8	6	2	1.92	No allocation yet

Note: States have been arranged as per the magnitude of allocations in descending order.

B.E.: Budget Estimates; Exp: Expenditure

* Revised Figures

RTI was not filed in J&K

No response received from Lakshadweep

Source: RTI applications filed by the Centre for Budget and Governance Accountability

Arunachal Pradesh, Bihar, Chandigarh, Chhattisgarh, Dadra and Nagar Haveli, Goa, Gujarat, Himachal Pradesh, Jharkhand, Rajasthan, Tripura, West Bengal, Mizoram, Nagaland, Pondicherry, Punjab, Daman & Diu and Tamil Nadu.

Of these 19 states, Tamil Nadu and West Bengal have not initiated a plan scheme but provide salaries to POs and other support staff from a separate budget head. Also, the POs have been appointed on a contractual basis.

Tamil Nadu: In the state, Rs. 79.92 lakh was allocated in 2011 – 12 for salary expenses of POs and Junior Assistant (JA) cum Typists (POs @ Rs.15, 000/ month and JA cum Typists @ Rs. 6,000/ month).

In addition, Rs. 64 lakh was allocated to create awareness about different schemes and programmes including the PWDVA; and Rs. 7.14 lakh to pay the salaries of the counsellors (@ Rs. 7,500/ month).

Magnitude of Allocations: Of the states that allocated a budget via respective plan schemes, the allocation ranged from Rs. 2 lakh in Meghalaya to Rs. 5 crore in Karnataka.

In three states - Delhi, Meghalaya and Uttarakhand - allocations vary from Rs. 40 to 80 lakhs. In the rest of the states, the allocations are between Rs. 1 to 5 crores.

1. Overall scenario: The trend over the years

The state budget allocations for PWDVA have not changed much over the last 3 – 4 years. Several states such as Bihar, Chandigarh, Chhattisgarh, Gujarat, Jharkhand, and Rajasthan have not allocated resources for PWDVA. These are also states that report a higher incidence of violence.⁵⁹

Many of the north-eastern and northern states have not budgeted for the implementation of the Act.

The noticeable change over the last five years is **Maharashtra and Orissa**, when in 2010 a state plan scheme was formulated in both the states for implementation of PWDVA.

2. Expenditure trends 2008 – 09 to 2010 – 11

According to Table 2, **Andhra Pradesh** had the highest expenditure - nearly 200 percent in 2010 – 11.

Assam has shown full expenditure in the last two years and **Haryana and Sikkim** show near complete expenditure in all three years.

Delhi's expenditure profile has improved in 2010 – 11.

Uttarakhand is an exception, as either the expenditure figures are not available or no expenditure has been

⁵⁹ NFHS (2005 – 06) Report, Volume I, Government of India.

Table 2: Expenditure trends: 2008 – 09 to 2010 – 11

State	Exp. as % of BE in 2008 – 09	Exp. as % of BE in 2009 – 10	Exp. as % of BE in 2010 – 11
Andhra Pradesh	99.8	100	182
Assam	-	100	100
Delhi	80.8	27.3	89
Haryana	94.9	NA	84
Karnataka	97.3	37.3	48
Madhya Pradesh	37	34.1	31
Maharashtra	No budget allocated	-	62
Manipur	No budget allocated	100	100
Sikkim	5.1	75	96

Source: RTI applications filed by Centre for Budget and Governance Accountability, 2011

incurred *vis-à-vis* the budget that has been allocated.

Karnataka and **Madhya Pradesh** are consistently showing low expenditures.

Karnataka has had low utilisation figures over the last two years, and this could be the reason for the reduced budgetary allocation in the year 2011 – 12.

In **Madhya Pradesh**, the expenditure declined in 2010 – 11. Looking into the specific components for which expenditure figures have been especially low in MP, it emerges that the budget for PWDVA is under four heads: Office Expenditure; Seminars/Workshops; Assistance Grant and Miscellaneous.

Assistance Grant includes money provided to Shelter Homes. Each SH not receiving any government funding, is given an Assistance Grant of Rs. 2 lakh in the first year.

This is revised in the second year, in accordance with the number of women

victims. Secondly, POs are provided Rs.10,000 per year for meeting expenses relating to counselling, holding meetings etc.; Travel Allowance (TA) @ Rs. 5,000 per year; Transportation expenses for aggrieved women @ Rs. 5,000 per year; Rs. 3,000 per year for hoardings and Rs. 1,000 per year for wall paintings. All these expenses come under the miscellaneous category.

Table 3 indicates that a component that continues to show extremely poor utilisation is 'Assistance Grant'. One reason could be because of the limited awareness of the SPs regarding the notification process under the Act or rigidity in application procedures of SPs. The 'Miscellaneous' head also shows poor utilisation. Moreover, in the expenditure figures for the present year i.e. 2011 – 12, six months have passed, but no expenditure has been incurred under both Assistance Grant and the Seminar/Workshops. The other two components also show a very small expenditure.

Table 3: Expenditure as percentage of budget estimates for specific components in 'Usha Kiran Yojana' of Madhya Pradesh

	2008 – 09	2009 – 10	2010 – 11	2011 – 12 (up till August, 2011)
Office Exp.	61.8	9.6	46.3	10
Seminar/Workshops etc.,	68	80	56.3	0
Assistance grant	2.8	22.2	12.6	0
Miscellaneous	34	43.1	42.7	6

Source: RTI applications filed by Centre for Budget and Governance Accountability

Nature of Expenditure

Assam shows 100 percent expenditure in 2009 – 10 and 2010 – 11, but the nature of the expenditure needs to be determined.

In **Delhi**, during the same period, a grant was given to an NGO for making high school students aware of issues relating to domestic violence. While this is important, some women's groups feel that the priority should be to put in place mechanisms to ensure effective implementation of the Act and generate awareness among women for whom it is primarily intended. It is also important to sensitise various other stakeholders such as police personnel, SPs and MFs among others.

In **Andhra Pradesh**, Rs. 114 lakh was allocated under two heads – Rs. 1, 09, 00,000 for Other Contractual Services (OCS) and Rs. 5, 00,000 for Other Office Expenses (OOE). The OCS head includes salaries for support staff in Andhra Pradesh, which : 1 Legal Counsellor; 1 Social Worker; 1 Data Entry Operator; 2 Home Guards at the district level and a Data Entry Operator and Junior Assistant at Commissionerate level.

In Delhi, as seen from Table 2, the allocation has been enhanced in the year 2011 – 12. But, the state response did not give information on detailed budget allocations. Therefore, it is unclear whether some new components have been added, or the increased budget is due to increase in allocation for the components for which the budget was being allocated in the past three years.

The good news: On the whole, in terms of budgeting for specific components, a positive trend across states is that many have allocated funds for training and capacity building of different stakeholders and awareness generation or IEC. These are two extremely important components for the Act to function effectively.

The not so good news: A component that remains neglected is Support to Service Providers. **Madhya Pradesh** is the only state that has budgeted funds for SHs run by private organisations.

Special Mention: Two states deserve special attention – Kerala and Bihar - due to certain interventions initiated by them.

Madhya Pradesh budget allocation 2011 – 2012

Support Staff to serve notices	Rs. 5000 per PO
Building of the Office of the PO (furniture, stationary etc.)	Rs. 6,000 per PO
Training & Capacity Building	Rs. 5,000 per PO per workshop
Service Providers	Rs. 36.6 lakh
Capacity building of police personnel and counsellors	Rs. 18.01 lakh
Awareness Generation	Rs. 36.24 lakh

Karnataka budget allocation 2011 – 2012

Salary of POs	Rs.111.1 lakhs
Support Staff for PO (Data Entry Operator, Messenger, Clerk)	Rs. 313.32 lakh
Building the Office of the PO	Rs. 83.04 lakhs
Training & Capacity building of POs, Police personnel and magistrates and awareness generation	Rs. 25 lakh

Haryana budget allocation 2010 – 2011

Office Expenses	Rs. 4 lakhs
Other Charges	Rs. 1 lakh
Contractual Services	Rs. 75 lakhs

Orissa budget allocation 2011 – 2012

Contingency expenses for POs	Rs. 15 lakh
Awareness Generation and IEC	Rs. 10 lakh

Kerala

The state is way ahead in appointing POs on a permanent basis. It has created separate posts for POs in the regular government structure.

Under the New Plan head, for the year 2011 – 12, Rs. 52.36 lakhs have been allocated for the salaries of POs. One PO is to be appointed in each district. Till now, 13 POs are in place. The pay scale of the POs is @ Rs.18740 –

Kerala: Budget proposals

Training of all stakeholders	Rs. 60.15 lakh
Vehicle hire for POs	Rs. 4.54 lakhs
Provision for legal counsellors	Rs. 62 lakhs (Honorarium @ Rs. 5,000 per month)
Awareness generation on the PWDVA by a media campaign	Rs. 39 lakhs
Web portal giving information on SPs, POs etc., in addition to information regarding schemes for women	Rs. 27 lakhs
Placing women counsellors in 150 police stations	Rs. 37 lakhs
Messengers (One messenger attached to each PO)	Rs. 14 lakhs (including salary of messenger @ Rs. 5,000 plus TA).

Rs.33,650 per PO per month. All other expenses such as HRA, TA etc., are also included.

While there is no separate state plan scheme for PWDVA in Kerala, most expenses are met through the “Flagship Scheme on Gender Awareness”. For the year 2011 – 12, Rs. 2 crores has been allocated for the scheme.

Bihar

While Bihar has not initiated a separate plan scheme for implementation, there are recent interventions which are noteworthy. Under a flagship scheme, “*Mukhyamantri Nari Shakti Yojana*” (Prime Minister’s Women’s Empowerment Project) introduced by the Social Welfare Department in 2007–08, the state created many interventions to address the concerns of women in distress.

For instance, a women’s helpline has been made operational in each district. Besides the capital Patna, where the unit cost of setting up a helpline and running it is Rs. 9.89 lakhs, the unit cost of the remaining districts is Rs. 5.38 lakhs per annum. Table 4 below shows the details of the allocations.

In addition to the helplines, protection and short stay homes have been initiated to cater to the concerns of DV victims.

Draft Scheme for PWDVA by the National Commission for Women

In the infrastructure section, the scheme proposed by the NCW was discussed. The draft scheme proposes to allocate funds for PWDVA by way of a Centrally Sponsored Scheme (CSS) with the share of centre

Table 4: Helplines in Bihar

Grade A Helpline (for Patna District)		Grade B Helpline (for other districts)	
Component	Unit cost (in Rs.)	Component	Unit Cost (in Rs.)
Project manager	10,000 per month	Project manager	10,000 per month
3 Counsellors	5,500 per month	2 Counselors	5,000 per month
Data entry operator	5,500	Travel expenses	4,000 per month
Travel expenses	1,12,000	Office expenses (lump sum)	56,000
Office expenses	1,00,000	Rent	3,000 per month
Travel allowance for counselors	1,00,000	Legal aid	1,500 per month
Rent	8,250 per month	Panel of 3 lawyers	1,500 per lawyer per month
Panel of 5 lawyers	1,500 per lawyer p.m.	Non recurring expenses	50,000
Legal aid	54,000		
Medical	50,000		
Non recurring expenses	1,00,000		

and state as 50:50. There are two major issues with this. Jha, Das and Acharya⁶⁰ highlight several problems in the working of CSSs. One of the most important issues, they note, is that CSSs follow a top-down approach - with little or no flexibility given to the implementing agencies - in this case, the states.

This is a constraint for states in modifying the scheme to suit their local conditions. The scheme puts a 50 percent burden on states, thus not taking cognisance of the fact that the majority of the states have to abide by the Fiscal Responsibility and Budget Management Act, which restricts their spending. This is problematic.

The Working Group on Empowerment of Women and Child Development for the Eleventh Five Year Plan in 2007 had recommended an outlay of Rs. 600 crores for implementation of PWDVA and other women related legislation.

The above discussion underscores the components or non-negotiables for which allocation must be made so that the PWDVA can be implemented in letter and spirit. In the following section, there is an estimation of funds required to effectively implement the PWDVA. (See Annexures Table 5 for a budget estimate to implement the PWDVA).

The total budget is around Rs. 1,522 crores, assuming that independent full time POs are appointed at the block level and full time Chief Protection

Officers at the district level who will coordinate the work of POs at the block level. This is, at best, a conservative estimate.

1. Model of funding

What should be the model of funding? The NCW suggests that both the centre and the states will provide equal proportion of resources for implementation of PWDVA.

However, as discussed earlier, given the fiscal health of the states and the limitations of CSS, this model may have serious challenges. The Planning Commission constituted a Sub Committee to deliberate upon the issues concerning CSSs. It submitted a report which proposed recommendations to restructure the CSSs to build in flexibility. More specifically:

- In the scheme, provision of Flexi Fund to enable State Governments to meet their special needs. Twenty percent of budget allocation in all the CSS (10 percent in Flagship Schemes), called Flexi Funds, be earmarked in each scheme.
- While a part of the resources of Schemes could be used for issues concerning all States, a second component should be flexible, which States may use as required.
- Transparent guidelines for allocation of funds from the Centre to the States.

⁶⁰ Jha, P., Das, S., & Acharya, N. 2011. Centrally Sponsored Schemes: Are They the Solution or the Problem? In P. Jha (Ed.). *Progressive Fiscal Policy in India*, New Delhi: Sage

2. A possible model

A scheme that merits attention is *Rashtriya Krishi Vikas Yojana* (RKVY) or the National Farmers Development Scheme. The RKVY is an example of a CSS which is unique in its structure - in terms of flexibility the states enjoy in implementing it. Funds provided to states are as 100 percent grant by the Centre. Each state has to prepare a comprehensive State Agricultural Plan by integrating the District Plans. The state must also indicate resources that can flow from the state to the district. The scheme does not follow a common formula for allocating funds to the States.

The funding model for the implementation of the PWDVA must build flexibility in the scheme design. And, there needs to be a formula that it takes into account state specific constraints. For example, states such as West Bengal, Punjab and Kerala are heavily indebted and would require larger assistance from the Centre than those that enjoy better fiscal health.

Conclusions on Budgeting

Of the 33 States and Union Territories (UTs), 13 have a Plan Scheme for implementation of the PWDVA. The remaining 19 States have no scheme. No information was received from Lakshadweep and an RTI was not filed in Jammu & Kashmir.

The state budgets for the implementation of the PDWVA have varied from Rs. 1 crore to Rs. 5 crores and have not changed much over the last 3 – 4 years.

Several states such as Bihar, Chandigarh, Chhattisgarh, Gujarat, Jharkhand, and Rajasthan have not allocated resources for PWDVA. These are also states that report a higher incidence of violence. Many of the north-eastern and northern states have not budgeted for the implementation of the Act.

Maharashtra and Orissa are cases for noticeable changes over the last five years. In 2010 a State Plan Scheme was formulated in both states for implementation of PWDVA.

In terms of budgeting for specific components, many states have allocated funds for Training and Capacity Building of different stakeholders and Awareness Generation or Information, Education & Communication (IEC). These are two extremely important components for the Act to function effectively.

Support to SPs is a neglected area. **Madhya Pradesh** is the only state that has budgeted funds for SHs run by private organisations.

Bihar and Kerala deserve special mention for initiating interventions in services and budget allocations.

The 2011 – NCW drafted scheme to provide matching assistance to state governments for implementation of the PWDVA is based on the model of Special Cells (for women and children) initiated in Maharashtra in the 1980s - by a joint initiative of Bombay Police and TISS.

There are concerns about the NCW draft which include the stationing of

POs; allocation of funds; SPs; Training and capacity building and monitoring and supervision of the implementation of the scheme.

The budget for the effective implementation of the PWDVA - assuming that independent full time POs are appointed at the block level - is around Rs. 1,522 crores. This further assumes that there are full time Chief POs at the district level who will coordinate the work of POs

at the block level. This is, at best, a conservative estimate.

The funding model for the implementation of the PWDVA requires flexibility in the scheme design and one that takes into account state specific constraints. For example, states such as West Bengal, Punjab and Kerala are heavily indebted and would require larger assistance from the centre than those that enjoy better fiscal health.

CHAPTER 3

The Litigation Process: Practices and Trends

Implementation on the Ground: Experiences from Delhi, Maharashtra and Rajasthan

SECTION A: Delhi

Introduction

The PWDV Act 2005 is a central legislation, but the responsibility for specific mechanisms of implementation is with each state government.

As a result, different states have adopted and evolved diverse practices with regard to the law. Differences across states in implementation are due to the type of model applicable in the state – public, private or mixed partnership; the infrastructure available including number and type of the POs, SPs, budgetary allocations and the nature of multi-agency coordination initiatives between different stakeholders.

This chapter presents results of the documentation of the current situation of the implementation of the PWDVA across five states of India. It provides evidence on the shifts and changes in KAP and procedures in specific states. A significant part of the annual tracking of the law has been the collection of primary evidence in three states - Delhi, Maharashtra and Rajasthan - to document changes from a baseline point (2009) to the endline point (2011) on select indicators.

The LCWRI conducted capacity building workshops in Delhi and Maharashtra. A mapping across time enables comparison of relative gains

and impact, as compared to Rajasthan, the comparison state. The choice of Rajasthan as a comparison state was based on features of similarity and dissimilarity with Delhi and Maharashtra¹, including the type of POs appointed.

In each of these states, a number of districts were selected to gather data based on pre-determined criteria. The overarching criterion was districts where the LCWRI intervention was implemented. In Maharashtra, three districts – Mumbai, Thane and Sangli - were selected; in Delhi, all districts were covered. In Rajasthan, one primarily urban district (Jaipur, which is also the capital, and thus similar to Mumbai) and one primarily rural district (Jodhpur) was selected for the study.

Since 2007, state governments have been addressing implementation gaps in these three states and elsewhere. In addition, courts have played a major role in defining and setting judicial procedures under the PWDVA. The LCWRI intervention has been one, and a small factor, that could have influenced change, but it loses relevance for an overall comparison among states.

The data presented neither compares the changes that have taken place over time of the earlier defined “intervention states” with the comparison states, nor does it ascribe any attribution to the LCWRI efforts.

¹ Annual M&E Report 2009. The first two M&E Reports, indicated the highest number of cases filed under the PWDVA, despite no appointment of POs. This was unlike Delhi, which was among the states recording a high number of cases, but has had independent POs appointed in the first year itself. Further, in terms of appointment of POs, Rajasthan was similar to Maharashtra, in that it has appointed DWCD officials as POs and conferred an additional charge on them. Further, feasibility in terms of time, geographical reach, active civil society organisations and existing partner support were some other factors that guided our selection. Thus, in addition to being intervention and comparison states, these also presented different models of implementation.

This chapter presents analysis of gains, shifts and gaps by tracking changes over time for each of the states, thus, that have taken place describing the comparative situation across states, with each representing different models of implementation.

It further provides a nuanced and dynamic understanding of the subject, and enables deliberations on the successes and challenges. It spells out encouraging practices that can be considered for adoption nationally or by other states. It presents examples of key indicators (KIS) by which to monitor and track the implementation. This reflection on the current situation can also be a powerful tool for motivating change and strengthening advocacy towards pressuring states to improve the implementation of the law.

Data, Methods and Study Participants

Quantitative Surveys of Police and POs: Using the systematic random

sampling procedure described below, a representative sample of police and POs were interviewed in Delhi and Rajasthan² to assess their knowledge of and attitude towards the PWDVA, women in general, women accessing the law, and practices with regard to its implementation.

1. Sampling procedure

1.1 Police Officers

For the survey, standard statistical assumptions and formulae were used³. The total sample size was 250 police officers per state.

In **Delhi**, the sampling frame was from the list of all police stations and Crimes against Women (CAW) Cells. From this list, 50 police stations and CAW cells were selected, using systematic random sampling. Then, from each of the selected police stations, among those who were present in the police stations and willing to participate in the survey. Five police officers including duty officers, investigating officers (IOs) and

Table 1: Achieved sample size at baseline and endline surveys

	Delhi		Maharashtra		Rajasthan	
	Baseline	Endline	Baseline	Endline	Baseline	Endline
POs	15	14	156	141	40	41
Police	246	245	-	-	249	250

² Due to the delay in securing official permission in Mumbai for the survey, the endline survey with the police could not be completed within the fixed time limit. Therefore, the Maharashtra section includes data comparing baseline and endline for POs only. It also benchmarks the situation vis-a-vis the police as gathered at baseline in early 2010.

³ Assuming that only 30 percent of the police officers are aware of their role under the PWDVA and are providing support to the PO for the implementation of the law, a sample of 125 will 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 the POs, a total sample size of 250 in each state has finally been decided.

SHOs⁴ were selected randomly. Among IOs, preference was given to officers, such as female investigating officers, who were more likely to be approached for a case of domestic violence. The same police stations were visited for the endline, and five officials were randomly interviewed.

In **Rajasthan**, all police stations from Jaipur and Jodhpur including the *Mahila Thanas* (women's police stations) formed the sampling frame. Following the 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.

1.2 POs

In 2009, 17 POs were surveyed. In 2011, 50 POs in Jodhpur and 50 POs in Jaipur were surveyed. Since the total number of POs was not large, all of them were included for the interview. The same was done at the endline. In Maharashtra, since a large number of POs (3,892) had been notified, a sample of 250 was taken, based on the statistical assumptions and formulae.

In addition to quantitative interviews with POs and the police, the team from Lawyers Collective conducted in-depth interviews with POs, police, SPs and lawyers. In Haryana and Andhra Pradesh, only In-Depth Interview (IDIs) were conducted to capture the implementation practices.

2 Limitations of the LCWRI state visits

Many hurdles were faced while conducting the state visits in these five states. The LCWRI team had to shortlist only select numbers of POs, SPs, police officers and lawyers, since significant constraints were faced regarding time, resources, language and delayed responses from the concerned government departments.

The LCWRI intended to conduct a study in Chandigarh, the capital city of Haryana. Concerned persons in the DWCD, Haryana were contacted but no adequate response was received from them. So, the LCWRI continued the study in other districts in Haryana. A hurdle faced by all SPs in all states included the issue of non-functioning or limited functioning due to lack of funding and discontinuing work on women related issues. Some police officers could not be interviewed in spite of prior appointments due to their engagement/deployment elsewhere on the day of the interview. While there was a representative sample for the number of districts in each state and the number of stakeholders interviewed, it does not represent the entire state. The LCWRI has tried to take forth the findings of the previous years in these states and do a follow up study.

Accessibility was a serious limitation, as several districts in Rajasthan and Andhra Pradesh could not be accessed.

⁴ In our interactions with the police, we were told that IOs, SHOs and duty officers were most likely to interact with the woman approaching the police station and are therefore the key decision makers in the police station.

Data collection has been challenging. Securing official permissions and scheduling a convenient time for interviews has been an intensive process, requiring numerous follow-ups. Most departments, however, have been extremely cooperative and the data collection could be completed successfully, barring a few, where other priorities made it difficult for permissions to be secured within the given time frame.

The quantitative surveys provide information on broad patterns that are generalised but are not always able to explain pathways of change, given the complexity, multiplicity and dynamic nature of the processes on the ground.

More focused studies using mixed methods or qualitative tools would be essential to gather further insights and explanations on areas requiring further enquiry. In addition, the data is gathered only from select districts of the states included in the study.

Delhi

This section describes the changes over time, in KAP of POs and the police in Delhi. The data draws from a comparative analysis of the findings from baseline and endline surveys. In relevant sections, qualitative data gathered from discussions with select stakeholders - SPs, POs and lawyers - involved with litigation under the PWDVA is also presented.

3. Protection Officers

Delhi was one of the first states to appoint POs. It currently has 17 independent POs – all women - functioning on a contractual basis at the district level, aged between 25-35 years, with post graduate degrees, and over half of them have specialised in Social Work.

3.1 Attitudes of POs towards domestic violence⁵ and the Act

3.1.1 Attitudes towards DV

The PO has been pictured as an individual who will support and guide the woman in seeking remedies under the Act to stop violence. The law confers on the PO, the responsibility of giving information to the AP on her rights and remedies under the PWDVA. This is followed by recording a DIR. For POs to perform these duties, understanding what qualifies as DV coupled with a gender-sensitive approach is a pre-requisite. Thus, it is important to examine their attitudes towards DV, the Act, and change overtime.

Attitudes of POs towards DV were measured on six statements indicating societal norms. POs were asked whether they agree, partially agree or disagree with those statements. In order to assess the attitude towards DV, study participants were given six statements indicating societal norms. They were asked whether they agree, partially agree or disagree with those statements. The analysis for the individual items

⁵ These are findings from survey interviews held with each of the POs and reflect their personal views.

DV index

To measure the overall attitude of study participants on DV, an index was developed. Since all the items (given in Table 2) are negative, the response of 'agree' is scored as 1, 'partially agree' as 2 and 'disagree' as 3. Thus, a score of 6 indicates that the study participant is highly supportive of DV, while a score of 18 means that he/she is highly against DV. After adding the scores, study participants are categorised into three groups – a score from 6 to 9 indicates a low gender attitude, 10-14 is moderate and a score of 15-18 means the individual is highly supportive of gender.

is given in Table 2. Further, an index was developed to measure the overall attitude and change over time.

In the past years, as compared to the other states, the POs in Delhi have reported a consistently better gender attitude and sensitivity towards women experiencing DV (See Table 2 on the following page). When measured collectively, in the form of a DV index, most POs continue to report a positive attitude, with a slight increase recorded in the category of highly positive attitude from baseline to endline. At baseline, 67 percent (10 of 15 POs) fell in the moderate category and 33

percent (five) in high. At endline, there is a slight shift and that is in the positive direction; with 50 percent (seven of 14) now in the high category.

As we compare the baseline and endline (percent) figures for each statement, some key patterns emerge that are striking.

Unfortunately, there is **hardly any change** over time in the notion that *DV is a family affair*. More than half the POs agreed with this at baseline, and this remains more or less consistent. At endline (percent), all POs agree with the statement, *“Beating one’s daughter*

Figure 1: Delhi POs baseline and endline survey

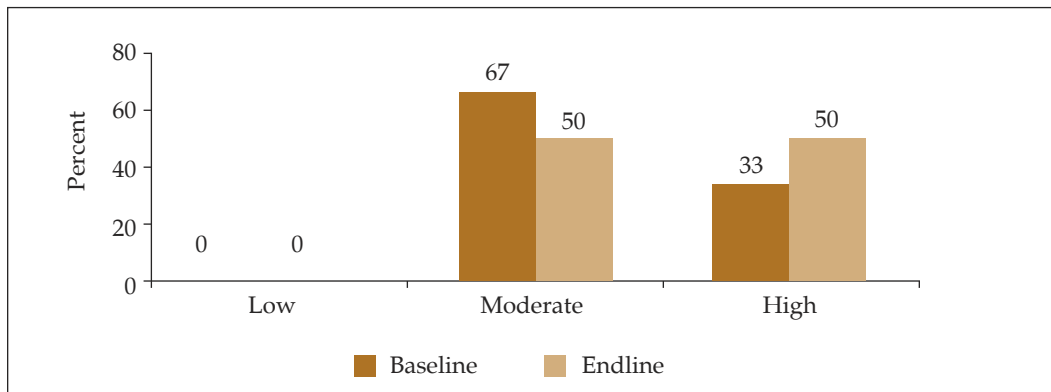


Table 2: Attitude of POs towards DV - baseline and endline - Delhi surveys

Attitude towards Domestic Violence		Baseline (%)	Endline (%)
DV is a family affair	Agree	53.3	57.1
	Partially agree	13.3	7.1
	Disagree	33.3	35.7
DV can be best resolved by counselling the woman	Agree	53.3	28.6
	Partially agree	20.0	50.0
	Disagree	26.7	21.4
Beating one's daughter is DV	Agree	73.3	100.0
	Partially agree	13.3	0.0
	Disagree	13.3	0.0
Women, before filing a complaint of DV, should consider how that would affect their children	Agree	26.7	14.3
	Partially agree	26.7	35.7
	Disagree	46.7	50.0
It is predominantly poor men who beat their wives	Agree	13.3	0.0
	Partially agree	13.3	14.3
	Disagree	73.3	85.7
There are times when a women deserves to be beaten	Agree	6.7	0.0
	Partially agree	6.7	21.4
	Disagree	86.7	78.6
Total number of respondents		15	14

is DV", which is an increase over baseline (73 percent at baseline, 100 percent at endline). As the POs engage consistently with the law, it is likely that the inclusion of this form of violence within the PWDVA is increasingly appreciated.

The agreement with the statement, 'DV can best be resolved by counselling the woman' drops from 53 percent at baseline to 29 percent at endline; this is encouraging, but the disagreement percentage does not show a marked change (27 at baseline and 21 at endline). What is striking is that the percentage of POs who are unsure about their beliefs has increased from

baseline to endline ("Partially agree" jumps from 20 percent at baseline to 50 percent at endline).

This is indicative of remnant confusion or lack of conviction - and an area for increased intervention/training. Often the first step in transformation of attitudes is the creation of dissonance, where confusion sets in as rigid and firm beliefs are re-examined. Discussion is key at this point, to ensure that individuals do not slip back and are given support to change.

Similar trends are seen for two other statements. There is an increase from seven to 21 percent who "Partially

agree” that “*There are times when a woman deserves to be beaten.*” For the statement, “*Women before filing a case of DV should consider how that would affect their children*” though the proportion “Disagree” remains almost the same, the category of “Partially agree” increases marginally from 27 percent at baseline to 36 percent at endline.

Thus, it appears that over time, some POs in Delhi seem to be less sure of how they perceive and what they believe about DV *per se*. The next section on knowledge and attitudes will discuss in greater detail if this is being influenced by the changes in practices and instructions laid out by the courts and their departments.

3.1.2 Perceptions and attitudes towards the PWDVA

The attitudes of the POs towards the PWDVA are measured through their response to four statements related

to the law (See Table 3) and their perceptions around when (for which acts of violence) and under what law (i.e., PWDVA/ Section 498-A IPC/ both) complaints against DV (See Table 4).

As indicated in Table 3, many POs have a positive attitude towards the law, and seemed to appreciate its intent.

There is a slight increase in the proportion of POs who do NOT believe that “*The PWDVA should include violence against men*” – “Disagree” is 47 percent at baseline and 57 at endline. As mentioned in the earlier section, it is interesting to note that the proportions who “Agree” have dropped, but those that are unsure (“Partially agree”) have increased. This trend points to the need for more careful reflection on the processes, experiences and trainings that the POs have been exposed to during the course of the two years.

Table 3: Attitude of POs towards the PWDVA, baseline and endline – Delhi surveys

		Baseline (%)	Endline (%)
A woman who is beaten by her husband because she has committed adultery should be granted relief under the PWDVA	Agree	60.0	50.0
	Partially agree	20.0	42.9
	Disagree	20.0	7.1
The PWDVA should address violence against men as well	Agree	40.0	21.4
	Partially agree	13.3	21.4
	Disagree	46.7	57.1
Women in live-in relationships should be covered under the PWDVA	Agree	100.0	92.9
	Partially agree	0.0	0.0
	Disagree	0.0	7.1
	Partially disagree	6.7	7.7
Total number of respondents		15	14

Table 4: Perception of POs on when to lodge a complaint and under which law – PWDVA or Section 498-A or in both, baseline and endline Delhi surveys

Attitude towards PWDVA		Baseline (%)	Endline (%)
Slapping the woman once in a while	PWDVA	93.3	92.9
	498-A	6.7	0.0
	None	0.0	7.1
Threatening to throw the woman out of the shared household once	PWDVA	86.7	100.0
	498-A	0.0	0.0
	None	13.3	0.0
The husband forcing the wife to have sexual intercourse with him	PWDVA	86.7	100.0
	498-A	6.7	0.0
	None	6.7	0.0
Ridiculing the woman by calling her names	PWDVA	86.7	100.0
	498-A	6.7	0.0
	None	6.7	0.0
Refusing to giving the woman money for running the house	PWDVA	93.3	92.9
	498-A	6.7	7.1
	None	0.0	0.0
Banging her head against the wall repeatedly	PWDVA	93.3	92.9
	498-A	6.7	7.1
	None	0.0	0.0
Total number of respondents		15	14

Maybe, more specific focus is needed in discussions and interactions around these aspects.

Recognition of the need to include relationships ‘in the nature of marriage’ was complete at baseline, and it is unfortunate that one PO seems to have changed her opinion towards the negative at endline. It is the attitude towards **adultery** that was not very encouraging. At baseline, three out of 15 (20 percent) POs “Disagree” that a woman experiencing violence due to the adultery should get relief under the PWDVA. At endline, while this decreases, and only one PO reports this,

the percentage of “Agree” also drops and more POs move into the category of being unsure. In other words, the relatively clear opinions (whether positive or negative) held at baseline move, as more POs are unsure and “Partially agree” to this statement. Thus, while in Delhi most POs appeared to have understood the object and intent of the Act, the findings point to the need for continuous discussion and dialogue on these issues.

The perceptions of POs on when to lodge a complaint, under which law, are presented in the Table 4. Even at baseline, there was a high proportion

of POs who perceived acts of verbal, emotional and sexual abuse as acts of DV that justify lodging a complaint, and under the PWDVA.

This further increased in the positive direction, or remained stagnant at endline, with the exception of one PO who reports at endline that “Slapping the woman once in a while” is not an act that justifies the filing of a complaint. It is encouraging to note that one or two POs, who felt that acts of sexual violence, ridiculing or dispossession, did not justify any complaint **at all** at baseline, do not believe so at endline.

3.1.3 Knowledge of key provisions under the PWDVA

This section describes the findings of the extent of knowledge of the POs with respect to key definitions and concepts of the law.

3.1.4 Definition of AP and respondent: increased confusion when both AP and respondent are female

The knowledge that women can file against both marital and natal male family members is universal among POs in Delhi. However, confusion arises when both the AP and

respondent are female and it increases at endline (percent). As seen in Table 5, there is a sharp increase from baseline to endline (percent), in the percent of POs who assume that a “Daughter can file against her mother” (from 27 percent to 43 percent); a “Mother in-law against her daughter-in-law” (20 percent to 57 percent). Though those who wrongly assume that a female domestic worker can file, under this law, against her employer shows a slight decrease (from 47 percent to 36 percent), this is still a gap in knowledge *vis-a-vis* the understanding of “domestic relationship”.

This confusion was also prevailing among the judiciary, and was subsequently clarified through a Supreme Court Judgment in 2011.

3.1.5 Acts defined as DV under the law: understanding is comprehensive

The PWDVA gives a comprehensive definition of DV, including all forms of violence such as physical, sexual, verbal and emotional and economic abuse. The POs in Delhi had a comprehensive understanding at baseline and this remains constant at endline too (See Table 6). Only the act of scolding has a slightly lower

Table 5: Knowledge of POs about who can be an ‘AP’ under the PWDVA – Delhi, baseline and endline surveys

	Baseline (%)	Endline (%)
Married woman against her husband	100.0	100.0
Daughter against her father	100.0	100.0
Daughter against her mother	26.7	42.9
Mother against her son	100.0	100.0
Mother-in-law against her daughter-in-law	20.0	57.1
Female domestic help against her employer	46.7	35.7

Table 6: Percent of POs reporting that the given Acts are defined as DV under the law – Delhi, baseline and endline surveys

	Baseline (%)	Endline (%)
Slapping the woman	100.0	92.9
Scolding the woman	73.3	78.6
Forced sexual relationship with wife	100.0	92.9
Forcefully getting the daughter married	100.0	100.0
Name calling	100.0	100.0
Refusing to give money to the woman	93.3	100.0
Preventing the woman from taking up a job	100.0	100.0
Preventing the woman from leaving the house	100.0	100.0
Total number of respondents	15	14

agreement, with about three-fourths reporting this at baseline, as well as, at endline.

3.1.6 Provision of reliefs under the law

To 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, two commonly held incorrect options – the division of property and divorce. The baseline data shows that most POs had a good understanding of the provisions that could be sought under the Act (See Table 7).

At endline, while there is only a slight variation with regard to other provisions—two findings are important to note. First, there is an increased knowledge at Endline with regard to the compensation order. However, there is an increase from seven percent to 29 percent of POs who wrongly assume that division of property can be sought under the PWDVA. This is resonated in the understanding of the “Right to residence”, as seen in Table 8. The POs were clear that the “Right to reside” in the shared household **does not imply ownership**

Table 7: Distribution of POs by reliefs that can be sought under the PWDVA – Delhi, baseline and endline surveys

	Baseline (%)	Endline (%)
Protection order	100.0	92.9
Division of property	6.7	28.6
Right to residence	93.3	92.9
Right to custody	93.3	85.7
Maintenance order	100.0	92.9
Divorce	6.7	7.1
Compensation order	86.7	100.0
Total number of respondents	15	14

Table 8: Distribution of POs, according to their understanding of the "Right to Residence" – Delhi, baseline and endline surveys

	Baseline (%)	Endline (%)
A wife has ownership right over the shared household	0.0	21.4
A wife has right to reside in the shared household only if the shared household is owned by the husband	53.3	64.3
A wife 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	50.0

at baseline, However at endline, more than 20 percent (i.e., four of 14 POs) now believe this to be true. It appears, thus, that misinterpretations of key provisions have indeed influenced knowledge.

3.1.7 Knowledge of other provisions and procedures under the Act: Knowledge seems to be impacted by practice

DIR: In response to *Who can file a DIR*, at endline, more POs in Delhi at endline report that lawyers can file (seven percent at baseline and 27 percent at endline). On the other hand, the proportion of POs who report that SPs can file a DIR drops from 60 percent at baseline to 43 percent at endline. The knowledge of filing the DIR is directly affected by the practice itself, which in turn, is impacted by what the courts accept (Table 9).

In their interviews, POs stated that they file DIRs only when a case has to be filed in the court, and court directed DIRs are also filed. As seen in Table 10, POs do not report knowledge of filing the DIR every time the woman approaches them. In practice too, none of the POs reported they did this. As in Rajasthan, the purpose of the DIR

being a record of the history of violence is interpreted as a detailed record for purposes of the court cases only. What is surprising though is that at endline, 21 percent POs mistakenly believe that the DIR and the home visit report (HVR) is the same.

Knowledge of the role of POs and the police under the Act: Table 11 gives the comparative picture of changes from baseline to endline on several aspects pertaining to the role of a PO.

There is no significant change recorded in the knowledge of the specific procedures related to the coordination role with respect to the DIR from

Table 9: Knowledge of POs, about who all can file DIR – Delhi, baseline and endline surveys

	Baseline (%)	Endline (%)
PO	100.0	100.0
Police	26.7	28.6
SP	60.0	42.9
Lawyer	6.7	28.6
Medical staff	26.7	21.4
Aggrieved woman	53.3	57.1

Table 10: Knowledge of POs about DIR – Delhi, baseline and endline surveys

About the DIR	Baseline (%)	Endline (%)
The role of the DIR is to initiate the legal proceedings	80.0	71.4
The role of the DIR is to record history of violence	100.0	92.9
Every time a woman approaches a PO, the DIR has to be filed	0.0	7.1
The DIR is mandatory to accept application under Section 12	73.3	78.6
The DIR and the Home Visit Report (HVR) are the same	0.0	21.4

baseline to endline. Awareness that a copy of the medical report has to be forwarded to the police station, apart from the DIR, also remains high at endline too. This is because in practice, POs shared that they are attaching a medical report and an application for legal aid, along with the DIR.

It is interesting to note the slight increase (from seven percent at baseline to 14 percent) at endline of POs who believe that the 'police have no role under the PWDVA'. As detailed in the

next section, all POs, in practice, report asking the police for assistance, and in many instances, it is court directed. It is likely that they view the police as providing a more supportive role in the implementation and not a primary one.

Breach of order: The knowledge of breach of order being a cognisable and non-bailable offence decreases at endline (from 93 percent to 64 percent), though at endline almost all POs are aware of the reporting endlines of breach to the police.

Table 11: Knowledge of POs on other provisions under the PWDVA – Delhi, baseline and endline surveys

	Baseline (%)	Endline (%)
All DIRs have to be sent to magistrates as per the PWDVA	100.0	100.0
All DIRs have to be sent to the local police station as per the PWDVA	80.0	85.7
The PO should forward a copy of the medical report to the local police station	80.0	85.7
The police have no role to play under the PWDVA	6.7	14.3
POs should be present at daily hearings	13.3	57.1
POs have to be examined by the magistrate on facts stated in the DIR	86.7	78.6
Counselling the woman is the POs' duty under the PWDVA	46.7	64.3
Breach of order may be reported to local police as an FIR as per the PWDVA	80.0	92.9
Breach of a protection order is cognisable and non bailable under the PWDVA	93.3	64.3

Counselling: There has been considerable discussion regarding the role of POs in counselling, and different states have recorded varying practices in the past. In Delhi, there is an increase in the proportion of PO's who believe that *counselling the woman is the POs duty under the PWDVA* – from 47 percent at baseline to 64 percent at endline.

This may be influenced by directions of the court to counsel the parties. As reported by POs in their interviews they are expected to undertake counselling of the parties on being directed by the court. Since the main emphasis of the courts is upon bringing the parties to an out of court settlement, POs are directed to counsel the parties as and when required. POs also shared instances of referring the women to the family Counselling Centre or SPs for the purpose of counselling.

Service of notice: Knowledge of the POs around service of notice is presented in Table 12. The awareness that notice can be served by any other person (directed by the PO) or with assistance of the police shows some decline from baseline to endline.

In order to implement the PWDVA effectively, it is critical for all the key stakeholders to know the basic provisions and their key role as defined under the Act. As discussed in this section, we find a wide variation in different aspects of knowledge. It appears though that in many instances, knowledge is being impacted upon by the practices adopted and the interpretation of the Act by the courts.

Table 12: Distribution of POs According to their knowledge on who can serve notice under the PWDVA – Delhi, baseline and endline surveys

	Baseline (%)	Endline (%)
PO	86.7	92.9
Any person directed by PO	46.7	35.7
PO with the help of police	80.0	64.3
Police	80.0	78.6
Registered post	60.0	57.1

3.1.8 Implementation and practice of the law

All POs reported that they were approached by women in the past year, and the women approached them on their own – which is an increase from 60 percent reported at baseline. In keeping with the increased presence of lawyers in litigation in Delhi, the percentage of POs receiving women referred by lawyers almost doubles at endline (from 27 percent to 50 percent). An increase is also seen in referrals by SHs. However, the referrals from Legal Services Authorities, SPs, other NGOs and even the police decrease from baseline to endline, as indicated in Table 13.

3.1.9 Forms of violence reported by the women to the POs

The most common complaint reported at endline was that of being refused money, which was reported by 93 percent of the POs as the complaint with which women approach them. Though this is not an increase over the reporting at baseline, reporting of other complaints has reduced at endline,

Table 13: Distribution of POs according to the People/stakeholders who referred women facing DV to them in last one year – Delhi, baseline and endline surveys

	Baseline (%)	Endline (%)
They come on their own	60.0	100.0
NGOs	80.0	64.3
Shelter home	0.0	21.4
Medical facility	0.0	7.1
Police	93.3	71.4
Lawyer	26.7	50.0
Service provider	40.0	14.3
Legal services authority	60.0	14.3
Number of respondents	15	14

including physical violence (being beaten) at 71 percent (see Table 14).

The other two acts of physical violence of “Being slapped” and “Being scolded”, show an increase from baseline to endline, as indicated in the table above. Other forms of non-physical violence too, such as “Threats of being thrown out of the house” and “Prevented from leaving the house” show a slight increase. On the other hand, there is a marked decrease in the reporting of sexual violence within marriage (53 percent at baseline to 21 percent at endline)⁶; “Being forced to marry” (20 percent at baseline to seven percent at endline) and “Name calling” (53 percent at baseline to 29 percent at

Table 14: Percentage of POs reporting forms of DV women came with in last one year – Delhi, baseline and endline surveys

	Baseline (%)	Endline (%)
Being slapped	53.3	64.3
Being scolded	26.7	42.9
Being beaten	93.3	71.4
Forced sexual relationship within marriage	53.3	21.4
Being forced to marry	20.0	7.1
Name calling	53.3	28.6
Refusing to give her money	93.3	92.9
Preventing her from taking up a job	33.3	42.9
Preventing her from leaving the house	33.3	50.0
Threatening to throw her out of the house	33.3	50.0

endline). In Delhi, many women are being directed by the courts to the POs; and thus may already have had filed cases in court through their lawyers.

3.1.10 Help sought by the woman, and assistance provided by the PO

At endline, the most commonly sought help was that of providing protection (79 percent), followed closely by lodging complaint (64 percent) and taking the case to court (57 percent).

This is similar to the pattern at baseline, with the exception of assistance sought to provide shelter – this was at 60 percent at baseline but decreases to 43

⁶ In 2010, LCWRI, while analysing court orders found that more and more magistrates were recognising sexual violence in cases filed under the PWDVA. This continued to be the trend in 2011 as well.

percent at endline. Referrals to other stakeholders such as medical facility and legal help are low and decrease further from baseline to endline (27 percent and 40 percent to seven percent and 28 percent respectively). It is likely that since many women are being directed by courts to the PO, referrals, as needed in the pre-litigation phase, may not be necessary. The expectation that the POs will counsel the family members is the same – at about 50 percent. As reported in the earlier section, courts are referring women to the POs for counselling and reaching an out of court settlement and the expectation of the women maybe in line with this. Many of these observations are areas for which more in-depth inquiry is necessary (See Table 15).

The actions taken by POs at *first contact* as a response to the help sought by the women are presented in Table 16. The women expect some assistance from the POs, regarding litigation and filing DIRs (71 percent) and informing them of their rights (64 percent). These are reported as the most frequent actions. There is a decrease in two actions from baseline to endline – that of filing an application (from 40 percent to 29 percent) and advise to lodge a criminal complaint. In the 2010 report it was noted that many courts do not encourage POs to file applications, and instead instruct lawyers.

The POs too felt that lawyers are more equipped to respond to the needs of the court. What is striking, is the

Table 15: Distribution of POs, according to the help sought by women facing DV in the last one year – Delhi, baseline and endline surveys

	Baseline (%)	Endline (%)
To lodge complaint	60.0	64.3
To provide protection ⁷	73.3	78.6
To take the case to the court	33.3	57.1
To counsel her husband & other family member not to continue the violence	46.7	50.0
To provide shelter	60.0	42.9
To refer her to medical facility	26.7	7.1
To refer her for legal help	40.0	28.6
Others	13.3	35.7

Table 16: Distribution of POs in Delhi, by action they have taken when women have approached them for the first time in the last one year – Delhi, baseline and endline surveys

	Baseline	End-line
Inform the woman of her rights under the PWDVA	73.3	64.3
Inform the woman of her rights under 498-A IPC	20.0	7.1
Refer her to the police	13.3	7.1
File DIR	86.7	71.4
Fill in an application on her behalf	40.0	28.6
Counsel her into going back to her home	0.0	21.4
Counsel husband & other family member not to continue the violence	26.7	57.1
Refer her to Crime Against Women Cell	6.7	7.1
Advise woman to lodge a criminal complaint	26.7	0.0

⁷ Several of the terms used here are based on the responses of the POs, about what women expect of them- such as “Lodging complaint”; “Provide protection”. These have been kept similar to what were used in the baseline.

increase in *counselling* – whether to the woman herself (non-existent at baseline but reported at 21 percent at endline) or involving the family members. As reported by POs in their interviews and also mentioned in the earlier sections, counselling is being emphasised by the courts as well. This practice emerged in 2010 in Delhi and seems to be continuing.

3.1.11 Reliefs sought under the PWDVA

There are changes observed in the reliefs that women seek from the courts (see Table 17). Almost all POs report that women seek Protection Orders (93 percent). As compared to baseline, the right to custody decreases from 87 percent at baseline to 57 percent at endline. The division of property is reported by 21 percent of POs as compared to seven percent at baseline. This may be contributing to the knowledge that this provision can be sought under the PWDVA as reported in the section on knowledge.

3.1.12 Interaction of POs with police and other stakeholders

All POs reported that they had approached the police for assistance, similar to the reporting at baseline (Table 18). The reasons for assistance remain similar to what was reported at baseline. As seen in Table 18, restoration of women in the household is one action for which assistance sought increases substantially from 13 percent at baseline to 27 percent at endline.

The assistance provided by the police too does not show much change from baseline to endline (Table 19). Police assistance for filing the DIR has

Table 17: Reliefs women sought under the PWDVA as reported by POs in last one year – Delhi, baseline and endline surveys

	Baseline (%)	Endline (%)
Protection order	86.7	92.9
Division of property	6.7	21.4
Right to residence	86.7	78.6
Right to custody	86.7	57.1
Maintenance order	80.0	78.6
Divorce	20.0	14.3
Compensation order	53.3	42.9
Number of respondents	15	14

decreased from 27 percent at baseline to seven percent at endline. This was also reported as assistance sought by PO, the only other action that decreases is assistance in enforcement of court order (60 percent to 36 percent).

3.1.13 Assistance for breach of order

Though the help sought and given for breach is not reported as being very high, 71 percent POs reported that they had received assistance in the report of breach, a decrease from 87 percent at baseline. Of the POs who received this report, 50 percent reported the breach to the court, and the other half to the police. The other actions reported at baseline were not done at endline (Table 20).

When asked about their interaction with other stakeholders, an increased number of POs at endline reported

Table 18: Distribution of POs according to the help they sought from police during the last one year – Delhi, baseline and endline survey

	Baseline	Endline
Service of notice	60.0	64.3
Rescue of woman in case of emergency	33.3	28.6
Accompanying the PO to record DIR	0.0	7.1
Restore the dispossessed woman into the shared household	13.3	28.6
Confiscation of weapon used in violence	0.0	0.0
Prepare safety plans	20.0	21.4
Assist in implementation of safety plans	20.0	14.3
Provide protection to PO	40.0	42.9
Assist in the enforcement of the court order	60.0	35.7
Record an FIR in case breach of order reported	20.0	14.3
Arrest the respondent in case of breach of court order	20.0	21.4
Assist conducting home visit	40.0	42.9
Presence during the visitation with children	13.3	0.0

that they had sought assistance from the legal service authority. This could indicate the request for legal services that POs attach to the DIR, when women approach them directly with requests to file cases in court. The interactions with SHs and MFs decreases and drops way at endline.

Table 19: What assistance did the police provide you?

	Percentage of respondents	
	Baseline	End-line
Service of notice	40.0	42.9
Rescue of woman in case of emergency	20.0	21.4
Accompanying the PO to record DIR	26.7	7.1
Restore the dispossessed woman into the shared household	13.3	21.4
Confiscation of weapon used in violence	0.0	0.0
Prepare safety plans	20.0	21.4
Assist in implementation of safety plans	20.0	21.4
Provide protection to PO	46.7	42.9
Assist in enforcement of the court order	60.0	35.7
Record an FIR in case breach of order reported	13.3	7.1
Arrest the respondent in case of breach of court order	0.0	7.1
Assist conducting home visit	40.0	42.9
Presence during the visitation with children	13.3	0.0

Table 20: Distribution of POs according to the action they took in case of breach of a court order – Delhi, baseline and endline surveys

	Baseline	Endline
Refer the woman to the police station	23.1	0.0
Reported the breach to the police	30.8	50.0
Reported the breach to the court	84.6	50.0
Investigated the case	38.5	0.0
Gave warning to the respondent	23.1	0.0

3.1.14. Interaction with the courts

The POs in Delhi are directed by the courts to undertake several functions and most are expected to be present at the hearings. They are directed to serve notices on their own and often the courts now direct the police to assist the POs in the same. This is one role due to which the POs find themselves extremely overburdened. As indicated earlier, POs file court directed DIRs, and also attach medical reports and applications for legal aid along with the DIR, if required.

The POs report that the disposal rate of cases under PWDVA is low and therefore most of them remain pending in the courts for more than a year. POs as such do not have much role to play during the pendency of the case except for counselling the parties on being directed by the court or to comply with an interim order passed by the court. Since the main emphasis of the courts is to bring the parties to an out of court settlement, POs are directed to counsel the parties as and when required.

As seen in Table 21, more POs report receiving orders at endline as compared to baseline. The nature of directives issued by the courts to POs remains similar to the pattern observed at baseline. Directives to provide protection and enforce custody show a decline, the latter perhaps because fewer reliefs for custody are being sought by women as reported earlier.

Most of the POs complain of being overburdened and lacking adequate infrastructure under the PWDVA.

Table 21: Distribution of POs according to their interaction with the courts – Delhi, baseline and endline surveys

	Baseline (%)	Endline (%)
Receive copies of all court orders	33.3	64.3
Nature of directives issued by the court		
Retrieve <i>Streedhan</i>	38.5	42.9
Reinstate the disposed women in shared household	69.2	71.4
Enforce maintenance order	46.2	42.9
Enforce custody order	69.2	28.6
Provide protection to women/her relatives/ persons assisting her in her case	53.8	14.3
Enforcement of compensation order	15.4	14.3

Though the latter has decreased from 100 at baseline to 71 percent at endline, the need for vehicles (likely to be connected to the function of service of notice), office equipment and space are among the most required support articulated by POs.

In detailed interviews, POs reiterated the lack of office space and other office arrangements. They said that a budget of up to Rs. 2,00,000 per annum is allocated to them, which also includes their salary. They have not been given any assistance and computers or phone facilities. For telephone expenses, a re-imbursment of Rs. 500 is given, which is much less than the actual cost of telephone bills borne by them.

3.2 Police Officers

Under the PWDVA, the police are one of the stakeholders with critical responsibilities at two points in the implementation of the Act. First, when they receive a complaint of DV, the police are expected to inform the AP of her rights under the Act and under Section 498-A, the right to free legal aid and specific reliefs available. They are also expected to inform women about POs and SPs and refer them to concerned POs. Secondly, the role of the police comes into play automatically upon the breach of a Protection Order or interim Protection Order.

Currently, the police are the most known, accessible and obvious structure, whom women facing violence

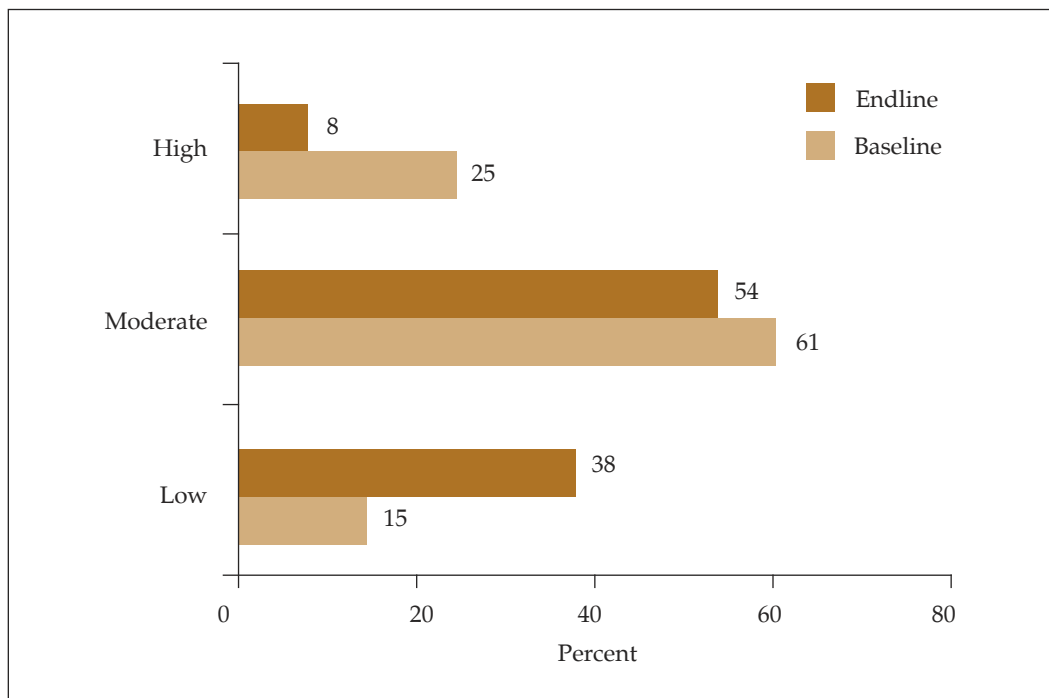
approach for help. Thus, the response, guidance and direction provided at the police station become critical, as these are likely to influence her choices and subsequent outcomes.

This section explores the perception, understanding and practices of Delhi police with respect to the PWDVA, and how these have changed from 2009 to 2011.

3.2.1 Attitude of police towards DV and the Act

Like the POs, six statements on societal norms around DV were given to the police and asked if they “agree”, “Partially agree” or “Disagree” with these. A similar DV index was developed for the police. Data suggests that Delhi police have become more

Figure 2: Distribution of police officers according to the score on DV scale



supportive of DV. The percentage of officers with high scores significantly decreased from 25 to eight percent at endline (Figure 2).

Looking at the individual items, on four out of six statements including *“There are times when a woman needs to be beaten, “Domestic violence is a family affair” and “Women - before filing a complaint of domestic violence - should consider how that would affect their children”*, a significantly lower proportion of officers disagreed at endline compared to the baseline survey. In only two statements – *“Domestic violence can be best resolved by counselling the woman”* and *“It is predominantly poor men who beat their wives”* - no significant change was noted (Table 22).

A steep decline was noted in the statements on who should be covered under the Act and its intent. At baseline,

around 70 percent of officers disagreed with the statements that women facing DV due to adultery and women in live-in relationships should not be covered under the Act, which dropped to around 30 percent at endline.

Officers were asked their opinion about which form of violence merited the lodging of complaints and under which Act – the PWDVA or Section 498-A.

This data needs to be analysed at two levels the percentage that reported a particular violence should not be registered, and under which Act the violence should be registered. A quarter of the police officers think that *“Being slapped once in a while”* does not justify lodging a complaint. Further, there is significant increase among those who consider that the complaint of *“Being threatened to be thrown out of house”*

Table 22: Percentage of police officers who disagreed with the statement on DV and the Act – Delhi, baseline and endline surveys

	Baseline	Endline
Statements on domestic violence		
Domestic violence is a family affair*	20.3	12.2
Domestic violence can be best resolved by counselling the woman	16.7	17.6
Beating one’s daughter is not domestic violence*	63.8	50.6
Women before filing a complaint of domestic violence should consider how that would affect their children*	26.8	14.7
It is predominantly poor men who beat their wives	59.3	56.7
There are times when a woman deserves to be beaten*	57.7	37.6
A woman who is beaten by her husband because she has committed adultery should not be granted relief under the PWDVA*	69.9	27.8
Women in live-in relationships should not be covered under the PWDVA*	67.1	29.0
Total number of respondents	246	245

Note – significant at *p ≤ 0.05

should not be registered (14 percent at baseline, 24 percent at endline).

Some changes are also noted in the suggestion of the Acts under which complaint should be registered (Table 23). Over time, a significantly higher proportion of officers shared that forced sexual relations (from five percent to 17 percent) and refusal to give money for running the home (from two percent to 14 percent) should be registered under 498-A. Around 30 percent of officers, the

highest compared to other forms of violence, mentioned that "Banging the head repeatedly against the wall" should be registered under section 498-A. This suggests that police officers would register severe forms of violence under 498-A.

3.2.1 Knowledge of provisions under the PWDVA

There are substantial gaps in knowledge among the police, on several aspects of the Act.

Table 23: Distribution of police officers who reported which violence should be registered and under which Act – Delhi, baseline and endline surveys

		Baseline	Endline
Slapping the woman once in a while	PWDVA	68.3	64.5
	Section 498-A	6.5	9.0
	None	25.2	26.5
Threatening to throw the woman out of the shared household once*	PWDVA	78.9	65.7
	Section 498-A	6.9	10.6
	None	14.2	23.7
The husband forcing the wife to have sexual intercourse with him*	PWDVA	82.5	63.7
	Section 498-A	5.3	17.1
	None	12.2	19.2
Ridiculing the woman by calling her names	PWDVA	86.6	80.0
	Section 498-A	6.1	11.8
	None	7.3	8.2
Refusing to giving the woman money for running the house*	PWDVA	88.6	77.6
	Section 498-A	2.8	13.9
	None	8.5	8.6
Banging her head against the wall repeatedly	PWDVA	67.1	59.2
	Section 498-A	29.3	33.5
	None	3.7	7.3
Total number of Respondents		246	245

Note – significant at *p ≤ 0.05

Table 24: Knowledge of police on who can be an ‘Aggrieved Person’ under the PWDVA – Delhi, baseline and endline surveys

	Baseline (%)	Endline (%)
Married woman against her husband	99.2	98.8
Daughter against her father	89.4	90.6
Mother against her son	95.1	87.8
Daughter against her mother*	61.4	77.6
Mother-in law against her daughter-in law*	74.4	83.7
Female domestic help against her employer*	85.4	66.5
Total number of respondents	246	245

Note – significant at *p ≤ 0.05

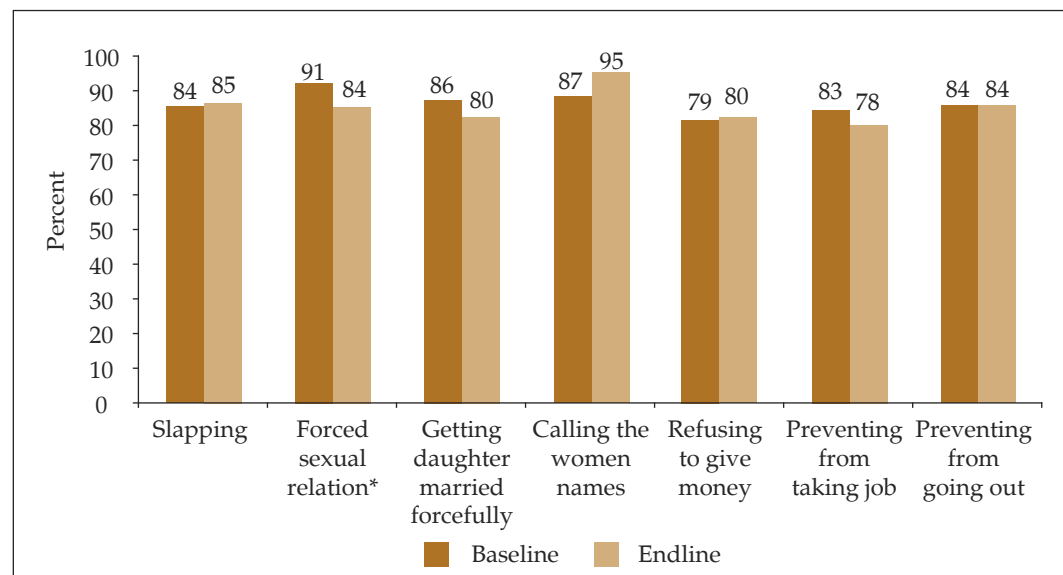
i. Who can be the AP/respondents?

The knowledge that a married woman could file a case against her husband under the Act is almost universal

(Table 24). Around 90 percent of the respondents reported that a daughter could file against her father and a mother against her son, with no significant difference over time. However, there seems some confusion about females as respondents. Around 78 and 84 percent mentioned that the daughter could file against the mother and the mother-in-law against her daughter-in-law respectively, here the endline is significantly higher than the baseline.

Though there has been significant decline, still two-thirds of the police officers reported that female domestic help could be the AP under the Act, **which is incorrect**. Confusion was apparent when they were asked specifically about who the respondents could be. Half of the officers agreed that only male relatives could be the respondents, which was 88 percent at baseline.

Figure 3: Percent of police officers by forms of violence listed under the Act – Delhi, baseline and endline surveys



Note – significant at *p ≤ 0.05

ii. Domestic violence defined under the Act

At the baseline, 80-90 percent officers reported that “Slapping”, “Forced sexual relations”, “Name-calling”, “Refusing to give money” or “Preventing from going out” are listed as DV under the Act (Figure 3). Interestingly, significant changes were noted on two forms - “Forced sexual relations and “Name-calling”. While there was seven percent decline among those who considered “Forced sexual relations” come under the Act, an eight percent increase was noted in “Name-calling”.

iii. Provision of reliefs

Though awareness about some of the reliefs is high, there is an overall decline over time (Table 25). At baseline, around 96 percent were aware of “Protection Order” and “Right to residence orders”. However, this declined significantly at endline. Three-fourths of the officers assumed that “Division of property” and “Divorce” can be sought under the PWDVA. This misunderstanding on the “Division of property” becomes even more apparent when three-fourths of the police define “Right to residence” as “Ownership right over the shared household”.

iv. Role of police and other provisions under the Act

As mentioned earlier, the police are one of the key stakeholders in the implementation of the PWDVA. The Act has outlined certain roles and responsibilities for the police in the whole process. In Delhi, the HC has passed an order instructing the police to assist POs in the execution of their duty. In this context, it is important

Table 25: Distribution by police by reliefs that can be sought under the PWDVA – Delhi, baseline and endline surveys

	Baseline	Endline
Protection order*	96.7	86.1
Right to residence*	95.9	89.0
Maintenance order	90.7	90.6
Right to custody	89.0	83.7
Compensation order	82.5	84.5
Division of property	71.1	76.7
Divorce*	59.3	73.1
Total number of respondents	246	245

Note – significant at * $p \leq 0.05$

for the police to know the provisions under the Act, their role in effective implementation, and in ensuring better access to law to women facing DV.

A few of the statements are important to consider. Even after five years of implementation of the Act, 43 percent of the police mentioned that they *have no role* under the Act; this is significantly higher than baseline (15 percent). While saying so, a high proportion (70 percent) reported that *it is the duty of the police to make a diary entry when a woman approaches the police station with a case of DV* (90 percent at baseline). At endline, only 38 percent of officers agreed that *there is no provision of arrest under the PWDVA* and 71 percent mentioned that breach of the protection order is a bailable compoundable offence (Table 26).

Further, two-thirds considered that POs are exclusively responsible for the service of notice (37 percent at baseline). Nearly three-fourths of the

Table 26: Awareness of the role of police and other provisions under the Act – Delhi, baseline and endline surveys

	Baseline (%)	Endline (%)
The police have no role under the PWDVA*	15.0	43.3
It is the duty of the police to make a diary entry when a woman approaches the police station with a case of DV*	90.2	70.2
It is strictly the duty of the PO to serve the notice*	37.0	64.1
A woman already getting maintenance from her husband cannot file an application under the PWDVA*	17.1	73.1
The purpose of a home visit is to ascertain the occurrence of domestic violence.	94.3	93.9
The purpose of the DIR is to initiate legal proceedings*	85.8	68.2
There is no provision for arrest under the PWDVA*	67.5	38.4
The breach of a protection order is a bailable compoundable offence.	66.3	71.4
Police should lodge FIR when the violence is severe*	80.5	91.0
Police should lodge FIR at the time of the breach of the order*	78.0	88.2
Police should lodge FIR when the woman approaches the police for the first time	49.2	44.9
Total number of respondents	246	245

Note – significant at * $p \leq 0.05$

officers reported that a woman getting maintenance from her husband cannot file an application under the PWDVA, which is incorrect. Actually, the Act allows women to file a case even if they are getting maintenance.

The police seem to be more informed about the purpose of the home visit and the DIR and the civil-criminal nature of the Act. In response to the purpose of the home visit and the DIR, around 95 percent said that the home visit is carried out to ascertain the occurrence of domestic violence and 68 percent reported that the DIR is filed for the initiation of legal proceeding (significantly lower than baseline - 86 percent). On the questions about the timing of filing an FIR under the Act, around 90 percent mentioned that FIRs should be lodged when the violence is severe and at the time of breach of

the court order. Around half of the police said that when women come for the first time, a complaint should be lodged. Actually, under the Act, provision of arrest is made only in the case of breach of protection order.

3.2.2 Practices for the implementation of the Act

In order to understand the practices of the police under the Act, specific questions were asked pertaining to DV cases the study participants have handled in the last year and it was compared it with the practices followed two years back, at baseline.

i. Cases of DV received by the police

Compared to baseline (67 percent), a greater numbers of police officers reported that women facing DV have approached their police stations for

help in the last one year (92 percent). There seems to be some variation over time in the pattern of DV cases women come with, but this could be merely due to the response. At baseline, police officers might have given more time to spell out more forms of violence than endline, as there has hardly been any change in the order of violence commonly reported. The highest proportion of officers mentioned that usually women complain about “Slapping,” followed by “Scolding” and “Name-calling”. Around 10 percent of officers mentioned that women also complain about “Forced sexual relations” (Table 27).

ii. Help sought by women facing DV

Table 27: Percentage of police reporting forms of DV women came with in the last year – Delhi, baseline and endline surveys

	Baseline	Endline
Being slapped	97.6	78.3
Being scolded	55.0	62.4
Name calling	52.1	34.5
Refusing to give her money	38.5	35.4
Forcefully getting daughter married	34.9	15.9
Preventing her from leaving the house	26.0	8.8
Forced sexual relationships within marriage	21.3	10.2
Preventing her from taking up a job	8.3	7.1
Total number of respondents	166	226

Note – significant at *p ≤ 0.05

and action taken by police

The majority of the police officers mentioned that women primarily expect them to counsel their husbands and other family members to stop violence. Around half of them said that women requested the police to provide protection (55 percent) and lodge complaints (45 percent). Only 13 percent reported that women ask for shelter at endline compared to 60 percent at baseline (Table 28).

With respect to the PWDVA, it is expected that the police provide guidance to women who approach the police station – by informing her of her rights and providing referrals to either POs or SPs.

There is a significant drop in the proportion of police officers who report about informing women of their rights under the PWDVA and 498-A or even about referring them to POs.

Table 28: Distribution of police according to the help sought by women facing DV in the last one year – Delhi, baseline and endline surveys

	Baseline	Endline
To counsel her husband & other family members not to continue the violence*	88.0	60.6
To lodge complaints*	85.0	44.7
To provide protection	57.0	55.3
To provide shelter*	60.0	13.3
To refer her to medical facility	8.0	5.3
Total number of respondents	165	226

Note – significant at *p ≤ 0.05

Though a higher proportion of officers reported that police refer women to the CAW cell, a counsellor or for medical examination (compared to baseline), only three percent mentioned referral to POs at endline. At baseline, almost 40 percent officers had mentioned this. Interestingly, 61 percent officers reported that it is the police who file DIRs, which could not be established by any other stakeholders. It also appears that over time, Delhi Police has focused more on counselling – the husband, family members, or even women, as seen in Table 29.

When asked specifically, 88 percent of the officers reported that they have interacted with women facing DV, significantly higher than the baseline (55 percent). Their reported action was in-line with what usually happens at police stations (Table 30). It clearly indicates that while more police officers

are interacting with women facing DV, their unfavourable attitude and lack of knowledge are hampering women access the Act.

iii. Interaction with POs

The interaction between the police and POs has declined significantly over time (Table 30). Fewer police officers reported that their police station was approached at endline (39 percent at baseline, 16 percent at endline). There is also variation in the forms of assistance POs sought. While at baseline, more than two-thirds of the officers had reported that POs sought assistance in enforcement of the court order, in the restoration of dispossessed women, service of notice and recording of DIR, only 20-30 percent officers reported so at endline.

POs are seeking more assistance in preparing safety plans, implementing

Table 29: Actions police taken by at first contact with women facing DV in the last year according to police officers – Delhi, baseline and endline surveys

	Baseline	Endline
Counsel her husband & other family members not to continue the violence	75.8	82.3
Counsel her into going back to her home*	27.9	63.3
File DIR*	34.5	61.1
Refer her for medical examination*	16.4	26.5
Refer her to CAW Cell *	13.3	25.7
Refer her to Counsellor*	11.5	21.2
Inform the woman of her rights under the PWDVA*	75.8	23.9
Inform the woman of her rights under the 498-A IPC*	55.2	8.0
Register the case under 498-A	12.7	5.8
Record the case under PWDVA*	56.4	7.1
Refer her to PO*	39.4	3.5
Make a note of the incident in the daily diary	18.8	10.6
Advise her to lodge a criminal complaint	11.5	3.5
Total number of respondents	165	226

Note – significant at *p ≤ 0.05

Table 30: Distribution of police officers according to the assistance POs sought from their police station last year – Delhi, baseline and endline surveys

	Baseline	Endline
Assist in enforcement of the court order*	84.5	30.8
Restore the dispossessed woman into the shared household*	80.4	28.2
Service of notice*	79.4	30.8
Accompanying the PO to record DIR*	67.0	20.5
Rescue woman in case of emergency*	44.3	25.6
Confiscation of weapon used in violence*	42.3	12.8
Assist conducting home visit*	46.4	20.5
Prepare safety plans*	10.3	43.6
Assist in implementation of safety plans*	9.3	38.5
Provide protection to PO*	8.2	25.6
Record an FIR in case breach of order reported*	6.2	25.6
Arrest the respondent in case of breach of court order*	7.2	23.1
Total number of respondents	97	39

Note – significant at * $p \leq 0.05$

safety plans, providing protection to POs, recording breach of court order (6 percent to 26 percent) and arresting respondents in case of breach. It is likely that there are specific directions on which courts are directing assistance to be sought and given. In order to understand this process, further inquiry is necessary.

Further, analysis was done on endline data to understand the extent to which request for assistance was met. Among those who had mentioned that POs had sought enforcement of court order, only 58 percent reported that the police had assisted in this. Similarly, only half of the officers reported that their police station assisted POs in preparing safety plans, implementation of safety plans and service of notice. However, certain requests are fulfilled more often than others.

More than 80 percent officers mentioned that assistance was provided to rescue

Table 31: Kind of assistance SPs sought from police as reported by police officers in the last year – Delhi, baseline and endline surveys

	Baseline	Endline
To rescue women in emergency*	68.4	46.5
To restore dispossessed women in shared household*	71.9	34.9
To confiscate weapon used in DV*	54.4	20.9
To give protection to women	57.9	58.1
To file an FIR in case of breach of court order	40.4	51.2
To arrest the respondent in case of breach of court order	17.5	25.6
Total number of respondents	58	43

Note – significant at * $p \leq 0.05$

women in an emergency situation, record a DIR, confiscate the weapon used in violence and arrest respondents in case of breach of court order.

iv. Interaction with SPs

Similar to POs, a lower proportion of officers (25 percent to 18 percent) reported that any SP had approached their police station for any assistance under the PWDVA (Table 31). Around half of the officers at endline reported that SPs approach their police station to seek help to rescue women in emergency, give protection to women and lodge an FIR in case of breach of the court order. On the kind of assistance the police provided, more than 80 percent officers reported that the SPs requested help to restore dispossessed women, provide protection to women and lodge an FIR in case of breach of court order.

v. Breach of court order

Seven percent officers reported receiving reports of breach of court order at endline (4 percent at baseline) and only half of them mentioned that an FIR was lodged in this regard. Though at baseline, nine out of 10 officers reported that they had lodged an FIR.

vi. Inter-agency coordination

After five years of implementation of the Act and several IEC activities, 74-86 percent of police officers have the contact numbers of key stakeholders including POs, SPs, MFs, SHs and state legal service authority. No significant improvement is noted on this. In fact, a significantly lower proportion of police officers have the contact numbers of POs at endline (79 percent) as compared to

baseline (91 percent). When the police officers were asked to rate their relation to the PO, more than 80 percent did not respond at endline, as compared to 35 percent at baseline who were those who had never interacted with PO.

Around 60 percent of the officers reported that a copy of the court order is sent to the police station and more than 80 percent were aware of the High Court circular instructing the police to assist POs in the implementation of the PWDVA.

The majority of the officers reported that the record of cases under the Act is maintained (85 percent baseline and 86 percent endline) at the police station and discussed during the monthly meeting (78 percent baseline and 73 percent endline).

vii. Capacity building of police officers

At the endline, only 12 percent reported receiving any training on the PWDVA. Further, only 11 percent reported that someone from the police station has also received training. Though, the majority of the officers – who received training or knew that someone else had received training – reported that they have discussed the training with other colleagues, it does not seem to be a common practice.

Service Providers

Seven SPs were interviewed in Delhi. Some of the SPs in Delhi do not seem to be well versed with the objectives and intent of the Act, while others seem to be very pro-active and coordinate well

with the concerned POs and police officers.

The main services provided by SPs are counselling, legal aid if necessary, SHs and vocational training centres. Most of them have a Family Counselling Centre too. Most SPs have a 24 hour helpline. The SPs keep a register to record all the women who approach them and follow up cases that have been counselled. Some assist women during the court proceedings too. Most counsellors in these organisations have not undergone any training under the PWDVA.

SPs provide legal aid to women and it is only through the courts that the POs file the DIRs, which are filled in by only one SP. They help the women to fill up the DIR. According to them, the most common relief sought by the AP is maintenance and residence order. No other report is sought by the courts from the SPs. The courts sometimes send the women to them for their SHs and counselling, and they are directed to submit a counselling report as well. For the purpose of counselling, joint sittings are done with both the parties. The main emphasis is on the re-union of the parties.

The SPs categorically complained that the POs are never available and cannot be contacted in cases of emergency.

Lawyers

Most lawyers are not aware of the concept of SPs and therefore there is not much coordination between them. In case of emergency protection orders, maintenance and residence are granted

on the first date of hearing. The court easily grants maintenance orders but the quantum of maintenance granted is not satisfactory. Cases are still filed under section 498-A IPC, but only if the lawyers are sure that the woman does not want to go back and that filing a case u/s 498-A is the final resort.

Most cases are pending at the stage of recording evidence and the majority of lawyers in Delhi stated that the interim orders or ex-parte orders at the first date of hearing is granted. They further said that these orders are easily granted if the lawyer is able to convince the court regarding the urgency of the matter. In Delhi, an interim relief is easily obtained, especially relief in the nature of a protection order and custody are very often granted on the first date of hearing.

Conclusions

The survey shows that Delhi has had independent POs, many of whom have had a background in social work. At baseline, it was noted that the POs in Delhi demonstrated far more sensitive attitudes and a better understanding of violence, as compared to other states.

Over time, there has been a further positive shift in the attitudes of POs; though there are specific aspects on which further deliberation and clarification is needed for some POs.

The POs in Delhi are attached to specific magistrates, and are expected to be present in court. They appear to be functioning as “officers of the court”, and are called upon by the court to undertake

several and specific tasks with regard to the implementation of the PWDVA. Thus, it also appears that, over time, their knowledge and practices adopted on many aspects is influenced by the direction of the court. For example, as compared to baseline, many more POs report an increase in court directed DIRs, and court directed counselling.

Both these aspects are divergent from the purposes that are laid out in the law. There is a clear increase in the role of lawyers under the Act. In addition, as noted in 2010, there is hardly any cognisance among the judiciary on the role of the SPs, for either filling in the DIR, or for counselling. On the other hand, POs are being directed to attach the medical and legal aid applications, along with the DIR, a practice that should be encouraged. While the role of the POs during litigation seems to have become more well-defined, there is still ambiguity regarding their pre and post litigation roles.

The findings from a comparison of baseline and endline information for police in Delhi do not reveal very encouraging trends. There is an overall decline in attitudes of the police as well as their knowledge about their specific role. Unfortunately, there is no significant positive shift in the action expected of the police at two critical junctures: guidance and referrals to the woman at the pre-litigation stage and action at breach. There is a large gap in terms of the need for training, clarifications on knowledge, and setting procedures with respect to the PWDVA. Given the critical role of the courts in the interpretation and

implementation of the law, discussion with them is a priority.

SECTION B: Maharashtra

Protection Officers

In Maharashtra, POs have been appointed at the district, block and *taluk* level. This includes the Child Development Project Officers (CDPOs) appointed under the Integrated Child Development Scheme (ICDS), district WCD officers, sub-divisional officers, extension officers, block development officers, community development officers in addition to *tehsildars* and *nayab tehsildars*. In the first year, 800 were appointed and the number has gradually increased to 3,774.

However, as officers handling additional charge, they face the standard problems of being overburdened and dealing with inadequate budgetary allocations and infrastructural investments. Some of them were not even aware of their appointment under the PWDVA.

1. Attitudes of POs towards domestic violence and the PWDVA

1.1 Attitude towards DV

Over time, there is positive shift in the POs' attitude towards DV as evident from Figure 4. There is significant increase in the proportion of POs with a high score from baseline (3 percent) to endline (36 percent). However, there is more to do.

Item-wise analysis indicates interesting results. Of the six items, a significant

Figure 4: Distribution of POs according to their score on the DV scale in Maharashtra baseline and endline surveys

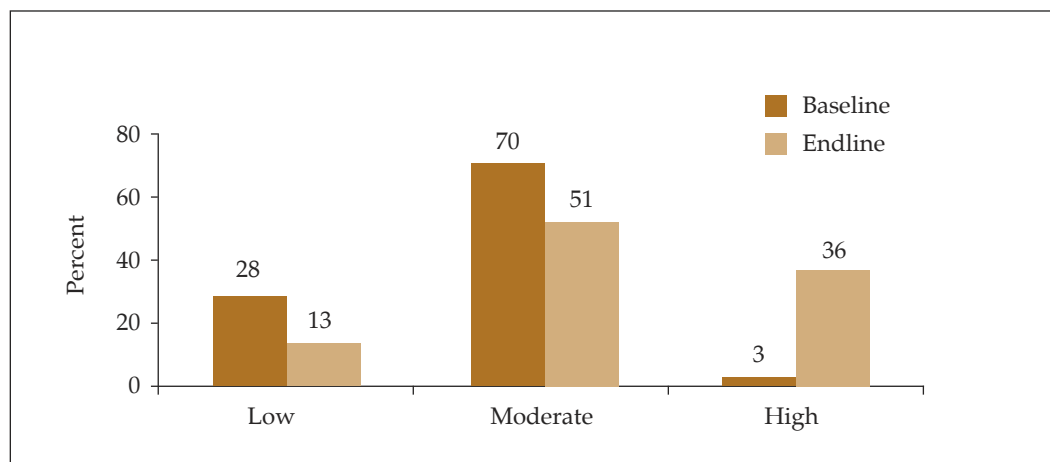


Table 32: Attitude of POs towards DV – Maharashtra, baseline and endline surveys

		Baseline (%)		Endline	
		%	N	%	N
DV is a family affair*.	Agree	87.2	136	50.0	64
	Partially agree	12.2	19	14.8	19
DV can be best resolved by counselling the woman*	Disagree	0.6	1	35.2	45
	Agree	64.1	100	43.0	55
	Partially agree	27.6	43	39.8	51
	Disagree	8.3	13	17.2	22
Beating one's daughter is DV*.	Agree	61.5	96	78.9	101
	Partially agree	14.1	22	8.6	11
Women before filing a complaint of DV should consider how that would affect their children*.	Disagree	24.4	38	12.5	16
	Agree	82.1	128	44.5	57
	Partially agree	13.5	21	34.4	44
	Disagree	4.5	7	21.1	27
It is predominantly poor men who beat their wives	Agree	14.1	22	25.8	33
	Partially agree	19.9	31	14.1	18
There are times when a women deserves to be beaten*	Disagree	66.0	103	60.2	77
	Agree	28.8	45	18.0	23
	Partially agree	26.3	41	7.0	9
	Disagree	44.9	70	75.0	96
Total number of respondents		156		128	

Note – Significant at *p ≤ 0.05

positive shift is noted on item no. 5 and no change in item no. 1 (Table 32). Around one-third of the POs disagreed to the notion that “*Domestic violence is a family affair*”, which was less than one percent at baseline. This is a critical change, as this attitude reduces stigma and encourages women to seek help from outside. On the statement – “*Domestic violence can be best resolved by counselling the woman*” – while there is significant increase in POs disagreeing overtime, it still remains small (17 percent). Further, an increase is noted in the proportion of those who disagreed with “*Before filing a complaint of domestic violence, a woman should consider how it would affect her children*” from five to 21 percent. However, there is still a substantial proportion that places concern for the family over a woman’s right to seek recourse for the violence that she faces.

1.2 Attitude towards the Act

A few statements were used to gauge the POs’ attitude towards the PWDVA.

On three out of four statements, no significant change was observed from baseline survey (Table 33). Even after five years of implementation of the Act, more than two-thirds of the POs are not clear about the intent of the Act and agreed with the statement – “*The PWDVA should address violence against men as well*” and less than half agree that “*Women in live-in relationships should be covered under the PWDVA*”.

To understand the POs perception about when a complaint should be lodged and under which law (i.e., PWDVA/Section 498-A IPC/ both), POs were given a few specific forms of violence (see Figure 5).

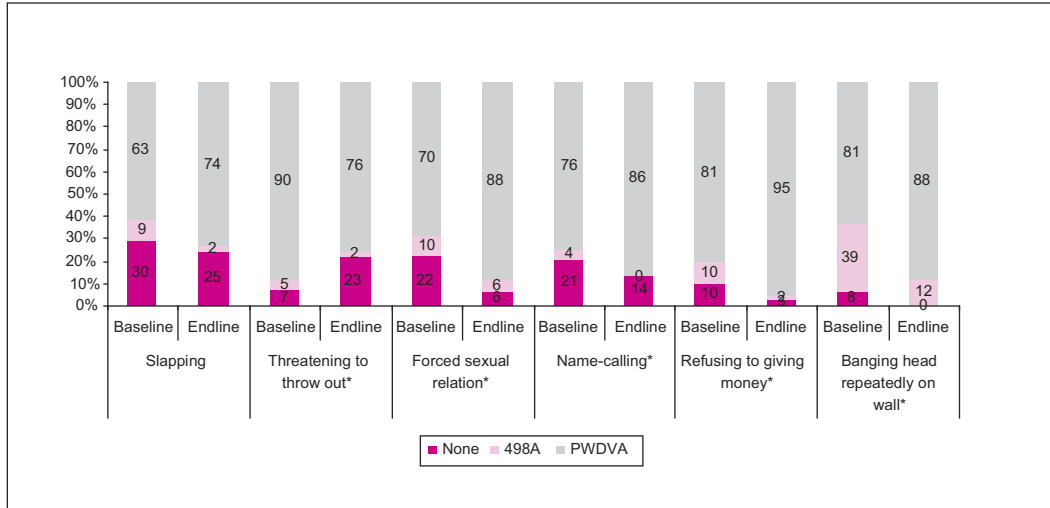
Data suggests that except for threatening to throw the woman out of her shared home, a significantly higher proportion of POs justified complaints to be lodged at endline compared to baseline survey. For example, at baseline, 22 percent of POs said that complaint of “*Forced sexual relations*”

Table 33: Attitude of POs towards the PWDVA – Maharashtra, baseline and endline surveys

		Baseline (%)	Endline (%)
A woman who is beaten by her husband because she has committed adultery should be granted relief under the PWDVA	Agree	65.8	65.7
	Partially agree	21.9	14.7
	Disagree	12.3	19.6
The PWDVA should address violence against men as well	Agree	74.2	68.6
	Partially agree	18.7	26.5
	Disagree	7.1	4.9
Women in live-in relationship should be covered under the PWDVA	Agree	44.5	48.0
	Partially agree	23.9	20.6
	Disagree	31.6	31.4
Total number of respondents		156	128

Note – Significant at *p ≤ 0.05

Figure 5: Distribution of POs according to their perception on when to lodge a complaint and under which Act



was not justified, which declined to six percent at endline. This is indicative of enhanced understanding of when a complaint is to be filed. More than one-fifth of POs said that *‘Threatening to throw the woman out of the shared household’* was not serious enough to lodge a complaint.

1.3 Knowledge about the PWDVA

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 law⁸.

1.4 Definition of AP: 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 when both the AP and the respondent are female. As presented in Table 34, half of the POs reported that the daughter can file a case against her mother, while around 60 percent reported that the mother-in-law can file against the daughter-in-law with no significant change over time. This indicates some

⁸ Before asking the details about the Act, POs were asked whether they have heard about the Act, are aware of its provisions and their role under this. Since, 20 percent were not familiar with these, they were not asked any question on knowledge and practice. Thus, at endline, only 103 POs responded to the questions on knowledge. Interestingly, at baseline, only those who were aware about the law and their roles participated in the interview.

Whilst conducting interviews of POs in Mumbai, (6) it was found that even as WCD officers and CDPOs were playing a relatively active role, some of the tehsildars were not even aware of their notification under the PWDVA and this was acknowledged by them.

Table 34: Knowledge of POs about who can be an AP under the PWDVA – Maharashtra, baseline and endline surveys

	Baseline	Endline
Married woman against her husband	97.4	100.0
Daughter against her father	87.1	88.2
Daughter against her mother	49.0	48.0
Mother against her son*	65.8	94.1
Mother-in law against her daughter-in law	58.1	60.8
Female domestic help against her employer*	49.7	73.5
Total number of respondents	156	103

*Note – Significant at *p ≤ 0.05*

confusion as to whether a woman can be a respondent; it was prevalent in the judiciary and cleared in 2011 by a judgment of the SC which said a woman can be a respondent.

Surprisingly, 73 percent of the POs wrongly assume that a female domestic worker can file under this Law against her employer, and this was significantly higher than at baseline (50 percent). This indicates that POs have misinterpreted the definition of domestic relationship included under the Act.

1.5 Acts of violence defined under the PWDVA

There was significant improvement in the comprehensive knowledge of acts of violence included in the

PWDVA over time. At endline, more than 80 percent of POs mentioned that “Slapping”, “Forced sexual relations”, “Getting daughter married forcefully”, “Refusing to give money”, “Preventing women from taking-up jobs” or “Leaving the house” were covered under the Act. However, at endline only half of the POs reported that “Scolding” and “Name calling were defined under the Act.

1.6 Reliefs sought under the Act

On certain reliefs POs have gained clarity over time though certain areas have remained unclear. This is evident from Figure 6. Compared to baseline, at endline, a significantly higher proportion of POs reported that “Right to residence” (73 percent to 85 percent), “Right to custody” (45 percent to 90 percent) and “Maintenance order” (60 percent to 91 percent) can be sought under the PWDVA. Three-fourths of the POs still mentioned that women can seek “Division of property” under this Act.

Even though a higher proportion of POs mentioned “Right to residence” as one of the reliefs, they were not clear about its meaning. At endline, more than 40 percent of POs considered “Right to residence” as “Ownership rights” over the shared household, and that a wife could seek the “Right to reside” if the shared household was owned by the husband (Table 36).

1.7 Knowledge about when to fill the DIR

The majority of the POs (87 percent) consider that the role of a DIR is to

Table 35: Knowledge of POs about acts defined as DV under the PWDVA – Maharashtra, baseline and endline surveys

	Baseline	Endline
Slapping the woman*	56.1	90.2
Scolding the woman*	85.2	46.1
Forced sexual relationship with wife*	45.2	82.4
Getting the daughter married forcefully*	63.2	89.2
Name calling	48.4	48.0
Refusing to give money to the woman*	62.6	91.2
Preventing the woman from taking up a job*	44.5	81.4
Preventing the woman from leaving the house*	52.9	95.1
Total number of respondents	156	103

Note – Significant at *p<0.05

Figure 6: Percentage of POs reporting about the reliefs under the Act – Maharashtra baseline and endline surveys

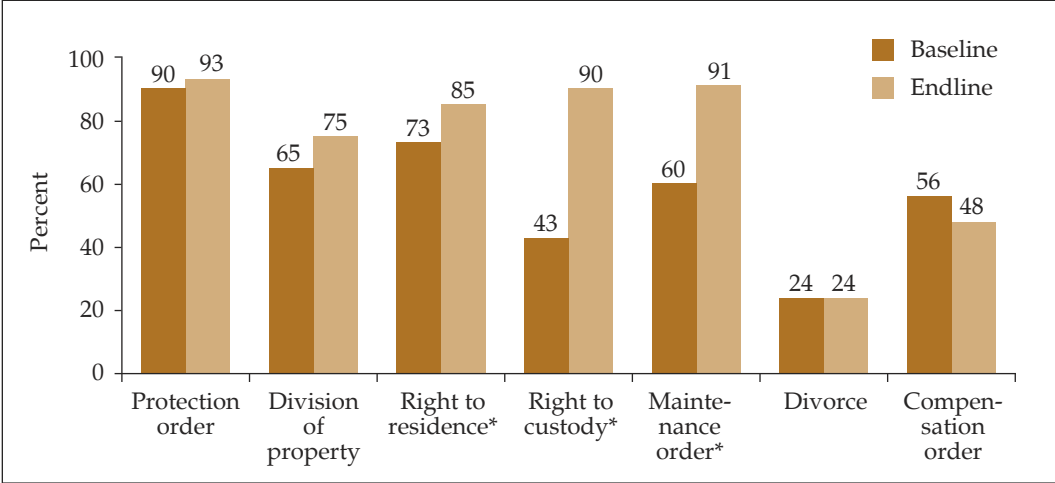


Table 36: Understanding of POs about the “Right to Residence” under the PWDVA – Maharashtra, baseline and endline surveys

	Baseline (%)	Endline (%)
A wife has ownership right over the shared household*	56.8	43.1
A wife has the right to reside in the shared household only if the shared household is owned by the husband*	19.4	44.1
A wife has the right to reside in the shared household whether or not she has any right, title or beneficial interest in the same	11.0	12.7
Total number of respondents	156	103

Note – Significant at *p<0.05

initiate legal proceedings. Yet, around two-thirds mentioned that the DIR is to record the history of violence and has to be filled every time a woman approaches a PO. This suggests a lack of clarity about the purpose of a DIR. According to the Act, a DIR is meant to record the history of violence, and it should be filed every time a woman visits the PO, irrespective of her intention to approach the court. It is important to review the practice of POs regarding this. Nevertheless, POs are clear about the distinction between a DIR and a HVR. At endline, only seven percent reported that these two are the same, compared to 44 percent at baseline (Table 37).

The understanding that POs can file a DIR is universal. However, their knowledge about the role of other

Table 37: Knowledge of POs about filing DIRs – Maharashtra, baseline and endline surveys

About DIR	Baseline (%)	Endline %
The role of the DIR is to initiate the legal proceedings	86.5	87.3
The role of the DIR is to record the history of violence	67.7	69.6
Every time a woman approaches a PO, the DIR has to be filed*	75.5	61.8
The DIR is mandatory to accept application under Section 12 of the PWDVA	78.7	85.3
The DIR and the HVR are same*	43.9	6.9
Total number of respondents	156	103

*Note – Significant at *p≤0.05*

Table 38: Knowledge of POs about who can file DIRs – Maharashtra, baseline and endline surveys

	Baseline (%)	Endline %
PO	94.2	100.0
Lawyer*	24.5	58.8
SP	21.3	13.7
AP	27.7	28.4
Police*	38.1	6.9
Medical Staff	7.7	2.9
Total number of respondents	156	103

*Note – Significant at *p≤0.05*

stakeholders in filing a DIR is minimal. For example, only a small proportion of POs said that SPs and medical staff can file it and more than half reported that lawyers can do it. Around 30 percent of the POs reported that even the AP can file it. Nevertheless, from baseline to endline, a steep decline is noted in the POs who mentioned that police can file a DIR. (Table 38).

1.8 Service of notice

In response to the question – “Who can service notice under the PWDVA” - 90 percent mentioned POs, which is significantly higher than the baseline (79 percent). However, there is significant decline over time in POs, who consider the role of the police in the service of notice. Only nine and 17 percent POs mentioned that the PO, with the help of the police or the police alone respectively, can serve notice under the Act as compared to 44 percent and 37 percent respectively at baseline (Table 39).

Table 39: Knowledge of POs about who can service notice under PWDVA – Maharashtra, baseline and endline surveys

	Baseline (%)	Endline (%)
PO*	79.4	90.2
Any person directed by PO*	25.8	43.1
PO with the help of police*	44.5	8.8
Police*	36.8	16.7
Registered post	9.7	8.8
Total number of respondents	156	103

Note – Significant at $*p \leq 0.05$

1.9 Knowledge of other provisions of the Act

In the knowledge of POs, on other provisions, including their role and the roles of others, there is a considerable gap. Around two-thirds of them consider counselling a woman as their duty under the Act. Half of them also mentioned that POs should be present in daily hearings in the Court, which is significantly higher at endline than at baseline (39 percent). On the role of the police, a higher proportion reported that the police have no role to play under the Act (Table 40).

On breach of the court order, around two-thirds are aware that it is a cognisable and non-bailable offence and around 80 percent are aware that it should be reported to the police. When asked specifically “When can police register an FIR under the PWDVA?”, two-thirds (significantly higher than

Table 40: Knowledge of other provisions under the PWDVA among POs – Maharashtra, baseline and endline surveys

	Baseline (%)	Endline (%)
Counselling the woman is the POs duty under the PWDVA	61.9	67.6
The POs should be present in daily hearings*	38.7	52.9
The police have no role to play under the PWDVA*	20.6	36.3
Breach of order may be reported to local police as an FIR as per the PWDVA.	79.4	82.4
Breach of a Protection Order is cognisable and non-bailable under the PWDVA.	60.6	64.7
Total number of respondents	156	103

Note – Significant at $*p \leq 0.05$

baseline 19 percent) reported “At the time of the breach”.

1.10. Implementation of the PWDVA

This section presents the implementation experience of POs and tries to capture the change over time. Two-thirds of the POs reported that women with experience of DV have approached them since they have become POs and 85 percent of them have interacted with women in the last year.

Thus, at baseline, 85 out of 156 (54 percent) reported having interacted with women with DV cases in the last

one year, while at endline, 58 out of 141 (41 percent) reported so.

1.11 Forms of DV reported by women

There is a significant difference in the response of POs about the experience of violence of women who approached them in the one year preceding the baseline and endline surveys. At baseline, most of the POs had reported multiple forms of violence, while at endline, most reported a single form. Further, at endline, the highest proportion of POs (30-40 percent) reported that women complain of "Being beaten", "Being refused money", or "Being

Table 41: Distribution of POs according to complaints women approached them with in the last one year – Maharashtra, baseline and endline surveys

	Baseline (%)	Endline (%)
Being slapped	13.2	7.6
Being scolded*	60.4	5.4
Being beaten*	62.6	38.0
Forced sexual relationship within marriage	6.6	7.6
Being forced to marry	11.0	5.4
Name calling*	42.9	5.4
Refusing to give her money*	48.4	29.3
Preventing her from taking up a job	12.1	5.4
Preventing her from leaving the house*	25.3	9.8
Threatening to throw her out of the house	27.5	32.6
Total number of respondents	85	58

Note – Significant at *p≤0.05

threatened to be thrown out of the house". At baseline, "Scolding" and "Beating" were reported by 60 percent of POs (Table 41).

1.12 Help sought by women

Half of the POs reported that women sought their help in taking their case to the court, followed by lodging a complaint (36 percent) at endline. Ten to fifteen percent of POs also reported that women request them to provide protection, counsel their husband and other family members to stop violence, and refer them for legal help. Compared to baseline figures, except for the help to take the case to the court, there is decline in proportion of POs who mentioned other help women sought from them. For example, at baseline, half of POs reported that women

Table 42: Distribution of POs according to the assistance women sought in the last one year – Maharashtra, baseline and endline surveys

	Baseline (%)	Endline (%)
To take the case to the court	62.6	54.3
To lodge complaint*	59.3	35.9
To provide protection*	40.7	15.2
To counsel her husband & other family member not to continue the violence*	52.7	14.1
To provide shelter*	17.6	4.3
To refer her to the medical facility*	19.8	4.3
To refer her for legal help*	36.3	12.0
Total number of respondents	85	58

Note – Significant at *p≤0.05

request them to counsel their husband and other family members, however, at endline this proportion reduced to 14 percent (Table 42).

1.13 Action taken at first point of contact

In response to the question on “Action taken at first point of contact”, at endline, most of the POs mentioned one or two actions, unlike at baseline where POs had reported multiple actions.

At endline, half the POs reported that at first point of contact, they inform women of their rights under the PWDVA and 62 percent said they file the DIR. More than a third of them fill an application on behalf of the woman, and 16 percent reported they counsel the husband and other family members at first point of contact.

Other actions, such as recording the information in a register, counselling her to go back and advising her to lodge a criminal complaint were reported by less than five percent of POs, which is significantly lower than the baseline. Further, five percent at baseline and one percent at endline reported that they did not take any action (Table 43).

When asked specifically, around three-fourths of the POs reported that they file the DIR every time a woman approaches them, with no significant change over time and almost all POs reported that they make preliminary enquiries before filling a DIR, though it is not mandatory under the Act.

In the detailed interviews of POs from Mumbai (6) all of them reported that

Table 43: Distribution of POs according to the action they took at the first point of contact in the last one year – Maharashtra, baseline and endline surveys

	Baseline (%)	Endline (%)
Inform the woman of her rights under the PWDVA	56.0	50.0
File DIR	49.5	62.0
File in an application on her behalf	46.2	39.1
Counsel her husband & other family members not to continue the violence*	47.3	16.3
Record the information in a register*	30.8	4.3
Counsel her into going back to her home*	24.2	1.1
Advices woman to lodge a criminal complaint*	26.4	0.0
Inform the woman of her rights under the 498-A IPC*	13.2	1.1
Refer her to the police*	15.4	0.0
Nothing	5.5	1.1
Total number of respondents	85	58

Note – Significant at * $p \leq 0.05$

women did approach them in the pre-litigation stage. They either came directly or were referred by lawyers, NGOs or the police. This indicates a higher level of awareness. All of them had undergone training and were clear that they did not have to provide counselling. Only one Child Development Project Officer (CDPO) said he did “counselling” but he used the term counselling to mean talking to the woman to mentally prepare her

for the possible repercussions of filing a case.

Two CDPOs interviewed said that they filed the DIR in all the cases which had come to them. The reason given by one of them, who had filed 70 DIRs, was that it was because by the time they came to him, the women were clear that they wanted to file a case under the PWDVA. Interestingly, the other reported that he got very few cases because his office was not in the district of his jurisdiction, thus discouraging women from approaching him.

The rest said that they file the DIR only if the women wished to file a case under the PWDVA. The number of DIRs filed by them ranged from two to 127. One WCD officer said that in the three years he had been working, the number of DIRs filed by him had gone from 23 in the first year (2007-2008), to 122 in the next and 127 in 2009-2010. Almost all of them said they send a copy of the DIR to the concerned police station and in each case, they were filing the safety plan as well.

1.14 Interaction with the police and other stakeholders

A small proportion of POs have approached the police for help. During the baseline, 35 percent (30 POs) and at the endline, 24 percent (14 POs) reported this. Given the small number of POs, it is difficult to capture change over time. However, at endline, half of the POs reported that they approached the police for enforcement of the court order, and

for the rescue of women in case of emergency and for the restoration of dispossessed women in the shared household. Restoration of dispossessed women and assistance in enforcement of the court orders were also mentioned by almost half of the POs at baseline. Most POs said they received the support requested from police, at baseline and endline.

In the detailed interviews, all POs from Mumbai acknowledged that the police assist them whenever needed. This included service of notice, implementation of orders and restoring a woman to her shared household in particular and in emergency situations. One WCD officer reported receiving police help in two emergency cases.

The POs interaction with SPs and MFs was limited as they did not require any help from them.

In the detailed interviews, all six POs from Mumbai reported interaction with SPs by referring women to the SPs during the pre-litigation stage, as envisaged under the Act. The POs also reported using the services of the Legal Services Authority.

Against half of the POs, at baseline, only five percent reported that they receive copies of all the court orders at endline, indicating limited interaction of POs with the court. During detailed interviews, POs said that after filing a DIR, they are unable to follow cases. They are neither directed to do home visits nor asked to be present during the court hearing.

1.15 Breach of court order

Only two POs at baseline and three at endline reported receiving any report of the breach of the court order. Of three, two reported it to the police and the court, while one reported only to the court at endline.

1.16 Infrastructure and other support

Most POs seem dissatisfied with the infrastructure available over time. Compared to almost half at baseline, only 15 percent of the POs reported that they have adequate infrastructure to fulfill their role assigned under the Act. The majority of the dis-satisfied POs want administrative staff (81 percent), vehicles (63 percent) and stationery (76 percent) support.

Ninety percent POs said they would like training on the Act. Compared to 80 percent at baseline, only 66 percent reported receiving any training, and want more.

Police Officers

In Maharashtra, the endline survey with the police was not complete as permission for data collection was

delayed. Therefore, baseline data collected in April 2010 is provided, which gives an indication of KAP of police under the PWDVA.

1. Attitudes of police towards DV and the Act

A key factor that determines how the police view and receive the complaint from a woman affected by DV depends upon their attitudes to DV. Each study participant was given a set of statements reflecting societal norms around DV and asked to respond on a three point index ranging from agree, partially agree or disagree.

1.1 Attitude towards DV

A substantial proportion of police (79 percent), 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 may not be treated with empathy when they approach the police for help. This proportion rises even higher if we add the category of “Partially agree”. Close to half of all the police “Agreed” or “Partially agreed” with the statement that “Women deserve to be beaten in

Table 44: Attitude of the police towards DV – Maharashtra, baseline survey

	Agree (%)	Partially agree (%)	Disagree (%)
Women deserve to be beaten in certain situations	22.0	33.3	44.7
Domestic violence is a family affair	71.8	15.7	12.5
Domestic violence can be best resolved by counselling the woman	66.7	18.4	14.9
Women before filing a complaint of DV should consider how that would affect their children.	78.8	12.9	8.2

Table 45: Perception of the police around when to lodge a complaint and under which law – PWDVA or Section 498-A or under both – Maharashtra, baseline survey

Act of violence	PWDVA	SEC 498-A	None
Slapping the woman once in a while	59.2	3.5	37.3
Threatening to throw the woman out of the shared household once	60.0	16.9	23.1
The husband forcing the wife to have sexual intercourse with him	42.7	13.7	43.5
Ridiculing the woman by calling her names	63.9	13.7	22.4
Refusing to give the woman money for running the house	67.8	15.7	16.5
Banging her head against the wall repeatedly	41.6	52.2	6.3

certain situations' and around 70 percent considered DV as a family affair, that can best be resolved by counselling the women (Table 44).

Specific questions were asked to assess the perception of the police around what constitutes DV and when does an act of violence attract lodging of a complaint and under which law? Table 45 presents variations in the perceptions. It seems that for the police, the severity of the act in the form of physical violence is the prime criteria for lodging a complaint.

Table 46. Distribution of police according to their knowledge of who can file a complaint under PWDVA – Maharashtra, baseline survey

Married woman against her husband	98.0
Daughter against her father	92.3
Mother against her son	90.6
Daughter against her mother	70.6
Mother-in law against her daughter-in law	74.9
Female domestic help against her employer	81.6
Total number of respondents	255

Around 40 percent reported that in case of "Slapping" once in a while, and "Forced sex", women should **not** lodge a complaint. Around 60 percent said that in case of "Slapping", "Threatening", "Ridiculing" and "Refusing to give money", a case should be lodged under the PWDVA. Only in the case of "Banging the head repeatedly", the police justified lodging complaint under Section 498-A.

Around two-thirds of the POs partially or fully agreed that a woman in illicit or in a live-in relationship **should not** be included under the PWDVA.

1.2 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 of the police. This section describes the findings on the knowledge of the key definitions and concepts enshrined in the law.

1.2.1 Definition of AP

The knowledge that the PWDVA

includes women who are married is universal. More than 90 percent officers reported that a daughter can file a case against her father and a mother against her son (Table 46).

Similar to POs, police officers are confused on the issue of women as respondents. Around 70 percent reported that a daughter can file a case against her mother and a mother-in-law against her daughter-in-law, However, there is confusion about domestic help, as around 80 percent officers wrongly assumed that under the Act a female domestic help can file a case 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.

1.2.2 Acts defined as DV under the law

In the survey, a list of specific acts was given and officers were asked whether or not each of those Acts fall under the PWDVA (Table 47). Around 80 percent categorised the Act of “Getting the daughter married forcefully, while 60-70 percent said acts such “Slapping”, “Name calling”, “Refusal to give money and “Preventing women from taking up a job” as DV under the law. Only two percent reported that under the Act, “Preventing women from stepping out” was defined as DV.

1.2.3 Provision of reliefs under the law

To gauge knowledge of reliefs under the Law, a list of ‘reliefs’ was provided, which included the correct options, as well as, two commonly held incorrect perceptions about the reliefs: namely, division of

Table 47. Percent age of police officers reporting that the given acts are defined as domestic violence under the law – Maharashtra, baseline survey

Getting the daughter married forcefully	81.2
Slapping the woman	66.7
Name calling	68.6
Refusing to give money to the woman	64.7
Preventing the woman from taking up a job	60.4
Forced sexual relationship within a marriage	59.6
Preventing the woman from leaving the house	2.5
Number of respondents	255

property and divorce. Approximately 85-90 percent 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, a fairly large proportion perceived that that division of property (84 percent) and divorce (55 percent) can also be sought as reliefs under the law (Table 47).

This misinformation can be damaging as it can contribute to the misconception that the PWDVA gives women the right to ownership over property.

1.2.4 Role of police as defined under the PWDVA

Police are key stakeholders in the implementation of the law. It is, therefore, crucial that they assist the POs to facilitate the efficient multi-agency response envisaged under the PWDVA. Only 12 percent said that the

Table 48: Distribution of police according to their knowledge of different provisions of the Act – Maharashtra, baseline survey

The police has no role under the PWDVA	12.5
There is no provision for arrest under the PWDVA	47.5
It is the duty of the police to make a diary entry when a woman approaches with a case of DV	20.0
A woman already getting maintenance from her husband cannot file an application under the DV law	45.9
It is the duty of the PO to serve the notice	33.3
Breach of a Protection Order is cognisable and non-bailable under the PWDVA	80.4
Total number of respondents	255

police has **no role** under the PWDVA. However, they were not clear about several provisions, including the civil-criminal nature of the law.

Around half of the officers were not aware of the provision for arrest under the Act and that a woman can file under the PWDVA, even if she was getting maintenance. Eighty percent said that breach of the protection order was cognisable and non-bailable under the Act; and 95 percent reported that police can lodge an FIR in case of breach of the court order (Table 48).

2. Implementation of the law

Around half of the police officers said that women facing DV have approached their police stations in the last year. Of these, 90 percent reported

Table 49: Distribution of POs reporting acts of violence for which women approach their police station in the last one year, Maharashtra, baseline survey

Slapping	72.1
Was refused money	74.0
Name calling	45.0
Was stopped from going outside the house	35.0
Trying to get married off forcibly	19.1
Was stopped from going for job	16.0
Scolding	4.2
Husband had sex with her forcibly	3.0
Total number of respondents	148

that all cases of DV were recorded at their police station.

2.1 Forms of violence reported by the women

Around 70 percent of officers reported that women come with complaints of “Being slapped” and “Being refused money”. One third to half said that women also complain of “Name-calling” and “Being stopped from going out of the home” (Table 49).

2.2 Help sought from police and action taken at first point of contact

Almost all the officers reported that women want the police to advise their husbands and relatives to stop the violence, while 26 percent mentioned that women should come with the request of providing protection. Interestingly, less than one percent mentioned that women should approach them with a request to lodge a complaint (Table 50).

Table 50. Distribution of police officers by type of help sought by women in the last one year – Maharashtra, baseline survey

Advise husband and other family members to stop violence	95.3
Give protection	26.4
Arrange a safe shelter	18.1
Lodge a complaint	0.7
Send her to health service	6.0
Total number of respondents	148

2.3 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. Half of them reported that they referred the woman to the Women’s Cell/desk, one-fourth called the husband and other family members and talked to them to stop the violence,

Table 51. Action taken by police in response to help sought by women in the last one year – Maharashtra, baseline survey

Send her to the CAW cell/ <i>Mahila Thana</i>	50.0
Advise her husband and other family members to stop violence	27.2
Make the women aware of her rights under PWDVA	25.0
Advise her to go back home	13.6
Fill DIR	12.2
Record the case under 498-A	6.8
Record the case under PWDVA	3.4
Make the women aware of her rights Under IPC 498-A	4.1
Send her to PO	0.7
Total number of respondents	148

and made the woman aware of her rights under the Act. Less than one percent reported that they refer women to the PO (Table 51).

2.4 Multi-agency coordination

When asked about their interaction with the POs, only 10 police officers reported that a PO had approached them in the last year, which was primarily for service of notice. On breach of the court order, 11 reported being aware of it, of which seven reported having lodged an FIR for the same. Around 40 percent of the police had the contact details of the POs, SPs and SHs.

Service Providers

Six SPs were interviewed from Mumbai (including three special cells). All said that they have been notified, but the WCD had not given them the list of other stakeholders under the Act. They had used their own sources to get the information they required.

Of the three SPs interviewed in Mumbai, one, who had been notified in October 2009, was playing an active role under the PWDVA and had assisted women to file complaints under the Act in around fifty cases (from 2008 onwards).

These were the only SPs who shared that in cases of extreme violence they would immediately file and not wait for the counselling process. However, like the other two, they did not file the DIR in every case, but only if the counselling or out of court settlement failed. They said they had no coordination with the PO as it was a very time consuming

process. Once the woman decided to file under the PWDVA, they filed the DIR and the safety plan, and helped the women to file with the help of an in-house lawyer. They accompanied the woman on every court date. Due to their active involvement they had also been directed by the court to do counselling in two cases. They said that women are quite satisfied with the Act and are getting speedy reliefs, especially protection orders. The SPs have taken help of the police in implementation of court orders and got an order under breach in two cases, where the respondents had to undergo six months imprisonment.

The other two SPs played a minimal role during litigation, and their primary role continued to be only counselling. They continued to refer women to SHs and to the MFs but did not comply with the documentation requirements, as per the provisions of the Act for multi-agency co-ordination. One of them said that after being notified, the only difference was that they filed the DIR themselves (usually after doing a home visit) and did not have to coordinate with the PO for the same.

The SPs believed that their work was being given recognition by the government. However, they did not accompany the woman to court on every court day though if the cases were pending for long they had started accompanying them. One SP shared that they would refer the matter to the PO for filing of the DIR once the attempt at reaching a settlement failed, although they used to file DIRs in the past. The SPs said they preferred to empower women

rather than file under the Act, since an adequate number of stakeholders had not been appointed under the Act.

Lawyers

Three lawyers from Mumbai were interviewed. Generally, it was found that the awareness of the lawyers interviewed under the PWDVA was not very high. They reported that women approached them only when the violence had reached an extreme and was unbearable, and the role played by the POs during litigation was minimal. The magistrates did not insist on the POs remaining present. The DIR was not considered statutory at the time of filing the application under the PWDVA. One lawyer practising in the family court said that DIR was not asked for in pending cases. They also said that orders were being passed without the DIR; however, subsequently, the DIR was called for. One lawyer reported a positive experience in getting ex-parte interim orders in five of her cases, wherein the AP had been thrown out of the house.

Conclusion

Maharashtra has a large number of government officials notified as POs. They are mostly ICDS and revenue officers with the additional charge of being POs. Tracking their KAP over time, provided an insight into the implementation of the Act.

A majority of the POs support patriarchal values and justify violence against women. Nevertheless, a critical positive shift has been noted in their

attitude over time. Against one percent at baseline, one-third at endline felt that DV is **not** a family affair.

However, this shift is not reflected in their attitude towards the Act. Even after five years of implementation, more than two-third of the POs are not clear about the intent of the Act.

About knowledge of the Act, while there is improvement on certain procedure, areas such as domestic relationships, reliefs, “the Right to residence” and counselling, remain unclear to them. While the knowledge that the PWDVA includes women who are married is universal, 73 percent of the POs wrongly assume that female domestic workers can file against her employer under this Law. There is also confusion about whether women can be respondents or not. This was also true about the judiciary and has only been cleared in 2011 by a judgment of the SC, which says a woman can be a respondent.

A large proportion of POs reported that the AP could seek divorce and division of property under this Act. The definition of “Right to residence” was not clearly understood. On the purpose of a DIR, a majority consider this for the initiation of legal proceedings. Further, two-thirds of the POs consider counselling women as their responsibility. However, while there has been improvement in the knowledge of POs over time, a huge gap still exists.

Less than half of the POs report having implementation experience and half of

them reported that women sought their help in taking their cases to the court, while only 14 percent wanted them to counsel their husband and other family members. Support provided is in line with what women had sought at first point of contact. Two-third of the POs reported filing a DIR, and half of them about informing the women about their rights under the PWDVA. Only 16 percent reported counselling the husband and other family members. A few POs reported interacting with the police, but received the required support. A fewer number reported about their interaction with the Court. In most of the cases, their role ends with filing a DIR. The POs have limited infrastructural and capacity building support.

While attitudes could not be tracked, knowledge and practice of police in Maharashtra over time, using the baseline data collected in early 2010, provides valuable insight. Police can play a critical role in informing women of their rights and protecting them from further violence, as they often are the first point of contact for women in cases of DV.

The data, however, suggests that the police believe in maintaining the family and the security of children, over a woman’s personal well-being and safety. These gender biases are also evident from their perception of the Act and when to register a case. More than 70 percent of officers support the notion that DV is a family affair and “women should think about children” before filing a case. They maintain the same attitude of considering the

severity of the act of physical violence for lodging an a FIR under section 498A, for justifying registering a complaint under the PWDVA. Around 40 percent of the police report that in case of being slapped once in a while or being forced to have sexual relations, women should **not** lodge a complaint. A similar proportion suggested that the Act is a tool designed to harass men and his relatives!

In terms of knowledge of the law, responses seem to be based more on assumptions rather than on actual information. There is confusion around certain key provisions, such as the definition of AP 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. Like the POs, four-fifths of the police officers wrongly reported that female domestic help can file a case against her employer under this Act. A fairly large proportion perceived that that division of property (84 percent) and divorce (55 percent) can also be sought as reliefs under the law. Though half of them were not aware of the provision for arrest under the Act, 95 percent reported that police can lodge an FIR, in case of breach of the court order.

Half the police officers said that women facing DV have approached their police stations in the last year. There is a strong perception about the need for counselling. Nearly all police officers reported that women requested them to counsel and advise their husbands and other family members to stop violence.

Half of the police reported referring women to *Mahila Thanas* or Women’s Cells. However, referral to POs was negligible. They reported minimum interaction with the POs. Only 40 percent had contact information of POs, SPs and SHs. Only a small proportion of officers reported receiving training on the Act.

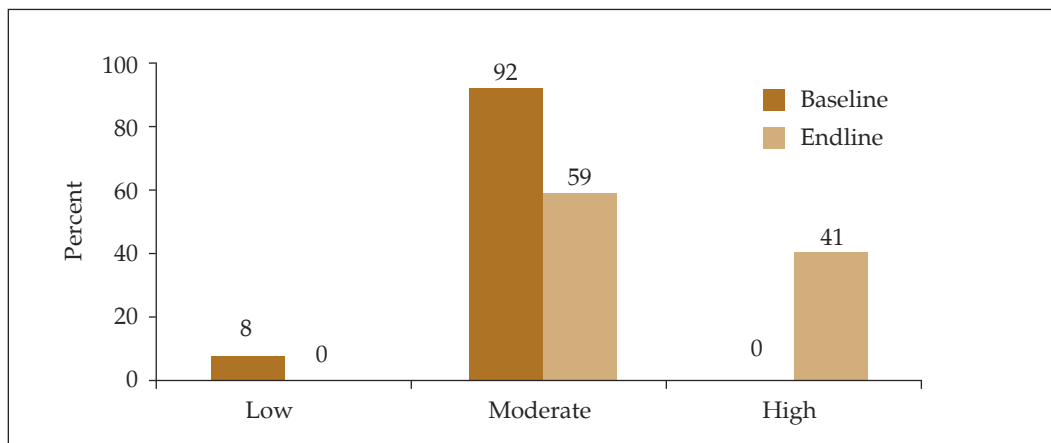
SECTION C: Rajasthan

Protection Officers

In Rajasthan, POs were appointed in early 2008. This was 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. As a result, the DWCD, Rajasthan issued notifications in February and April 2008, stating that the existing district and block level officials of the DWCD would take on **additional charge** as POs. Thus, Project Directors, CDPOs under ICDS programme and *Prachetas* were appointed as POs in Rajasthan. There are 50 POs in the districts of Jaipur and Jodhpur, the two sites of this study.

All POs were interviewed for the baseline survey in 2009. At endline, all POs were approached and finally 41 participated in the survey interviews, as the others could not be contacted despite several attempts. The majority of the POs are over 40 years, female and with post graduate degrees. A high proportion (73 percent) of POs in Rajasthan reported that they received training on the PWDVA.

Figure 7: Distribution of POs according to their score on DV scale – Rajasthan baseline and endline surveys



1. Attitudes of POs towards gender and violence⁹

There is an overall positive shift in the attitudes of POs from baseline to endline. At baseline, POs fell either in the low (eight percent) or in the moderate category (92 percent). At endline, none were in the low category, and 41 percent POs moved in to the 'high' category (Figure 7).

The item wise analysis reveals that the notions of *DV being a family and hence a private affair* have changed, with more than 58 percent disagreeing to it as opposed to only six percent at baseline. This could mean that as POs engage with the PWDVA, there is increased recognition and acceptance of DV being a legal offence. This is observed in the statement - *"Beating one's daughter is DV"* - though the change is less dramatic, and accompanied by increased acceptance of women exercising their rights to seek help and

recourse from the violence they face (Table 52).

For example, more POs disagree with the statement that *"Women, before filing a complaint of DV, should consider how it would affect their children"*, at endline (22 percent) as compared to eight percent at baseline. However, those who *"Partially agree"* with the statement have actually increased from baseline to endline (10 percent to 34 percent), suggesting confusion or dilemmas. Given that many of these perceptions, especially the norms around the family are deep rooted, such a finding is not surprising. It hints at a certain amount of dissonance being created as individuals struggle to realign their attitudes. A similar trend is seen with respect to counselling as a preferred way to resolve such matters.

Perceptions around when (for which acts of violence) and under what law (PWDVA/Section 498-A IPC/both)

⁹ These are findings from survey interviews held with each of the POs, and reflect their personal views.

Table 52: Attitude of POs towards DV – Rajasthan, baseline and endline surveys

		Baseline (%)	Endline (%)
DV is a family affair.	Agree	94.0	31.7
	Partially agree	0.0	9.8
	Disagree	6.0	58.5
DV can be best resolved by counselling the woman	Agree	92.0	63.4
	Partially agree	6.0	34.1
	Disagree	2.0	2.4
Beating one's daughter is DV.	Agree	68.0	80.5
	Partially agree	16.0	7.3
	Disagree	16.0	12.2
Women, before filing a complaint of DV, should consider how that would affect their children.	Agree	82.0	43.9
	Partially agree	10.0	34.1
	Disagree	8.0	22.0
It is predominantly poor men who beat their wives	Agree	2.0	4.9
	Partially agree	20.0	24.4
	Disagree	78.0	70.7
There are times when a women deserves to be beaten	Agree	0.0	4.9
	Partially agree	6.0	9.8
	Disagree	94.0	85.4

Table 53: Perception of POs on when to lodge a complaint and under which law – PWDVA or Section 498-A or both – Rajasthan, baseline and endline surveys

		Baseline (%)	Endline (%)
Slapping the woman once in a while	PWDVA	78.0	90.2
	498-A	10.0	2.4
	None	12.0	7.3
Threatening once to throw the woman out of the shared household	PWDVA	82.0	92.7
	498-A	10.0	2.4
	None	10.0	4.9
The husband forcing the wife to have sexual intercourse with him	PWDVA	50.0	95.1
	498-A	50.0	2.4
	None	2.0	2.4
Ridiculing the woman by calling her names	PWDVA	96.0	95.1
	498-A	0.0	4.9
	None	4.0	0.0
Refusing to giving the woman money for running the house	PWDVA	96.0	97.6
	498-A	2.0	0.0
	None	2.0	2.4
Banging her head against the wall repeatedly	PWDVA	96.0	92.7
	498-A	2.0	7.3
	None	2.0	0.0

complaints against DV should be filed, further assess the POs' attitudes (Table 53). Even at baseline, there was a high proportion of POs who perceived acts of verbal, emotional and sexual abuse as acts of DV that justify lodging a complaint under the PWDVA. This further increased or remained stagnant at endline.

The proportion of POs who felt that certain acts did not justify any complaint **at all**, showed a decreasing trend for the acts of "Slapping" and "Threatening to throw the woman out of the house". A striking difference is seen with respect to "Forced sex within marriage" where, at endline a higher proportion considered this as getting redressal under the PWDVA. It is likely that increased knowledge about which acts of DV fall under the PWDVA contribute to this.

A few statements were used to gauge the POs' attitude towards the PWDVA, and the results at endline are mixed (Table 54). The overall attitudes towards those who deserve protection under the Act do not show an equally strong positive change. At endline, more POs reported that women facing violence because of committing adultery should NOT be granted relief under the PWDVA (from 2 to 22 percent).

On the other hand, the percentage of POs who felt that irrespective of 'marital status', women deserved protection under the Act increased from 60 percent at baseline to 73 percent at endline. There is a slight increase in POs who disagreed with this. Similarly, POs who believe that PWDVA should not include men have decreased at endline (from 30 to 7 percent). What

2. Attitude towards the PWDVA

Table 54: Attitude of POs towards the PWDVA – Rajasthan, baseline and endline surveys

		Baseline (%)	Endline (%)
A woman who is beaten by her husband because she has committed adultery should be granted relief under the PWDVA	Agree	94.0	68.3
	Partially agree	4.0	9.8
	Disagree	2.0	22.0
The PWDVA should address violence against men as well	Agree	58.0	58.5
	Partially agree	12.0	34.1
	Disagree	30.0	7.3
Women in live-in relationships should be covered under the PWDVA	Agree	60.0	73.2
	Partially agree	22.0	4.9
	Disagree	18.0	22.0
	Partially agree	14.0	2.4
	Disagree	82.0	92.7

is contributing to the change is the category of POs who were *unsure or unclear*.

In other words, more POs have become unsure about whether the law needs to include men within its ambit; while many who were unsure at baseline, are now convinced that women in live-in relationships should not get relief under the law. Such a trend points to the need for more careful reflection on the processes, experiences and trainings that the POs have been exposed to during the course of the two years. More specific focus maybe needed in discussions and interactions around these aspects.

3. Knowledge of key provisions under the PWDVA

This section describes the findings of the extent of knowledge of the POs

Table 55: Knowledge of POs on who can be an ‘AP’ under the PWDVA – Rajasthan, baseline and endline surveys

	Baseline (%)	Endline (%)
Married woman against her husband	100.0	97.6
Daughter against her father	96.0	95.1
Daughter against her mother	40.0	92.7
Mother against her son	94.0	95.1
Mother-in law against her daughter-in law	60.0	92.7
Female domestic help against her employer	34.0	87.8
Don't know	2.0	4.9
Total no. of respondents	40	41

with respect to key definitions and concepts of the law.

3.1 Definition of AP and respondent: confusion around who can file under the PWDVA persists

The knowledge that the PWDVA includes women who are married is universal. However, the confusion arising when both the AP and the respondent are female persists and even increases for certain categories at the endline (Table 55). There is a sharp increase from baseline to endline in the percent of POs who assume that a daughter can file against her mother (from 40 to 93 percent); a mother in-law against her daughter-in-law (60 percent to 93 percent); and even those who wrongly assume that a female domestic worker can file under this law against her employer (from 34 to 88 percent). Thus, the gaps in their knowledge on the definition of the AP have been further intensified, as POs seem to be convinced that all women can seek recourse under the law. The POs have a poor understanding of ‘domestic relationship’ as they assume that domestic workers fall under the category of AP as defined by the PWDVA.

There is an increase in the knowledge that adult female relatives can be made a respondent under the Law (60 percent at baseline to 93 percent at endline). As reported in the earlier section of AP, there seems to be an overall understanding that all women are covered under the Act.

3.2 Acts defined as DV under the law: Increased and comprehensive understanding of what constitutes DV

The PWDVA gives a comprehensive definition of DV, which includes all forms of violence – physical, sexual, verbal, emotional and economic abuse. At baseline, acts under emotional and economic abuse such as “Preventing the woman from taking up a job” or “Preventing the women from leaving the house” had a lower agreement rate has increased substantially at the endline (from 76 and 62 percent, to 95 and 98 percent respectively).

It’s equally encouraging that while at baseline, approximately half the POs in Rajasthan **did not** think that “Forced sexual relationship within marriage was defined as violence under the law, at endline this increases to 98

Table 56: Percentage of POs reporting that the given acts are defined as domestic violence under the law – Rajasthan, baseline and endline surveys

	Baseline (%)	Endline (%)
Slapping the woman	96.0	97.6
Scolding the woman	56.0	87.8
Forced sexual relationship with wife	54.0	97.6
Getting the daughter married forcefully	92.0	95.1
Calling the woman names	88.0	97.6
Refusing to give money to the woman	82.0	95.1
Preventing the woman from taking up a job	76.0	95.1
Preventing the woman from leaving the house	62.0	97.6
Others	0.0	9.8
Total no. of respondents	40	41

percent (Table 56). Thus, at endline, the POs seemed to have a clear and comprehensive understanding of violence, with non-physical and sexual forms of violence being equally recognised within marital and domestic relationships.

3.3 Provision of reliefs under the law

To 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, two commonly held incorrect options - the division of property and divorce (Table 57). The percentage of POs who report that the division of property and divorce are reliefs under the law has increased substantially during the endline (from 36 and 16 percent to 95 and 75 percent respectively). This indicates that there are gaps in specific knowledge of reliefs under the PWDVA, as was also noted for the other key provisions as definition of APs.

Table 57: Reliefs that can be sought under the PWDVA – Rajasthan, baseline and endline surveys

	Baseline (%)	Endline (%)
Protection order	98.0	97.6
Division of property	36.0	95.1
Right to residence	88.0	97.6
Right to custody	72.0	97.6
Maintenance order	78.0	97.6
Divorce	16.0	75.6
Compensation order	70.0	92.7
Others (specify)	0.0	0.0
Total number of respondents	40	41

Table 58: Understanding of POs about the “Right to Residence” – Rajasthan, baseline and endline surveys

	Baseline	Endline (%)
A wife has ownership right over the shared household	46.0	17.1
A wife has the right to reside in the shared household only if the shared household is owned by the husband	10.0	63.4
A wife has the right to reside in the shared household whether or not she has any right, title or beneficial interest in the same	44.0	46.3
Total number of respondents	40	41

At endline, POs reported an improved understanding of the ‘Right to residence’ (Table 58). Compared to 46 percent at baseline, only 17 percent wrongly assumed this to mean ownership over shared household at endline. While they rightly understood that by claiming right to residence, the woman

Table 59: Knowledge of POs about who can file the DIR – Rajasthan, baseline and endline surveys

	Baseline (%)	Endline (%)
PO	98.0	100.0
Police	18.0	46.3
Service Provider	38.0	46.3
Lawyer	6.0	56.1
Medical Staff	2.0	17.1
Aggrieved woman	2.0	41.5
Total no. of respondents	40	41

is **not** making claim on ownership, they nevertheless think that this Act has a provision for division of property.

4. Knowledge of other provisions and procedures under the Act: knowledge impacted by practice

4.1. The DIR

In response to the question “Who can file a DIR?” at endline, more POs report that other stakeholders can file the DIR, as compared to baseline. For example, 46 percent reported that the SP and police can also file a DIR, 56 percent say that of lawyers, and 41 percent report that the AP herself can fill a DIR. Medical staff is also included in the list, and all these figures are increasing over the baseline. In Rajasthan, the provision that a DIR can be filed by ‘any other person on behalf of the woman’ has often been interpreted to include a variety of individuals, including the police. The knowledge of filling the DIR is directly affected by the practice itself, which in turn is impacted by what the courts accept (Table 59).

As explained in the detailed interviews of select POs, in practice, the filing of the DIRs is largely court directed. The courts emphasise on the filing of a case under PWDVA by an advocate, which is then referred to the concerned PO for filing of the DIR. The magistrates refuse to accept the DIRs filed by the POs in the cases where the women approach the PO directly. This trend has been noticed in Rajasthan in the previous years and seems to have further consolidated into a firm practice, which is against the provisions of the Act.

While almost all POs agree that the ‘role of the DIR is to record the history of violence’ (98 percent, endline as compared to 82 percent at baseline), they do not believe that a DIR has to be filed every time the woman approaches them (70 percent at baseline and 90 percent at endline). This appears to be in contradiction as, ‘recording the history of violence’ should mean maintaining a record of recurring violence, irrespective of whether a case is filed or not. In that case, the DIR should be filed every time a woman approaches the PO.

Because the courts do not accept DIRs that are not court directed, in effect, recording history is actually a description of violence for purposes of the court case only. Thus, the interpretation of the purpose of the DIR has been completely changed, and reflects what POs believe is correct.

4.2 Overall knowledge of role of PO

A reduced number of POs report knowledge of the specific procedures related to the coordination role to be played by the POs at endline (Table 60). Of the POs in Rajasthan, at baseline, 68 percent were aware that copies of the DIRs should be forwarded to the local police station, which dropped to 47.5 at endline. Similarly, the knowledge that the PO should forward a copy of the medical report to the police station also dropped from 88 percent at baseline to 37.5 percent at endline.

4.3 Breach of order

The knowledge of breach of order being a cognisable and non-bailable offence also decreases at endline (from 88 percent to 57 percent) though all POs are aware of the reporting of breach to the police.

Table 60: Knowledge of key provisions under the PWDVA among POs – Rajasthan, baseline and endline surveys

	Baseline (%)	Endline (%)
All DIRs have to be sent to local police station as per the PWDVA	68.0	47.5
The protection officer should forward a copy of the medical report to the local police station	88.0	37.5
The police have no role to play under the PWDVA	18.0	12.5
Magistrates may take <i>suo motto</i> action if DIR discloses commission of a serious offence as per the PWDVA	94.0	90.0
POs have to be examined by the magistrate on facts stated in the DIR	100.0	92.5
Counselling the woman is the PO’s duty under the PWDVA	88.0	47.5
Breach of order may be reported to local police as an FIR as per the PWDVA.	80.0	100.0
Breach of a Protection Order is cognisable and non-bailable under the PWDVA.	88.0	57.5
Total no. of respondents	40	41

4.4 Counselling

There has been considerable discussion regarding the role of POs in counselling. In previous years, many POs in Rajasthan believed it to be an important part of their duty and the 2010 M&E Report explores this issue in-depth. The extent and content of counselling too, has varied with the understanding and interest of the PO.

In previous reports, POs said they talked to the women and others even visited homes to have discussions with their families. It is encouraging that at endline, the proportion of POs who believe that counselling the woman is the POs duty under the PWDVA has decreased from 88 percent (at baseline) to 47; half the POs still believe that they must counsel the women. In the interviews conducted with select POs in Rajasthan, they stated that counselling was a practice adopted by them in the initial days but after their trainings under PWDVA, they have stopped counselling the parties.

Table 61: Knowledge of POs about who can serve notice under PWDVA – Rajasthan, baseline and endline surveys

	Baseline (%)	Endline (%)
PO	72.0	82.9
Any person directed by PO	14.0	19.5
PO with the help of the police	30.0	29.3
Police	22.0	58.5
Registered post	4.0	36.6
Total no. of respondents	40	41

4.5 Service of notice

The awareness that notice can be served by the police and registered post has increased from baseline (22 percent and 4 percent respectively) to endline (58 percent and 37 percent respectively). See Table 61.

The duties of the PO, as defined under the Act, place responsibility on them to carry out several functions as officers of the court. However, in practice, it appears that the POs are not directed by the courts to submit any report apart from a DIR, except in the cases of medical emergency where a medical report is attached along with the DIR. The interactions of the POs with various stakeholders and women are discussed further in the next section.

5. Implementation and practice of the law

In Rajasthan, 88 percent of the POs reported that they were approached

Table 62: Distribution of POs according to the people/organisation referred women to them in the last one year – Rajasthan, baseline and endline surveys

	Baseline (%)	Endline (%)
They come on their own	69.2	91.4
NGOs	7.7	5.7
SH	10.3	0.0
MF	2.6	0.0
Police	5.1	2.9
Lawyer	5.1	5.7
SP	12.8	5.7
Legal services authority	17.9	11.4

by women in the past year. This is a slight increase from the 78 percent who reported this at baseline. More POs report that women approached them on their own - 91 percent, as compared to 69 percent at baseline (Table 62). The referrals to the POs by most other stakeholders seem to have decreased. No referrals are made from SHs or MFs.

5.1 Forms of violence reported by women to the POs

As in baseline, being beaten was again the complaint for which most POs were approached for help, and 82.5 percent POs reported this at endline, as compared to 69 percent at baseline (Table 63). The other most common complaints reported at endline were

Table 63: Percentage of POs reporting the forms of DV women came with in last one year – Rajasthan, baseline and endline surveys

	Baseline (%)	Endline (%)
Being slapped	66.7	25.0
Being scolded	41.0	12.5
Being beaten	69.2	82.5
Forced sexual relationship within marriage	7.7	0.0
Being forced to marry	12.8	2.5
Being called names	25.6	5.0
Being refused money	35.9	50.0
Being prevented from taking up a job	10.3	2.5
Being prevented from leaving the house	28.2	17.5
Being threatened to be thrown out of the house	25.6	40.0

of economic violence which included “Refusal to give money” (50 percent), “Threats of being thrown out of the house” (40 percent), followed by “Slapping” (25 percent) and “Being prevented from leaving the house” (17.5 percent).

Compared to the pattern at baseline, it is noticeable that non-physical forms of violence are now being reported more - such as economic violence and threat of eviction. It is likely that as this law provides for a comprehensive definition of violence, and also specific reliefs for securing the “Right to residence”, women are making specific complaints around these. Conspicuous by its absence, however, is the reporting of sexual violence - the reporting was low for this at baseline - and it drops away completely from the list at endline.

Table 64: Distribution of POs according to the assistance women sought from them in the last one year – Rajasthan, baseline and endline surveys

	Baseline (%)	Endline (%)
To lodge complaint	30.8	47.5
To provide protection	74.4	45.0
To take the case to the court	15.4	22.5
To counsel her husband & other family members not to continue the violence	71.8	72.5
To provide shelter	56.4	10.0
To refer her to MF	10.3	5.0
To refer her for legal help	15.4	10.0

5.2 Help sought by the woman, and assistance provided by the PO

In responding to the type of help sought by women, the most common was that of women wanting the PO to counsel the family and advise the husband and his family members to stop violence, at 72 percent (Table 64). Though this percentage has not changed from the baseline figure, this option emerges as most common in endline, as other forms of help sought are reported much less. For example, “To provide protection” drops significantly from 74 to 45 percent. “Providing shelter” and “Referral to others” also decrease from baseline to endline. On the other hand, specific actions of taking their case forward to courts are an increased expectation by women - lodging a complaint increased from 31 to 47.5 percent - and there is a smaller increase taking the case to court.

The POs were asked to share the actions taken by them *at first point of contact* as a response to the help sought by the women (Table 65). In line with the women’s expectations, talking to the perpetrators to stop violence was reported highest at endline (72.5 percent), recording a small increase over the baseline. Counselling the woman continues to be low, indicating that POs make a distinction between counselling the woman *vis-à-vis* counselling the perpetrators to discontinue the violence. This is intriguing as there is knowledge and practice that counselling of the woman is not the PO’s duty, but reaching out to the family to stop violence is an effort still being made.

Filing of the DIR is the second most reported action taken by POs at first contact with the women, irrespective of whether women are approaching

Table 65: Distribution of POs according to the action they took at first point of contact in last one year – Rajasthan, baseline and endline surveys

	Baseline (%)	Endline (%)
Inform the woman of her rights under the PWDVA	71.8	12.5
Inform the woman of her rights under the 498-A IPC	56.4	2.5
Record the information in a register	33.3	2.5
Refer her to Police	2.6	0.0
File DIR	61.5	62.5
Fill in an application on her behalf	20.5	17.5
Counsel her into going back to her home	17.9	15.0
Counsel her husband & other family member not to continue the violence	64.1	72.5
Refer her to CAW Cell	0.0	7.5
Advice woman to lodge a criminal complaint	7.7	0.0
Nothing	0.0	12.5

them directly or through the courts. The percentage of POs who inform the woman about her rights under PWDVA or even 498-A is significantly lower than that reported at baseline. For women who are coming to them upon direction of the court, this could be seen as redundant as they would be assumed to have this knowledge. At

the same time, 12.5 percent of the POs also report 'doing nothing!'

5.3 Interaction of POs with police and other stakeholders

At endline, more POs reported that they had approached the police for assistance, as compared to baseline. The

Table 66: Kind of assistance POs sought and received from the police – Rajasthan, baseline and endline surveys

Assistance sought from police	Baseline (%)	Endline (%)
Service of notice	22.2	5.0
Rescue of woman in case of emergency	77.8	20.0
Accompanying the PO to record DIR	55.6	7.5
Restore the dispossessed woman into the shared household	44.4	15.0
Confiscation of weapon used in violence	22.2	0.0
Prepare safety plans		5.0
Assist in implementation of safety plans	22.2	33.3
Provide protection to PO	11.1	0.0
Assist in enforcement of the court order	11.1	2.5
Record an FIR in case breach of order reported	33.3	0.0
Arrest the respondent in case of breach of court order	22.2	0.0
Assist conducting home visit	11.1	12.5
Presence during the visitation with children	0.0	0.0
Assistance received from police		
Service of notice	22.2	2.5
Rescue of woman in case of emergency	66.7	10.0
Accompanying the PO to record DIR	44.4	7.5
Restore the dispossessed woman into the shared household	22.2	20.0
Confiscation of weapon used in violence	22.2	0.0
Prepare safety plans	33.3	7.5
Assist in implementation of safety plans	33.3	0.0
Provide protection to PO	22.2	0.0
Assist in enforcement of the court order	11.1	2.5
Record an FIR in case breach of order reported	22.2	0.0
Arrest the respondent in case of breach of court order	0.0	0.0
Assist conducting home visit	22.2	12.5
Presence during the visitation with children	0.0	0.0

numbers are more than double – from 23 percent at baseline to 51 percent at endline (Table 66). However, the range of reasons for which they approach is less at endline, being limited largely to rescue of the woman in case of emergency, restoration of the woman in the household and conducting home visits. It is likely that these are specific responsibilities that the court may have directed the PO to fulfill, for which they are working in coordination with the police.

The POs are expected to perform certain functions for which they could require police assistance: rescuing the women in case of emergency, preparation of safety plans, accompanying the PO for recording the DIR. There is no reporting of these at endline, and this could be because the POs are not involved in these functions. This is discussed more in detail in the next section - interaction of POs with the courts.

Police provide assistance, as and when the POs request it. The specificity of tasks for which assistance is both sought and received is striking, at endline. Equally important is that action on breach is completely missing.

At endline, none of the POs reported that they had approached either the SPs, SHs or any MF. While this interaction had been low at baseline, with only about eight percent reporting this, it drops away completely at endline. About 13 percent POs had reported that they had approached the Legal Service Authority for help at baseline, which drops to 2.5 percent at endline. This indicates that the multi-agency

coordination function is not being performed by POs in Rajasthan.

5.4 Interaction with the court becomes even more limited and impacts the overall function and significance of the PO

As mentioned above, the role and function of the PO is largely being defined by the direction and procedures set by the courts. Unfortunately the POs are not given the importance or seriousness that had been accorded to them in the Act.

Through the years, it has been observed that the litigation process in Rajasthan has been largely lawyer driven, and POs do not play a very pro-active role. This seems to have progressively diminished, and the interaction of the POs in Rajasthan with the courts is extremely limited.

In the above sections pertaining to the DIR, POs have mentioned that the courts do not accept those DIRs that are filed by them, when the woman approaches the POs directly. Thus, the role of the POs in being the first contact for the woman, and facilitating her interaction with the multiagency coordination system is undermined. Further, in their interviews, the POs state that once the DIR is filed, there is very little interaction with the courts.

The POs are generally not aware of the results of the cases filed in the courts and the fate of the women. In many cases, they are not aware if interim orders are ever passed by the courts.¹⁰ Since there is no nexus with

¹⁰ A few POs in Jaipur did not seem to understand terms like interim orders and breach of orders.

the courts, the POs are rarely expected to submit any other report apart from a DIR, except in the cases of medical emergency where a medical report is attached along with the DIR. The POs are not aware of the disposal rate of the cases under PWDVA. No follow up of the cases is done by the POs. This corroborates with the trend reported in the survey, where 89 percent of the POs state that they have not received any copies of court orders.

In Rajasthan, the communication necessary between the courts and the POs does not exist. The POs have no information of the decisions made in the court. They are not being forwarded the same, and they rarely attend court for a follow-up.

Most POs complain of being overburdened, as an additional charge has been given to them, without enough infrastructures under the PWDVA. There is no separate budget for them under the PWDVA and they are forced to use the CDPO office funds to carry out their duties. The POs expressed the need for additional administrative staff, equipment and infrastructure.

Police Officers

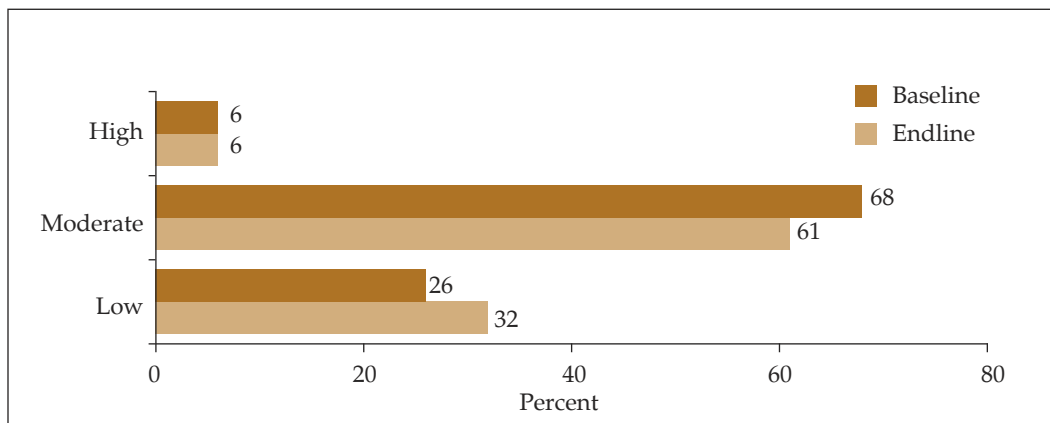
This section explores the perception, understanding and practices of the Rajasthan police with respect to the PWDVA and how these have changed from 2009 to 2011.

The data gathered from two districts – Jaipur and Jodhpur – will help to address some of the key questions: Is the police likely to dismiss the woman’s experience of violence when she approaches them? Do they inform the woman of her rights to file a complaint? Do they know what qualifies as violence under the law? What kinds of reliefs can the woman get under the PWDVA? When a violation of a court order is reported by the woman or the PO, do the police initiate criminal proceedings immediately? How do they interact with POs and SPs?

1. Attitude towards domestic violence: No significant overall change over time

The distribution of police officers based on their response to the attitudinal statement at baseline and endline are presented in Figure 8.

Figure 8: Distribution of POs according to their score on DV scale



Overall, as measured through the index, the attitude of police in Rajasthan is rigid and supportive of violence against women with no significant change overtime. Six percent. Out of officers, six percent scored high on the DV index at baseline, unchanged at endline. There is a very marginal increase in those that fall in the moderate category, but it is insignificant.

Item-wise analysis (Table 67) suggests that only 10 percent or less disagreed with the statement that “DV is a family affair, that can be best resolved by counselling the women” and “Women must think about her children before filing a complaints of DV”, with no significant change over time. A significant decrease is noted in the proportion who disagreed that - “There are times when a woman deserves to be beaten” (51

percent to 38 percent). It is interesting to compare this attitude with high acknowledgement (93 percent at baseline, 97 percent endline) that “The right to life (Art. 21 of the Constitution) includes the woman’s right to be free from domestic violence”.

Onattitudetowardsthelaw,atbaseline, less than one-third of officers (24-33 percent) disagreed with the statements - *a woman who is beaten by her husband because she has committed adultery should not be granted relief under the PWDVA and women in live-in relationships should not be covered under the PWDVA*. Only one item, which covered adultery, saw a shift in the positive direction, with a significantly higher proportion of officers who disagreed at endline (24 percent at baseline to 44 percent at endline).

Table 67: Percentage of police officers who disagreed with statements on attitude towards violence and the PWDVA – Rajasthan, baseline and endline surveys

	Baseline (%)	Endline (%)
DV is a family affair.	9.6	8.8
DV can be best resolved by counselling the woman.	10.8	8.8
Women before filing a complaint of DV should consider how that would affect their children.	6.8	8.0
There are times when a woman deserves to be beaten *	51.4	38.4
Beating one’s daughter is not domestic violence *	54.6	66.8
It is predominantly poor men who beat their wives	59.0	67.2
A woman who is beaten by her husband because she has committed adultery should not be granted relief under the PWDVA *	24.5	43.6
Women in live-in relationship should not be covered under the PWDVA.	30.1	34.0
Total number of respondents.	249	250

Note – significant at * $p \leq 0.05$ ¹¹

¹¹ Statements where there is a significant change have been marked for the police survey, as this is a representative sample.

1.1 Perception around when and under which act violence should be registered

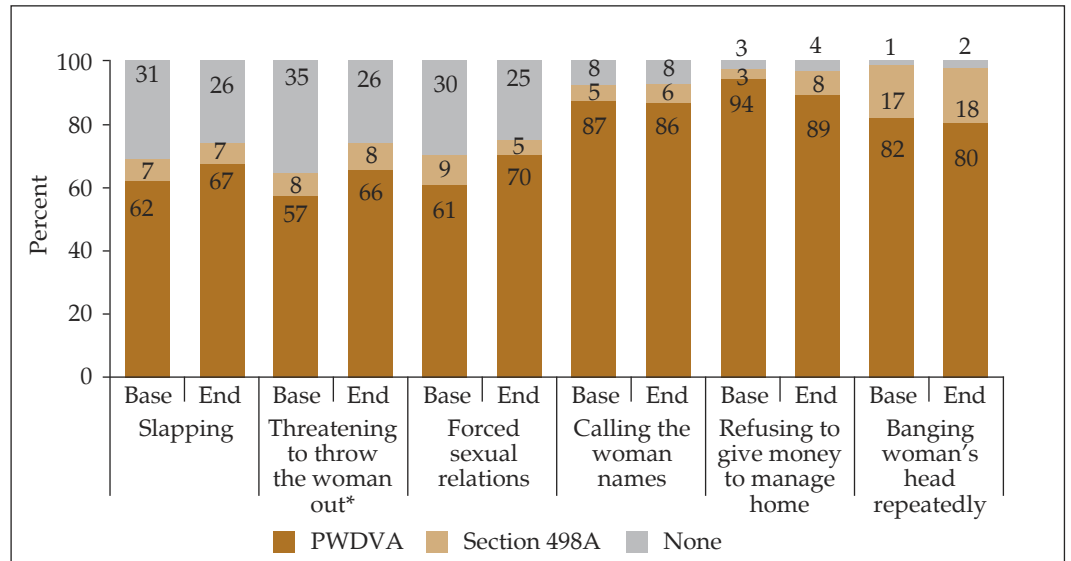
The police, being the first point of contact, come face to face with particular forms of violence and feel it is justified to file a complaint and under which Act. This will give an indication on the type of guidance they would provide to a woman facing DV.

At baseline (Figure 9), half to two-thirds of police officers reported that complaints of “Slapping”, “Threatening to throw the woman out”, “Forced sexual relations with wife” are justified and should be registered under the PWDVA, while around one-third said that these do not merit police complaint. In case of “Calling - the women names”, “Refusing to give

money for managing the home” and “Banging the woman’s head against the wall repeatedly”, 80 to 90 percent reported that the complaint should be registered under the PWDVA.

There appears to be no significant change in the understanding of the police over time. Unfortunately, the proportion of officers who maintain that such acts do not justify even the registration of a complaint, remain constant. At endline, a significantly higher proportion of police officers recognised that the “Threat to throw woman from shared household” should be registered, particularly under the PWDVA (66 percent compared to 57 percent at baseline at $p \leq 0.05$). This indicates that the right to reside is one provision of the PWDVA that is remembered as a specific relief under the Act.

Figure 9: Perception of PO about the violence that merits complaint at baseline and endline surveys



Note – significant at * $p \leq 0.05$

2. Knowledge of the provisions under the Act

Precise and complete knowledge of the law among key stakeholders is a critical first step towards the effective implementation of the Act. While the police may not be key players in filing the DIRs or complaints under the Act, their knowledge and understanding will be crucial in the way they respond or guide women facing DV. This section describes the findings of the extent of knowledge of the police with respect to the key definitions and concepts of the law and the shifts from the baseline survey.

2.1 Definition of AP and respondents

The knowledge that the PWDVA includes women who are married is universal. However, there is

Table 67: Percent of POs who agreed on the definition of 'AP' and respondents, Rajasthan, baseline and endline Surveys

	Baseline	Endline
Married woman against her husband	99.6	100.0
Daughter against her father	89.6	86.0
Daughter against her mother*	84.0	74.4
Mother against her son	92.8	89.2
Mother-in law against her daughter-in law	84.8	85.6
Female domestic help against her employer	72.8	71.6
Total number of Respondents	249	250

Note – significant at * $p \leq 0.05$

a substantial gap around other relationships, particularly mother-daughter and female domestic help and employee (Table 67).

While 90 percent reported that a daughter could file a case against her father at baseline, 84 percent reported that she could do the same against her mother. Around 85 percent agreed that the mother-in-law could file a case against her daughter-in-law. Interestingly, 73 percent reported that a female domestic help could file a case against her employee under the PWDVA.

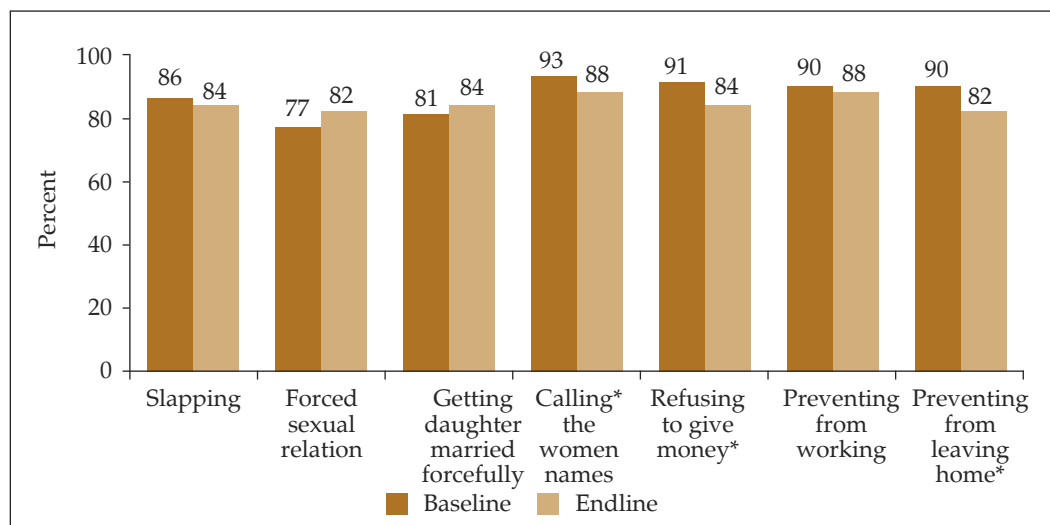
On one account, there is some improvement at endline. Compared to baseline, a significantly lower proportion (84 percent to 74 percent) mentioned that a daughter could file against her mother. Overall, it seems that there is confusion about the definition of domestic relationship and whether women can be respondents or not.

This confusion persisted while defining respondents. Though it improved, 66 percent of officers mentioned that only male relatives of the husband/ male partners could be respondents (86 percent at baseline).

2.2 Forms of violence listed under the Act

A majority of the police officers are aware of the different forms of violence defined under the PWDVA. In order to understand this, a list of actions was read out and officers were asked whether those actions were listed under the Act (Figure 10).

Figure 10: Percentage of POs reporting that the given acts are defined as under the law



Note – significant at * $p \leq 0.05$

More than 80 percent of the police officers, at baseline, reported that “Slapping”, Getting the daughter married forcefully, “Calling the woman name”, “refusing to give money”, “Preventing woman from taking up job”, and “Preventing woman from leaving home” are defined as violence under the PWDVA. However, at endline a small but significant decline of 6-8 percent around, “Refusing to give money” and “Preventing the woman from leaving is noted home.

2.3 Reliefs under the PWDVA

In order to assess the knowledge on reliefs mentioned under the PWDVA, response was sought on a list of reliefs that included two commonly held incorrect options: the division of property and divorce, along with the correct options (Table 68).

While 83 to 90 percent officers correctly indicated that “Protection order”, “Right to residence”, “Right to custody”, “Maintenance” and “Compensation order” could be sought under the PWDVA, 86 percent mentioned so, for “Division of property”. Half of the officers even reported that divorce

Table 68: Percent of police officers reported the reliefs that could be sought under the PWDVA – Rajasthan, baseline and endline surveys

	Baseline	Endline
Protection order	99.2	98.4
Division of property	86.4	90.4
Right to residence	96.4	99.2
Right to custody	97.2	95.6
Maintenance order	94.8	96.4
Divorce	57.2	52.4
Compensation order*	83.2	94.8

Note – significant at * $p \leq 0.05$

could also be sought under this Act. Overtime, no significant change was observed except on compensation. At endline, 95 percent mentioned it as one of the reliefs compared to 83 percent at baseline.

It is important to consider the knowledge on the provision of reliefs under the Act, particularly “Division of property” in context of their understanding on the “Right to residence”. Around 80 percent of the police officers consider “Right to residence” as ownership right, and 97 percent mentioned that a wife has right to reside in the shared household, only if the husband owns the shared household. These misunderstandings need to be clarified, as these are likely to influence the police officers’ response towards women facing DV.

2.4 Other provisions under the PWDVA

While some of the provisions under the PWDVA are well known, there

is confusion around some (Table 69). For example, more than 95 percent of officers reported that the purpose of a home visit is to ascertain the occurrence of DV and 90 percent said that the purpose of a DIR is to initiate legal proceedings. However, it is interesting to note that at endline, the proportion declines from 90 percent to 78 percent, which is significant. Further, around 60 percent of the officers were unaware that a woman can file under the Act, even if she is getting maintenance.

When asked about the provision of arrest and whether “Breach of protection order is a bailable, compoundable offence”, at baseline, half the officers said there is no provision of arrest under the Act, whereas three-fourths reported that “Breach of protection order” is a bailable, compoundable offence. At endline, a significant higher proportion (83 percent compared to 74 percent at baseline) reported about the bailable,

Table 69: Knowledge of POs about certain provisions under the PWDVA – Rajasthan, baseline and endline surveys

	Baseline	Endline
The purpose of a home visit is to ascertain the occurrence of DV.	98.8	95.2
The purpose of the DIR is to initiate legal proceedings*	89.6	78.0
The breach of a protection order is a bailable, compoundable offence*	73.6	82.8
A woman already getting maintenance from her husband cannot file an application under the DV law	62.0	54.4
There is no provision for arrest under the PWDVA.	50.4	43.2
Police lodge FIR when the violence is severe	98.4	98.0
Police lodge FIR at the time of the breach of the court order	89.6	90.0
Police lodge FIR when a woman approaches police for the first time*	55.6	35.2
Total number of respondents	249	250

Note – significant at *p ≤ 0.05

compoundable nature of “Breach of protection order”, decrease was not significant among those who reported about the non-provision of arrest (50 percent to 43 percent). This confusion could be due to the civil-criminal nature of the Act.

This was further evident when the police were asked when they should lodge an FIR under the PWDVA. Almost all of them said it should be lodged if the violence is severe, while half of them reported when a women comes into the station for the first time, both of which are not true. Under the Act, the police should lodge FIR at the time of the breach of the court order, as correctly mentioned by 90 percent of the officers.

2.5 Role of police under the PWDVA

Comparisons of baseline and endline data suggest that over time, the police have recognised their role in the implementation of the PWDVA. At baseline, 41 percent of the officers had reported that the police have no role to play under the PWDVA, which declined to 26 percent at endline. This is interesting as it is at variance with what is reported in Delhi, and should be examined further.

In practice, however, the role of the police is also defined as per orders of the courts. In select interviews with them, police officers reported that the courts do not direct them to serve notice or to execute orders. Their assistance to POs is asked for in emergency cases only.

Implementation of the Act

1. Help women sought

Data suggests that over the years, more women are approaching police stations with complaints of DV. At baseline, 58 percent of the officers reported that any DV case had come to their police station in the last year, while 90 percent reported so at endline (Table 70).

When asked about the complaints women come with, almost all officers at endline mentioned that women complain about “Being slapped”. One-third to half of the officers mentioned that women also complain that the husband “Refuses to give money” or “Scolds her”. One-fifth shared that

Table 70: Distribution of POs according to the complaints of DV women came with in last one year – Rajasthan, baseline and endline surveys

	Baseline	Endline
Slapped*	62.1	92.7
Refusing to give her money*	37.9	58.5
Scolded*	37.9	30.9
Preventing her from leaving the house*	6.9	22.4
Forced sexual relationship within marriage	2.1	1.6
Getting daughter married forcefully	3.4	1.6
Calling her name	18.6	9.3
Preventing her from taking up a job	6.2	7.3
Total number of respondents	145	246

“Preventing the woman from the leaving home is another violence they report. When compared to baseline, a significantly higher proportion of officers mentioned that women report complaint of “Being slapped” “Prevented from leaving the house”, and “Being refused money”. It is interesting to note that “Slapping” was one of the complaints for which about one-third officers felt that no complaint was justified.

According to 90 percent of the police officers, women want the police to counsel their husbands and in-laws to stop the violence. This is the same pattern as was observed by the POs. Interestingly, a higher proportion of officers at endline (69 percent) as compared to baseline, also mentioned that women want to lodge complaints (41 percent). Other help sought included request for protection, shelter, and to be referred to a MF (Table 71).

2. Action taken at first point of contact

In order to understand the implementation process, police officers were asked about the action they usually take at the first contact with women facing DV. Focus being on their role under the PWDVA, a significantly lower proportion of officers mentioned that women are informed about their rights under the PWDVA and Section 498-A, at endline as compared to baseline (Table 72).

Interestingly, a higher proportion of officers at endline mentioned that at

Table 71: Assistance women facing DV sought from the police in last one Year – Rajasthan, baseline and endline surveys

	Baseline	Endline
To counsel her husband & other family members not to continue the violence	89.0	95.1
To lodge complaint*	41.0	69.1
To provide protection	25.0	22.8
To provide shelter	14.0	6.9
To refer her to MF	7.0	8.1
Total number of respondents	145	246

Table 72: Actions police took at first contact with women facing DV in the last Year – Rajasthan, baseline and endline surveys

	Baseline	Endline
Counsel her husband & other family members not to continue the violence	72.2	98.8
Counsel her into going back home	61.8	63.0
Inform the woman of her rights under the PWDVA	36.8	9.8
Inform the woman of her rights under the 498-A IPC	20.1	5.7
Refer her for medical examination	12.5	19.1
Making a note of the incident in the daily diary	5.6	45.5
Register the case under 498-A	6.9	35.0
Total number of respondents	145	246

first point of contact they register the case under 498-A (35 percent compared to seven percent at baseline). A few officers (two percent at baseline and 0.4 percent at endline) reported that they refer women to the PO, which should have been the key action at first point of contact. In line with the request from women, the majority of officers (72 percent at baseline and 99 percent at endline) reported that the police *counsel the husband and other family members to make them stop the violence*. Even women are counselled to go back home (around 60 percent reported so), and it can be assumed from earlier qualitative interviews, that this could be to bring both the parties together and reach a compromise.

During the interviews with the police officers from *Mahila Thana*, it was said that most cases under PWDVA which come to the police station, are to reach a compromise through counselling and very few are referred to the POs. The police officers also believe that one of the reasons for which the number of cases under Section 498-A has not reduced is because women are not satisfied with the PWDVA and the lawyers often misguide the women to file a complaint under Section 498-A.

There is significant improvement in recording the case of DV (53 percent to 90 percent). Half of the officers reported that this now happens at first point of contact.

3. Assistance sought and provided to POs and SPs

The police are expected to work closely with the POs and assist them in the service of notice, execution of court order, home visit and other activities. However, only eight percent officers reported that their police station is ever approached for assistance. They further said that POs primarily approached them for service of notice (nine out of 20 mentioned it). A few officers (five-six) also mentioned that POs sought help in preparing safety plans, reinstating dispossessed women and conducting home visits. All the POs were assisted in executing specific activities.

Out of the police officers, 14 percent reported that SPs had approached their police stations in the last year and as requested, provided protection to the victim (20 out of 34) and helped in reinstating women in the shared household (15 out of 34). However, request of lodging an FIR for the breach of the court order did not receive the same attention. At endline, 14 officers reported that SPs had approached them to lodge an FIR and only two mentioned that police lodged the FIR.

4. Breach of the court order

There is gradual increase in the reporting of breach of the court orders. At baseline, two percent officers had reported receiving complaint of breach, which increased to seven percent at endline. However, only one-fourth reported registering an FIR.

5. Inter-agency coordination

Less than half of the police officers reported that they have contact numbers of PO, SP, and MFs notified under the PWDVA, SHs and State Legal Service Authority (SLSA), with no improvement since the baseline. Further, around 90 percent mentioned that they have never interacted with any PO. A majority of the officers (75 percent) said that they do not receive any court orders. This is significantly higher than the baseline (52 percent).

Though inter-agency coordination is limited, cases under the PWDVA are discussed during monthly meetings in the majority of the police stations and it has improved over time as indicated in baseline and endline surveys (74 percent at baseline, 83 percent at endline).

Vide a letter dated January 21, 2010¹² the police is required to report on cases under PWDVA every three months on a prescribed format. The first format has provisions for details of women who go to the *Thana* as the first resort; the second format provides for the details to be recorded in case of breach; and the third format contains the details that are to be maintained at the *Thana*. The third format has to be

sent every three months to the district police headquarters. The *Mahila Thanas* in Jaipur and Jodhpur do not seem to be following these guidelines. They primarily record an FIR and file a case u/s 498-A IPC.

6. Capacity building of police

Among the study participants, only six percent reported receiving any training on the PWDVA at endline. In addition, 12 percent said that someone from their police station had received training on the PWDVA. Compared to baseline, recall on training is lower at endline. Among those who said they had received training, more than 90 percent reported that they have discussed this with their colleagues. Similarly, 97 percent reported that their colleagues, who had received training, discussed it with them.

The involvement of police in cases under PWDVA has been rather simplified during the interviews of the police officers. They mentioned that *Mahila Thanas* in Jaipur and Jodhpur deal with the cases of violence against women, which includes cases of domestic violence, cases under Section 498-A IPC, and other offences against women. All the women who approach the *Mahila Thanas* are referred to '*Mahila Suraksha Evam Salah Kendra (MSSK)*'¹³ where

¹² Staying Alive: Fourth Monitoring and Evaluation Report on the status of implementation of PWDVA, p 187

¹³ "Mahila Suraksha Evam Salah Kendra" (MSSK) is a project carried out by the Department for Women and Child Development (DWCD) in which various NGOs apply to be a part of. The NGOs which are part of MSSK provide counselling. The primary objective of these centres is to counsel and provide shelter to the women and then refer them to either the police station or the concerned PO for filing of a case. The MSSKs specifically informed us that no counselling is done where the woman is keen on filing a case. MSSK, Jodhpur informed us that no counselling is done in the case of medical emergency; in fact, the matter is taken up directly with the local police station and a case is registered. Counselling is not mandatory and if a woman wishes to file a case, then legal aid is given to her. They follow up those cases which are settled through counselling. All the data related to women approaching the Mahila thanas is maintained by the related MSSK.

they are counselled and if a case has to be registered under Section 498-A, they are sent to the *Thana* where an FIR is recorded. For a case to be filed under the PWDVA, the women are referred to the concerned PO.

Service Providers

The coordination between the POs and the SPs is limited in Rajasthan. The POs in Jaipur are not aware of the SPs in their area, but they refer the women to MSSK for the SHs. Interviews were conducted with three SPs, one in Jaipur and two in Jodhpur, who are well versed with the objectives and intentions of the PWDVA, and are working proactively. All of them run a SH with a capacity for 25-30 women and have professionally qualified counsellors. There is no separate budget for their work under the PWDVA.

The SPs counsel the parties only when required. If a case can be settled through counselling, then sessions are conducted. Otherwise, if a case has to be registered under the PWDVA, legal aid is provided. Most of the SPs file a DIR on their own and directly deal with all the court cases. The Rajasthan University Women's Association (RUWA) works in close coordination with the lawyers and is sometimes directed by the courts to submit an incident report.

In the Fourth M&E Report it was stated that in Rajasthan, the courts expect the SPs to file in DIRs after investigating and hearing both parties. Contempt

proceedings are also instituted against them for failure of tasks that the court thinks that they should be fulfilling¹⁴. In 2011, the SP in Jaipur informed that the courts still direct them to hear both the parties and submit an opinion report, though they are not specifically asked to file DIRs anymore. This practice has led to minimising the role of a PO under the PWDVA and overburdening the SPs.

An SP in Jodhpur called '*Meera Sanstha*' offers classes for rural women to sensitise them on the issues related to the PWDVA. These women then go back to their native places, working as resource persons and spreading awareness. This organisation deals with the cases of DV and provides legal aid to the women as and when required, as well as, filing DIRs.

The SPs are involved in the follow-up of the women and say that the lawyers at SLSA are not responsible and leave the victim in the middle of the case. Judges do not take much interest in the cases of DV and the cases remain pending for a long time. This could also be because cases under the PWDVA are not a priority for the magistrates, who still consider such cases to be a 'problem' within a family, which should be resolved amicably.

Lawyers

Lawyers work in close coordination with RUWA (mentioned above) and provide legal aid to the women who approach the organisation. Two

¹⁴ Supra note 27.

lawyers were interviewed in Jodhpur as they work in close coordination with the CDPOs. There is not much coordination between the lawyers and POs in Rajasthan, except for filing up a DIR. There are conflicting opinions on whether the DIR is mandatory for the passing of interim and ex-parte orders. The courts in Rajasthan are generally reluctant to pass interim and ex-parte orders and pass them in the form of protection orders, if the need arises.

Most of the cases under PWDVA are pending at the trial stage and the disposal rate is very low. The lawyers in Jaipur and Jodhpur have collaborated with the SPs and provide legal aid to the women who approach those SPs. The lawyers said that cases under Section 498-A are filed only if the woman decides not to go back, and as the last resort. They did not think that the PWDVA has impacted the cases under Section 498A. The lawyers in Jaipur laid emphasis on the fact that the cases under the PWDVA do not get disposed off in the stipulated time period and it takes a lot of time for the final disposal of the cases. The judges do not seem to be aware of the provisions of the PWDVA and they have minimised the role of POs to a great extent. Most lawyers tend to misguide the AP in order to extract more money from them.

Interactions with various stakeholders and those involved with implementation of the PWDVA show that there is an increased understanding regarding various aspects of the law but its implementation is not according to the rules and procedures. The practices

adopted by the courts impact the roles and responsibilities of key stakeholders and the extent to which they get involved with the litigation procedures, as laid out in the law.

Conclusion

In Rajasthan, POs are holding additional charge and have been appointed sometime after the Act came into force. Over time, there is an overall shift in the attitudes of the POs. However, the police show more resistant gender attitudes, as compared to the POs. This could be a function of the fact that POs have been focused upon for trainings, and also that police do not see a role for themselves under the PWDVA.

In terms of knowledge, there are mixed results and the overall knowledge of key provisions is less than desirable. Several factors such as court directions and procedures, judgments and lack of systematic trainings, especially for the police, may be contributing to this.

There continues to be confusion about the definition of domestic relationship and whether women can be the first respondent or not. The knowledge on the definition of DV improves for the POs over time, but there is a decline among the police. For POs, at endline, there is comprehensive knowledge of the different forms of violence, including sexual and non-physical forms. For the police, at endline, there is a small but significant decline around recognition of non-physical forms such as "Calling the woman names", "Refusing to give money" and "Preventing the women from leaving the home".

While there is high knowledge of the reliefs and provisions provided under the Act, an equally high number erroneously continue to think that division of property and divorce are reliefs that can be claimed under this Act. The understanding on the "Right to reside", as compared to their earlier understanding, has improved among the POs, but not among the police. These are common findings across the states. It is critical to clarify these misunderstandings, as these are likely to influence responses towards women facing DV.

The practices adopted by most of the stakeholders are influenced by the directives and procedures set by the court. In 2010, a recommendation was made to this effect, as it was apparent that differing interpretations were leading to diverse practices, often in contradiction to the spirit and intent of the law.

For example, the data suggests that the courts are not accepting DIRs filed prior to litigation, and it is mainly court directed. Thus, POs will not file DIRs for women who approach them directly, (without filing a case). This goes against the purpose of the DIR, as envisaged under the law and should be an area of discussion with the judiciary. Moreover, the courts insist on lawyers filing applications, and POs are not involved or encouraged to be part of the court processes. Hence, POs do not seem to actively participate in the implementation of the Act, nor is there any active interaction with other stakeholders, diminishing the implementation of the multi-agency coordination mechanism.

The role of the SP is inconsistent with what is laid out in the Act. They are directed by the courts to submit an incident report/opinion report, and also file the DIR after investigating and hearing both parties. In fact, in Rajasthan, the lawyers and SPs are more actively engaged in the implementation of the Act, and the judiciary does not utilise the services of the POs.

Several trends observed over the years have been further consolidated and practices on how the PWDVA will be implemented have been set. The judiciary has been given the discretion and space within the Act to interpret it in the best interests of the women and in keeping with the rationale of the legislation. However, the diverse patterns of interpretation and implementation, and a less-than-sensitive appreciation of the provisions of the PWDVA have gone against the intent of the Act.

Overall Conclusion

The tracking of shifts in KAP of key stakeholders under the PWDVA provides a valuable evidence base to understand the implementation of the PWDVA, the gains and continuing challenges. A comparative picture of Delhi, Rajasthan and Maharashtra is presented.

1. Attitudes

1.1 There is an increase in positive attitudes on gender and domestic violence of POs across the three states

The Delhi POs, in comparison to other states, reported more equitable

attitudes at baseline, and there was a further increase in the positive direction at endline. In Maharashtra and Rajasthan, where gender attitudes were adverse at baseline, a positive shift was more pronounced at endline.

This change demonstrates the possibility of changing deeply held norms around DV, and a woman's right to seek recourse from it. However, even as the change from baseline to endline is significant, there remains a substantial number of POs in some states that continue to have inflexible and unsafe attitudes towards DV. However, the possibility of change can encourage further efforts in this direction.

1.2 Attitudes towards law show a mixed trend across the states

As noted above, Delhi POs demonstrated a more positive attitude towards the law at baseline than POs of other states. At endline, there is a marginal improvement, but it does not show a sharp positive increase as seen in gender attitudes towards violence.

In Maharashtra and Rajasthan, overall attitudes towards the law remain either the same or even show a slight decrease over time. The PWDVA is a progressive law that introduces aspects such as "live-in relationships" and a "Right to residence" that requires time and dialogue for it to be understood and put into practice.

For this, trainings and discussions on the intent, need and spirit of the law, presented against the backdrop of the

women's movement and a gender perspective are essential.

2. Knowledge

Knowledge of the PWDVA has been assessed across different categories of definitions, provisions and reliefs offered under the Act.

2.1 Respondent and AP

The confusion about the definition of domestic relationships and whether women can be first respondent or not, still prevails.

While there is great knowledge of the reliefs and provisions provided under the Act, an equally high number erroneously continue to think that the division of property and divorce are reliefs that can be claimed under this Act. The understanding on the "Right to reside", as compared to their earlier understanding, has improved among the POs, but not among the police. It is critical to clarify these misunderstandings, as these are likely to influence responses towards women facing DV.

The knowledge that the PWDVA includes married women was almost universal at baseline, across the three states and is maintained. On the other hand, the confusion noted at baseline, when both the respondent and the AP are female, persists and even worsens across time, as noted among POs in Delhi and Rajasthan.

At endline, almost half and more POs across states reported incorrect

knowledge. This means that a clearer articulation of who can be the 'first' respondent under the PWDVA is needed.

The area of domestic relationships needs clarity. At endline, the percentages of POs who wrongly assume that female domestic help can claim relief under the PWDVA increases significantly in Maharashtra and Rajasthan, with only a slight decline in Delhi. Even so, at endline, more than one-third POs are unclear about this, while in the other two states, this number is over three-fourths.

2.2 Definition of violence

The PWDVA provides a comprehensive definition of DV, and there is an overall significant improvement noted in the understanding of POs, on the various forms of violence included under the law. In Delhi, there was high knowledge of the definition at baseline and it is constant at endline. In Rajasthan and Maharashtra, there is an overall increase in recognition of inclusion of non-physical and sexual forms over time, with minor exceptions.

2.3 Reliefs

There is good overall knowledge of the different reliefs that **can** be sought under the PWDVA, across POs of different states, at endline. Compared to other states, this was at a high among POs in Delhi at baseline and is maintained. In Maharashtra, it has increased significantly for other reliefs that the POs were not aware of at baseline, except for compensation,

which is reported at about 50 percent, even at endline.

2.4 Division of property and divorce

These are two reliefs that **cannot be** sought under PWDVA and the ambiguity around these needs to be addressed. In Delhi, knowledge that division of property is included as a relief was minimal at baseline, and increases over time; in Maharashtra, it climbs further to almost three-fourths; in Rajasthan it increases sharply to become almost universal knowledge among POs at endline.

2.5 Agreement to divorce

This relief that **can be** sought under PWDVA. It is minimal in Delhi and maintained at endline. However, this shows no change among POs in Maharashtra and continues to be reported in about one-fourth of the POs, while in Rajasthan, it shows a sharp increase at endline.

2.6 Right to reside

The "right to Reside, introduced under the PWDVA, was to protect women from "being thrown out' of the shared household in which they reside, and has been subject to different interpretations over the years. Endline findings indicate that there persists a misinterpretation in the "right to reside". However, the patterns are interesting. For the POs in Maharashtra and Rajasthan, the interpretation of the "right to reside" as *a blanket ownership right over the shared household* shows a significant decrease. On the other hand, there is a *substantial*

increase in the belief that the "right to reside" is applicable only if the shared household *is owned by the husband*. In Delhi, there has been an increase in both the statements over time.

2.7 The DIR

The knowledge on filling of the DIR seems to be impacted by the practices set by the courts. Across states, more POs report that lawyers can file out the DIR under the PWDVA.

In Rajasthan, there is a sharp and large increase in POs who report that lawyers and police can file DIRs. In Maharashtra, there is a significant increase in POs who report that lawyers can file a DIR, while the increase is not that sharp in Delhi. However, in Delhi there is a decline in the POs who report that SPs can file DIRs.

In Rajasthan, interviews indicated that courts did not accept DIRs filed by POs, in cases when the women approach them directly. Courts insist that an advocate file a case under PWDVA, subsequent to which they are directed to the PO for the DIR. This goes against the purpose of the DIR, as envisaged under the law and needs to be discussed with the judiciary.

Noting the impact of different directives and procedures accepted by courts related to the litigation under the PWDVA, a recommendation was made in 2010 to have standard practice directions issued. This needs to be reiterated, as it is apparent that the differing interpretations are leading to diverse practices, often in

contradiction to the spirit and intent of the law.

In Delhi, at endline, a few POs seem to mistakenly believe that the DIR and HVR is the same. This was not the case at baseline. On the other hand, in Maharashtra, there was confusion about these two documents at baseline, which significantly reduced at endline.

2.8 Counselling

The past reports indicated a clear unmet need among women for receiving counselling services. The law places the responsibility of providing counselling to trained professionals, as defined under the SPs. Unfortunately, the role of the SPs has not been adequately understood or exploited.

The finding that POs have the duty to undertake counselling under the PWDVA shows interesting variation across states. In Delhi, there is an increase in the proportion of PO's who believe that *counselling the woman is the POs duty under the PWDVA* – from 47 percent at baseline to 64 percent at endline. The POs in their interviews say they are expected to undertake counselling of the parties on being directed by the court, and the main emphasis is upon bringing the parties to an out of court settlement. In Maharashtra, the percentage remains the same (at 60 percent) across time; while in Rajasthan, there is a sharp decline from a high of 88 to 47 percent at endline. Interestingly, this knowledge does not seem to impact the practices adopted by the POs as is noted in the next section.

3. PRACTICE

3.1 *Interactions with women*

At baseline and endline too, there are different proportions of POs who interact with women. In Maharashtra, of the POs interviewed, 40 percent reported interaction with women in the last year at endline, which was slightly lower than 54 percent who reported it as endline. Eighty eight percent (slightly higher than baseline) reported this in Rajasthan, while all POs reported this in Delhi at baseline and endline.

In Delhi, the patterns of help sought by the women at endline are similar across time, but the assistance and action reported by POs is different. The most commonly sought help by almost 80 percent women was "Providing protection", followed closely by "Lodging complaint" and "Taking the case to court". All of these were reported higher than the expectation that the POs will counsel the family members is the same, at about 50 percent.

There are notable differences in the action POs say they take – there is a sharp decrease in actions of filling an application on the woman's behalf and advising her to "Lodge a complaint". There is a sharp increase in counselling perpetrators to "not continue violence" and also in counselling the woman "to go back home". The latter was non-existent at baseline, but appears at endline.

In Rajasthan, there is no change in the high percentage of POs who report that women approach them to counsel

perpetrators "to stop violence" from baseline to endline. There is an increase in reporting of wanting assistance to "Lodge complaints and even" "Take the case to court". However, expectations of POs providing protection or shelter decrease substantially over time.

There is a steep decline in the POs reporting that they inform the women of her rights, both under PWDVA and Section 498-A, though the numbers filing the DIR remain the same, as reported by about 60 percent of the cases, at both points in time.

Courts seem to insist on advocates filing cases, and then refer them to POs for filing of the DIRs. It could be that since the decision to proceed legally has been taken, the POs perceive this to be irrelevant. The action taken to counsel perpetrators "to stop violence" is still reported by about three-fourths of the POs, a slight increase over baseline.

In Maharashtra, the help sought by women changes quite dramatically from baseline to endline. There is a significant decrease in POs reporting that women ask help in "Lodging a complaint" or any other help involving referrals, including requests for counsel "To stop violence". The only sought help that remains constant is to take their cases to court. In response, the POs too, seem to predominantly take two or three actions - that of informing women of their rights and filing DIRs. Some also report filling applications at endline. At baseline, there were many more actions reported, but they decline significantly at endline.

3.2 Interaction of POs and the police

In Maharashtra, there is limited interaction between the police and POs, both at baseline and endline. In Rajasthan, the number of POs reporting this interaction doubles across time, while in Delhi almost all POs reported this at baseline and it is similar at endline.

In Maharashtra and Rajasthan, assistance is sought for enforcement of court orders, rescue and restoration of the woman. In Rajasthan, while the number of POs who had sought assistance from the police increases, the range of reasons for which they do so becomes more specific and limited at endline. It is likely that these are specific responsibilities that the court may have directed the POs to fulfill, for which they are working in coordination with police. In Delhi, in comparison to other states, all POs report seeking assistance from the police, for service of notice, home visits, and protection to POs, apart from rescue and restoration. Interestingly, the one reason that declines sharply from baseline to endline is assistance in enforcement of orders.

3.2 Multi-agency coordination

In Rajasthan, multi-agency coordination is hardly visible; almost three-fourths of the POs in Maharashtra at endline report that they have not approached any other stakeholder. In Delhi, an increased number of POs at endline reported that they had sought assistance from the legal service authority. This could indicate the request for legal

services that POs attach to the DIR when women approach them directly with requests to file cases in court.

3.3 Shelter homes and medical facilities

The interactions with SHs and MFs decreases and drops way down at endline. The coordination between various stakeholders is extremely varied, but overall, limited across the states. The extent to which the PO is active and involved in the various litigation phases also influences the extent and need for them to reach out to various other stakeholders. The involvement of other stakeholders in the implementation in turn, depends on the clarity they and courts have about their roles.

3.4 Interaction with courts

In Maharashtra and Rajasthan, the POs have very limited interaction with the courts, and filing of the DIR, they have a negligible role in the litigation process and are generally not too aware of the orders given.

In Rajasthan, over the last few years, the litigation process has been largely lawyer driven and POs do not play a very pro-active role. This seems to have progressively diminished and the courts do not seem to give the importance due to the POs. For example, SPs are more often called upon to undertake court directed functions of litigation and courts also, do not accept those DIRs that are filled by POs, when the woman approaches the POs directly.

Once the DIR is filed, there is very little interaction with the courts. Though it seems that courts do call upon the PO to seek assistance of police for specific functions such as restoration of women to the household, almost 90 percent of the POs state that they have not received any copies of court orders at endline.

In Delhi, in contrast, the POs are directed by the courts to undertake several functions and most are expected to be present at hearings. They are directed to serve notices, fill in court directed DIRs, attach a medical report and an application for legal aid if required and also, counsel the parties on being directed by the court. All these tasks tend to overburden the POs.

3.5 Police

In terms of attitudes, within a state, the police generally show more inflexible gender attitudes and their attitudes towards DV and the law either remains unchanged, or even shows a decline over time, compared to the POs.

In terms of understanding of the law, a majority of police officers were aware

of the various forms of violence under the PWDVA. For police in Rajasthan, at endline there is a small but significant decline around recognition of non-physical forms such as "Calling woman names, "Refusing to give money" and "Preventing a woman from leaving the house" is noted. For police in Delhi, no significant changes were noted.

With regard to the PWDVA, in Rajasthan, a significantly lower percentage of police officers reported that they inform women of their rights under the PWDVA, at endline, as compared to baseline. A higher number reported making a note in their daily diary or registering cases under Section 498-A.

The most preferred action taken by police, at first contact, in Rajasthan and Delhi is counselling women "To go back home" and to "Perpetrators to discontinue violence".

In Delhi, knowledge given of rights under PWDVA and referrals to PO under PWDVA have significantly declined, but interestingly, referrals to counsellors and CAW cells have shown a significant increase over time.

CHAPTER 4

Judgements and Orders of the Higher Judiciary

SECTION A. Analysis of Judgements of the Higher Judiciary

Introduction

The PWDVA is a unique law. It goes beyond marital relationships, bringing into its ambit all women in domestic relationships. It provides protection from domestic violence perpetrated by male members in a shared household against their wives and against other female relatives - sisters, daughters or widows.

It recognises for the first time, the existence of economic and sexual violence and establishes concepts such as '*right to residence*' and provides for '*quick relief*' to victims of DV.

The judgements of the Supreme Court and High Court between 2006 – 2011 have helped to shape the law by clarifying concepts and laying to rest features of the law that were viewed as controversial.

This section examines certain recurrent issues that have arisen under the law, through the judgements of the higher judiciary during the period September 2010 to September 2011. During this period, a total of three judgements were rendered by the Supreme Court and 37 by the high courts.

Though all the judgements discuss and clarify important issues, in this

section selected judgements are analysed, and only those that are unsettled till now. All judgements selected put to rest and further crystallise settled issues under the Act. The judgements are discussed under the wider issues they attempt to settle. More specifically:

1. "Relationship in the nature of marriage" Section 2(f)

The intention of the PWDVA was to provide women protection from DV, to ensure the "right to residence" and all other rights under the Act, to all women living in a "domestic relationship" and living at any point of time in a "shared household". Accordingly, the definition of "domestic relationship"¹ which forms the basis of reliefs provided for and against whom the reliefs may be claimed under the Act, includes within its scope "*relationship in the nature of marriage*". This unequivocal inclusion of women living in a "relationship in the nature of marriage" as beneficiaries under the Act has generated considerable debate since the Act came into force.²

It is heartening that courts have consistently ruled in favour of the inclusion of "relationship in the nature of marriage" while granting maintenance to women, and have viewed the inclusion of this category as a positive step towards protecting all women, irrespective of their marital status.

¹ Section 2(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family".

² The inclusion was criticised on the grounds that it puts 'illicit relationships', 'mistresses', 'live in relationships' at par with the relationship of marriage and will destroy the institution of marriage.

This issue came up for adjudication for the first time after the enactment of PWDVA, in 2008.³ The judgement by the High Court of Delhi successfully argued in favour of such inclusion and held that “it is not unconstitutional for Parliament to provide for protection to a woman in a relationship akin to marriage, along with and juxtaposed to the protection given to wives and legitimate children.”⁴

The issue of long standing relationships between two consenting adults and the legal right to maintenance for women in such relationships has been adjudicated upon in two cases by the Supreme Court in 2011.

Though the question of maintenance in both cases came up under Section 125 Cr PC, and not under PWDVA, the Supreme Court has, in both judgements, examined in-depth and based its judgement on the provisions of the PWDVA, which has for the first time in the history of legislation protecting women in India articulated the right to seek protection, residence and maintenance for women in “relationship in the nature of marriage”.

Two Supreme Court judgements in 2011 established the long standing

issue of relationship in the nature of marriage, under the Act.⁵

1.1. *Virendra Chanmuniya vs. Chanmuniya Kumar Singh Kushwaha and Anr*⁶ (Decided by G.S. Singhvi and Asok Kumar Ganguly, JJ)

In this case, the appellant contended that she was married as per prevalent custom and usage, after the death of her first husband, to his younger brother, the respondent.⁷ The parties lived together as husband and wife and discharged all marital obligations towards each other. The respondent, after a few years, started harassing and torturing the appellant and refused to provide her with maintenance.

Proceedings under Section 125 Cr PC were initiated by the appellant. The present Special Leave Petition was filed by the appellant against the judgement of the High Court upholding the respondent’s contention that he was not the husband of the appellant,⁸ and therefore, she was not entitled to maintenance from him, since only legally married women could claim this under the provisions of 125 Cr PC.

The judgement accordingly restricts itself essentially to validity of a claim for maintenance under 125 Cr PC, by a

³ Aruna Parmod Shah v UOI WP(Crl.) High Court of Delhi (decided on 2008) MANU/DE/0626/2008.

⁴ Ibid, Para 7.

⁵ While the issue of granting maintenance to women under 125 Cr PC in cases where no strict proof of marriage is available has been debated in earlier cases by the Supreme Court; save a passing reference the earlier judgments are not being examined here since the present exercise is restricted to judgements passed during the period August 2010 to July 2011.

⁶ MANU/SC/0807/2010

⁷ In the Kushwaha community, it is customary for the widow to marry her deceased husband’s younger brother. The only ritual to have taken place was the local custom of ‘*Katha and Sindhur*’.

⁸ The reasoning apparent from the SC Judgement is that the essentials of a valid Hindu Marriage as required by Section 7 of the Hindu Marriage Act had not been performed.

woman in a case where strict proof of marriage is not available and lays down the ratio that where partners have lived together for a long time as husband and wife, a presumption would arise in favour of a valid wedlock.

In establishing the above ratio, G.S. Singhvi and Asok Kumar Ganguly, JJ examined in detail the provisions of the PWDVA and noted that the Act gives “a very wide interpretation to the term 'domestic relationship' as to take it outside the confines of a marital relationship, and even includes live-in relationships in the nature of marriage within the definition of 'domestic relationship' under Section 2(f) of the Act”.

The wide coverage under the definition of domestic relationship, according to the judgement, is the most significant provision under the Act. The effect of such inclusion ensures that “women in live-in relationships are also entitled to all the reliefs given in the said Act”.⁹

The judgement concludes that “if monetary relief and compensation can be awarded in cases of live-in relationships under the Act of 2005, they should also be allowed in proceedings under Section 125 of Cr PC”¹⁰ and upheld the claim of

maintenance sought on the ground that parties though not married, have lived together for a long period.

This judgement is significant from the point of view of the PWDVA as it draws directly on the relevant provisions from the Act to expand the category of relationships which can legitimately benefit from the maintenance provisions under Section 125 Cr PC, by interpreting the basic social intent¹¹ and purpose behind both enactments.

The inclusion of relationship in the nature of marriage, within the definition of domestic relationship under the PWDVA, has generated some debate and criticism. The Supreme Court recognises that that the PWDVA is a “forward looking” Act as it has successfully incorporated the constant change in social attitudes and values. By concluding that the provisions under 125 Cr PC must be considered in light of the Act of 2005, it has added strength to the underlying intent with which PWDVA was enacted - namely to protect and provide for women, irrespective of their marital status - and to ensure that men are not allowed to benefit from simple legal irregularities.¹² And, most important, from relationships entered into with

⁹ Supra note 6, Para 41,42.

¹⁰ Ibid, Para 43.

¹¹ See *Vimal (K) v Veeraswamy (K)* MANU/SC/0719/1991, (1991) 2 SCC 375, where a three-Judge Bench of the SC held that Section 125 of Cr PC, 1973 is meant to achieve a social purpose and the object is to prevent vagrancy and destitution.

¹² Non – fulfillment of rituals under parties’ personal laws have led to a plethora of litigation where paucity of strict proof of marriage leads to difficulties in claiming maintenance ordinarily granted only to wives especially in light of the fact that registration of marriage is not compulsory.

the intent of living as man and wife, without contracting marriage.

The judgement further states that the inclusion of 'relationships in the nature of marriage', is in consonance with the principles of social justice and upholding the dignity of the individual enshrined in the preamble to our Constitution.¹³

**1.2. *Velusamy vs. D. Patchaiammal*¹⁴
(Decided by: Markandey Katju and T.S. Thakur, JJ)**

In this case, the appellant claimed that the respondent is not his wife. The appellant has provided proof¹⁵ that he married Lakshmi in 1980 and stated that they have a grown up son from this wedlock. The respondent Patchaiammal, filed for maintenance under Section 125 Cr PC in 2001, claiming that she was married to the respondent in 1986 and they lived together in her father's house for 2 – 3 years, after which the appellant left the respondent and started residing in his native village and visited her occasionally.

The Family Court of Coimbatore and the High Court of Madras held that the appellant was married to the respondent and not to Lakshmi. The Supreme Court points out that the lower courts have made a declaration about Lakshmi's marriage to the appellant, without issuing her a notice and giving her an opportunity to be heard. Since any

findings on her marital status would affect her rights, no declaration could validly be given by the court without issuing her a notice. The Supreme Court set aside the findings of the courts below with respect to the invalidity of Lakshmi's marriage to the appellant. The matter was remanded back to the Family Court in order to ascertain these facts after issuing a notice to Lakshmi. The Judgement further notes that the question of validity of the respondent's marriage to the appellant could only be decided after the above findings.

In light of the fact that the Supreme Court has decided to set aside the finding that Lakshmi was not married to the appellant on grounds that she was not heard, the judgement observes that it cannot therefore be stated at this point that the respondent was married to the appellant. The respondents could claim maintenance as a wife only if it was established that Lakshmi was not married to the appellant.

Justice Katju examines the questions as to whether the respondent would be entitled to a claim for maintenance under Section 125, if it is shown that the respondent was not married to the appellant, but has lived with him in "a relationship in the nature of marriage", in light of the provisions of PWDVA. Upon examining the definition of AP¹⁶ and domestic relationship¹⁷ taken together, the judgement notes that the

¹³ Supra n. 6, Para 47

¹⁴ MANU/SC/0872/2010, AIR2011SC479

¹⁵ Proof by way of ration card, wife's voter id card, transfer certificate of his son, discharge certificate of his wife Laxmi from hospital, photographs of the wedding that look place as per Hindu rites and ceremonies.

¹⁶ Section 2(a) PWDVA, 2005

¹⁷ Supra n.1

expression “in the nature of marriage” included within the definition of “domestic relationship” has not been defined in the Act and expressed the need to interpret the expression in light of the fact that a number of cases under this category can be expected to come up before courts, hence an “authoritative decision”¹⁸ is required to elucidate what is and what is not, “a relationship in the nature of marriage”.

The judgement points out that in clearly establishing two distinct categories, namely relationship of “marriage” and “relationship in the nature of marriage”, Parliament has, without any doubt, intended that the enactment protect and benefit women in both these relationships.¹⁹ The Parliament has taken note of the emerging trend of ‘live-in’ relationships in the country, the expression “nature of marriage” and not the expression, “live-in relationship”, it is important that we interpret the expression keeping in mind the language used by Parliament.²⁰

In the opinion of the Court, “relationship in the nature of marriage” is akin to a common law marriage.²¹ The judgement goes on to enumerate the essentials of a common law marriage and states that not all “live-in relationships” will amount to “a relationship in the nature

of marriage” in the way it is intended under the Act. The judgement notes by way of illustration that “merely spending weekends together, “a one night stand”, a case where the man has a “keep” who he maintains financially but uses merely for sexual purposes and or as a servant, would not qualify for protection under the Act within the category of “relationship in the nature of marriage”.²²

The two cases mentioned above involve circumstances where the legality of marriage claimed by the woman approaching the court is unclear. While courts have been progressive in stating over and over again that strict proof of marriage is not required when deciding a case of maintenance under 125 Cr PC on the reasoning that the purpose of the provision is to prevent destitution, the question of what comprises a “relationship in the nature of marriage” has remained largely unanswered.

In *Chanmuniya vs. Chanmuniya*, Justice Ganguly has clearly expressed the opinion that a broad and expansive interpretation of the expression “wife” should also include cases where a man and a woman have lived together as husband and wife for a reasonably long period of time. Similarly, in *Velusamy vs. Patchaiammal*, Justice Katju examines the context in which “relationship in the nature of marriage”

¹⁸ Supra n. 12, Para 20

¹⁹ Ibid, Para 21

²⁰ Ibid, Para 34

²¹ Ibid, Para 33: Common Law Marriage requires that although not being formally married: a) the couple must hold themselves out to society as being akin to spouses b) they must be of legal age to marry c) they must be otherwise qualified to enter legal marriage, including being unmarried d) they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

²² Ibid, Para 34

would apply and similarly concludes that “relationship in the nature of marriage” is akin to a common law marriage, stating that not all live in relationships belong to this category. In both cases the tendency is to narrow down the definition of “relationship in the nature of marriage”.

1.3 Trends emerging from above judgements

- There is a tendency to view inclusion of the category of “relationship in the nature of marriage” as a progressive step, in so far as it refers to marriages which are void or voidable by reasons of non-fulfilment of rituals, etc., or to those “live-in relationships” which have stood the test of time and resemble for all practical purposes, a “regular” marriage.

This was made adequately clear by Justice Katju, who has cited cases that do not fall under the description – such as, when a man has a “keep”, where a “keep” has been described as a woman who the man maintains financially and uses mainly for sexual purpose and or as a servant.²³ The use of the term “keep” is highly objectionable and shows lack of gender sensitivity as it is used in a derogatory manner to refer to women in a live-in relationship. Moreover, by the logic of the judgement, the relationship certainly fulfils the criteria of a long standing relationship and hence, would qualify for a “relationship in the nature of marriage”.

- The essential requirement, as enunciated by both judgements relating to the requirement of “long period of time” is problematic. It is not always possible to equate the duration of a relationship with the intent or seriousness with which it was entered into. Existing data demonstrates that a large number of legal marriages end in a short time. Therefore, the length of a relationship must not be the sole criterion for judging the intention of the parties. Other issues such as holding themselves out as man and wife and/or sharing of resources would be equally important to the question.
- The Virendra Chanmuniya vs. Chanmuniya Kumar Singh Kushwaha and Anr²⁴ (decided by G. S. Singhvi and Asok Kumar Ganguly, JJ) case clearly brings out the long standing dilemma of the second wife and the validity of her claim to maintenance. The judgement is not clear about what happens when there are two women in a relationship: one entitled to a claim on the grounds that she is the wife and the other who is in a relationship in the ‘nature of marriage’ as defined by Justice Katju, that is, one who has lived with a man for several years. Will they both be entitled to claim maintenance? The judgement is silent on this very vital issue.
- Judgements 2 and 3 recognise that protection and maintenance must

²³ Supra n. 12, Para 34

²⁴ MANU/SC/0807/2010

be granted to all women in order to prevent destitution and vagrancy and draw parallels between the two provisions of law, namely the PWDVA and Section 125 Cr PC.

- The long standing debate related to the 'correctness' of including and providing protection and legal recognition to "women in relationships" in the nature of marriage has been settled by the two Supreme Court judgements, which clearly articulate that the existence of such relationships cannot be denied and no one must be allowed to take advantage of non-fulfilment of legal requirements of a valid marriage.
- In light of the above discussion, the concept of "palimony"²⁵ as recognised by courts in the USA deserves a mention.²⁶

The term "palimony" was coined in the famous case of *Marvin vs. Marvin*²⁷ recognising the implied and sometimes express contractual nature of non-marital partners. In *Chanmuniya vs. Chanmuniya Virendra Kumar Singh*, the Supreme Court noted that though in India the law has not developed on the lines of the *Marvin* case, we must, given that our social context is fast changing, take cognisance of this change in interpreting provisions like Section 125 Cr PC.²⁸

The Supreme Court further, in *D. Velusamy vs. D. Patchaiammal*,²⁹ commented that though the courts in the USA have divergent views on the right to "palimony", some states have found implied contracts to be sufficient for grant of "palimony".³⁰

In the USA, as in India, sufficient proof with regard to intention of parties and a certain degree of commitment is necessary to be shown in order to make a legal claim for maintenance. This requirement by courts should put an end to any debate that steers in the direction of suggesting that protection under PWDVA will extend to every 'affair' between a couple and thus take away from the sanctity of marriage.

The underlying rationale is that the PWDVA does not accord special status to any domestic relationship and protects every woman in all relationships. It is, therefore, sufficient to justify for the inclusion of "relationship in the nature of marriage" under the ambit of this protective legislation.

2. Respondent under Section 2 (q) and the existence of a domestic relationship

Under the PWDVA, a respondent is "any male person who is or has been,

²⁵ Term coined by combining 'pal' and 'alimony', the famous divorce lawyer Marvin Mitchelson has been credited with coining the term.

²⁶ Both the judgements above have examined the concept of "palimony"

²⁷ *Michelle Marvin v. Lee Marvin*, 18 Cal.3d 660 (1976)

²⁸ *Supra* n.6, Para 36

²⁹ *Supra* n.14 Para27, 28

³⁰ An illustration of such implied contact would be a case where the women has given up her career to manage the household and assisted the man in his business for a long period of time

in a domestic relationship with the AP and against whom the AP has sought any relief under the Act.”³¹ It is apparent from this definition that the existence of a domestic relationship between the AP and the respondent is essential.

The three judgements discussed below deal with this requirement. While the facts of the three cases are different, in each case lower courts have proceeded with the application under Section 12 without ascertaining that the AP has a domestic relationship with the respondent.

In **Bhupender Singh Mehra vs. State of NCT**,³² on an application made by the AP naming her husband, father-in-law and brothers-in-law as respondents, the Magistrate’s Court issued notice to the PO for filing the DIR and directed respondents to be served.

The facts mentioned in the judgement³³ indicate that the husband worked and resided in New Zealand. Though it has not been expressly stated, it appears from the judgement that other than the husband, the other two named as respondents did not share a domestic relationship with the AP. Justice Narayan Dhingra observed that summons were issued to the respondent by the court without considering the DIR, without going through the contents of the application and without specifying why each

respondent named by the applicant was summoned.³⁴

The orders passed by the Magistrate’s Court were set aside and the court was directed to consider the DIR and the contents of the application in order to ascertain whether the respondents were or had been in a domestic relationship with the applicant and to only issue notice to only those persons named, who fulfil the requirement under Section 2(q).

The two other judgements focusing on the necessary existence of domestic relationship between the parties, were delivered by Justice Dhingra in order to ascertain whether the person/s named in the application are respondents within the meaning of Section 2(q).

In **Razia Begum vs. State, NCT of Delhi and Abdul Rub & other vs. Razia Begum**,³⁵ on an application made by a widow, a maintenance order was passed by the Magistrate’s Court, granting Rs. 10,000 a month as maintenance to the widow. The order was passed against all five male respondents (father-in-law and brothers-in-law) named by the applicant, without specifying as to which of the respondents were liable for payment of maintenance and why. It was observed by the High Court that the order was “conspicuously silent” on which of the respondents named by the applicant shared a

³¹ Section 12(q) PWDVA, 2005

³² CrI. M.C. No. 1766/2010, MANU/DE/2666/2010

³³ The allegations made and reliefs sought have not been mentioned in the judgement.

³⁴ Supra n. 2, Para 5.

³⁵ MANU/DE/2506/2010.

domestic relationship with her, and which of them had deprived the widow of financial resources. It was also noted that the Additional Sessions Judge, while reducing the quantum of maintenance granted by the lower court, has remained silent on which of the respondents were liable for payment of the maintenance amount granted.³⁶

The judgement notes that one of the brothers-in-law has never resided in the same house as the applicant and thus, does not share a domestic relationship with the applicant. However, the order of maintenance by the lower courts has also been passed against him. The High Court observed that since the applicant's complaint did not indicate that she was in a domestic relationship with all the respondents named by her, the court should have satisfied itself that a domestic relationship had indeed existed between the applicant and all the respondents, before passing the order of interim maintenance. Further, it is incumbent upon the Court to specify which of the respondents would be liable to make payments and why.

The High Court notes further, that though PWDVA is not a penal law, non-compliance of order passed under the Act has been made an offence under Section 31 and an FIR can be registered against the person who

does not comply with the order and the offence is triable. Courts must, therefore, be careful in passing orders and specify as to whether there was a domestic relationship between the applicant and the respondents named in the application.

Accordingly, the following ratio was established by the High Court of Delhi: "Before passing an order under PWDVA, it must be satisfied that there existed a domestic relationship between the Petitioner and the Respondent", and held that the applicant shall not be dispossessed from the portion of the house in her occupation, and two of the respondents will be jointly responsible for payment of maintenance³⁷ till final disposal of the application.

In **Johnson Fernandes vs. Mrs Maria Fernandes, Mr Michael Fernandes and State**,³⁸ Justice Britto reiterates the point made in the preceding cases that the existence of a shared household is necessary, in order to establish that the applicant and the persons named in the complaint share a domestic relationship in order to qualify as respondent/s under the PWDVA. In this case, an application under Section 12 was filed by a brother and sister against their brothers. All parties resided in separate households. Order under Section 18 was passed by the Magistrate against one of the brothers named as respondent in the application.

³⁶ Ibid, Para 5.

³⁷ No reason has been given in the judgment for deciding why these two respondents would be liable for payment; by it appears that the court would have ascertained that these two respondents resided in the same household as the applicant.

³⁸ Criminal Revision Application No. 14 of 2010, MANU/MH/1670/2010, 2011CriLJ1504

The judgement holds first and foremost that under the PWDVA, only women can file for relief, unless an application is filed on behalf of a woman. Since this was not the case, no relief could be granted to the brother who was the co-applicant in this case.³⁹

The High Court stated that a protection order could have been made in favour of the sister in case she had lived in a “shared household” as contemplated by Clause (f) of Section 2 with the respondent/s. Since this was not the case, if there has been any kind of violence perpetrated by the respondents, the applicant should proceed under ordinary law, as she is not entitled to any relief under the PWDVA.

In order to assess the import of the above judgements, it is imperative that we consider the definitions under Section 2(f) “domestic relationship”,⁴⁰ 2(q) respondent and 2(s) “shared household” together. While it is clear that in order to be a respondent under the Act it is necessary that parties must share a domestic relationship, which in turn depends on the parties living or having lived in a “shared household”, the above judgements do not indicate whether courts have taken into consideration if the applicant and the respondents have - at any point

prior to filing of the application - lived together in a “shared household”. If the question could be answered in the affirmative, then indeed a “domestic relationship” can be said to exist between the parties.

The judgements in this section need to be read keeping in mind that the parties may have lived in a “shared household” at “any point of time”, as worded clearly in the definition of “respondent”, “shared household” and “domestic relationship”.

In the past, courts have passed orders against respondents, in most cases parent/s-in-law of the applicant; where at the time of filing of the application, the parties were not residing in a “shared household”, but have at some point lived together and continue to be an integral part of DV perpetrated on the woman.

It is common for a woman to live in a “shared household” with her parent/s in-law for a few years after marriage and then move out and live independently with her husband or her parents. If the in-laws continue to be a cause of DV, it would defeat the purpose of the Act, which is to stop violence. In addition to which courts should simply note separate addresses

³⁹ An adult male cannot file for relief under the Act, unless this is done on behalf of the AP, the Act is gender specific, therefore this point is not being discussed here in any detail. The judgment is discussed from the limited view point of the issue regarding the definition of respondent. So far as this point is discussed in the judgement, Para 9 clearly states, “In case there was DV or physical abuse to Applicant No. 1, from Respondent No. 1, in my view, Applicant No. 1 could not have approached the court with an application under Section 12 of the said Act but had to proceed under ordinary law”.

⁴⁰ “Domestic Relationship” means a relationship between two persons who live or have, at any point of time, lived together in a “shared household”, when they are related by consanguinity, marriage, or through “a relationship in the nature of marriage”, adoption or are family members living together as a joint family.

belonging to the parties before issuing summons or passing orders. **We propose, therefore, that courts must proceed based on the facts of an individual case.**

In the above cases, the court has overemphasised the non-existence of a “domestic relationship” between the applicant and the respondent/s. This is incorrect, since a “domestic relationship” by marriage does exist in the both cases. What was required to be shown in order to assert one’s rights against the respondent, under this law is the existence of a “shared household”, in addition to a “domestic relationship”, since both must be present together.

3. Women as respondents

Section 2(q) PWDVA defines Respondent as “any ADULT MALE PERSON who is, or has been, in a “domestic relationship” with the AP and against whom the AP has sought any relief under this Act: PROVIDED THAT an aggrieved wife or a female living in a relationship “in the nature of a marriage” MAY ALSO file a complaint against a RELATIVE of the husband or the male partner.”

Since the definition specifies that an adult male member can be a ‘respondent’ and the proviso does not specifically state that the relative of the husband or partner includes a women relative, there have been a large number of cases where it has been

contended that women cannot be made respondents under the Act and if relief/s under the Act can be passed against women.

As the PWDVA moves into the fourth year of its implementation, this question has more or less been settled in the affirmative. Judgements of High Courts have, in light of the Proviso to the definition, held that the proviso does not specifically exclude women from its preview and a wide interpretation of the proviso read with the statement of objective and reasons implies that women relatives can be respondents under the Act.⁴¹

The argument in favour of the exclusion of women as respondents’ points out that since the PWDVA provides in its preamble that the law was enacted to redress women against DV, the Act cannot be used against women.⁴² This argument was invalidated on the ground that women, as members of a family, are often responsible for perpetrating DV against other female member/s of the family and excluding them from the definition of a respondent would defeat the basic purpose of the Act, which is, to stop DV.⁴³

Moreover, as noted by the Division Bench of the High Court of Madras, that by including the Proviso to Section 19(1) related to Residence Orders which states that no order can be passed against a women directing her to be removed from the “shared household”, the Act

⁴¹ See Jayadipsinh Prabhatsinh Jhala and Ors vs. State of Gujarat and Ors, (2010) 51 GLR 635.

⁴² Vrasha Kapoor vs. UOI & Ors, Writ Petition (Crl.) No. 638 of 2010.

⁴³ Ibid.

ensures that all women in a household are protected and can only be ordered to stop violence against other female members of the household.⁴⁴

Despite judgements by several High Courts in favour of inclusion of female relatives of the husband or male partner within the scope of complaints under the Act, sporadic cases where courts have held to the contrary continue to surface.

For example, one such judgement in 2011 was the High Court of Karnataka judgement in the case of **Smt Leelavathi S. vs. Shri Murgesh and Ors**,⁴⁵ where a reference was made to the Division Bench of the High Court of Karnataka to decide as to whether the 'Respondent' as referred to under Section 2(q) of the PWDVA would include a female 'relative' The fact that different opinions have been expressed by different High Courts with regard to the expression 'Respondent', particularly with regard to the proviso to Section 2(q) of the Act, necessitated the present reference of the matter to the Division Bench.⁴⁶

The Division Bench held that the definition clause contained under Section 2(q) cannot be constructed to extend its meaning to include female relatives within its preview. It was observed that the Court must avoid reading into the provisions anything that is not expressly provided for and anything that is likely to create

confusion and chaos. In arriving at the above contention, the bench examined in detail the proviso to the definition in light of statutory norms of construction laid down by the Supreme Court in a number of cases.⁴⁷

Stating that provisions in a statute must always be given their plain and literal meaning, unless such meaning leads to absurd or irreconcilable results which are against the intention of the legislature, the Bench concluded that by the proviso to the section, it cannot be construed that Parliament intended to expand the meaning and scope of the term 'respondent' so as to encompass even female relatives of the husband or male partner of the AP. If that was the intention of the parliament, notes the Bench, then the provision would have been clear and specific and worded in a different way.

Observing that the definition of the term respondent does not incorporate an inclusive clause, the judgement states that since all 'reliefs' under the Act are only against the 'respondent', even where the 'respondent' abets or commissions acts of DV through female relatives, a protection order can be passed in favour of the AP, it is therefore not necessary to proceed under the impression that unless proviso to Section 2(q) is given an expanded meaning to extend the reach of the main definition clause defining the term 'respondent', the

⁴⁴ R.Nivendran and ors v Nivashini Mohan @M. Nivashini, CrI. O.P. No. 24598 of 2008.

⁴⁵ Cr Revision No. 56 of 2010, MANU/KA/1113/2010, 2010(4)KCCR 2973, ILR 2010 KAR 4673.

⁴⁶ Ibid, Para 2.

⁴⁷ Dwarka Prasad vs. Dwarka Das Sarf, MANU/SC/0505/1975; Vishesh Kumar v Shanthi Prasad, MANU/SC/0052/1980; A.N. Sehgal and Ors. V Raje Ram Sheoram and Ors.MANU/SC/0333/1991.

intention and purpose of the Act will not be served.⁴⁸

The reference is thus answered making it clear that the definition of the term “respondent” does not include a female relative of the husband or male partner of the AP.

On January 31, 2011, the Supreme Court gave its decision in *Sou. Sandhya Manoj Wankhade vs. Manoj Bhimrao Wankhade and Ors*⁴⁹ finally laying to rest the issue with respect to women respondents holding that reliefs can be passed against women. The decision of the Apex Court arose out of an appeal against the judgement passed by the Nagpur Bench of the Bombay High Court directing the appellant to vacate her matrimonial home and confirming the order of the Sessions Judge deleting the names of the women respondents from the proceedings.

The brief facts of the case are: the appellant after her marriage lived with her husband, mother-in-law and sister-in law. Following several episodes of physical beating within a year of marriage, the appellant filed a case under Section 498-A IPC and a complaint under Section 23 of PWDVA. An order was passed by the Judicial Magistrate First Class for interim maintenance against the husband and restraining the “respondents”, namely, the husband, mother-in-law and sister-in-law from dispossessing the appellant from her matrimonial home.

The husband’s appeal against the above order was dismissed by the Sessions Judge, following which he filed an application in the High Court under Section 482, which was also dismissed. In the meantime, the mother-in-law filed an application in the Court of the Judicial Magistrate, praying for modification of the order and directing the appellant to leave the mother-in-law’s house. The Magistrate dismissed the application stating that it was not maintainable. Following this dismissal, the mother-in-law and the sister-in-law filed an application under Section 29 of the PWDVA, questioning the orders passed by the Magistrate’s Court, on the grounds that since they were women they could not be made “respondents” in the proceedings filed by the appellant under PWDVA. The second contention raised by them under this application was that the matrimonial home of the appellant belonged exclusively to the mother-in-law and could not therefore qualify as “shared household” under the PWDVA.

The Sessions Judge allowed the appeal and set aside the order of the Magistrate’s Court, and modified the order to the extent of setting aside the injunction restraining the respondents, namely, the mother-in-law and the sister-in-law from dispossessing or evicting the appellant from her matrimonial home. They directed the first “respondent”, her husband, to provide separate accommodation for the residence of the appellant or to pay

⁴⁸ Here the judgment is referring to reliefs under Section 18 and 19, specifically Section 18 (b) relating to aiding and abetting in the commission of acts of domestic violence

⁴⁹ Cr Appeal No. 271 of 2011 (Arising out of SLP (Crl.) No. 2854 of 2010, MANU/SC/0081/2011

Rs. 1,000 per month in lieu of providing accommodation. The question with respect to whether a female member of the husband's family can be made party to the proceedings under the Act was not decided, and though the Sessions Judge did not absolve the women "respondents" in his order, he observed that female members cannot be made party in the proceedings under the Act as "females" are not included in the definition of "respondents" in Section 2 (q) of the Act.

In a writ petition filed by the appellant, Single Judge of the High Court directed the appellant to vacate her matrimonial house which was in the name of the mother-in-law and confirmed the order related to deletion of the names of the "other members", the women respondents.

In an appeal by the AP, the Supreme Court said that it is unable to sustain the decisions of either the Sessions Judge or the High Court and notes that "although Section 2(q) defines the "respondent" to mean any adult male person, who is or has been in a domestic relationship with the AP, the proviso widens the scope of the definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a "relationship" in the nature of marriage."⁵⁰

Justice Altamas Kabir observed that the expression "female" has not been

used in the proviso to Section 2(q) and if the legislature intended to exclude females from the ambit of the complaint, instead of providing in the proviso that a complaint can be filed against a "relative" of the husband or male partner, females would have been specifically excluded. No restrictive meaning can therefore be given to the expression "relative" since it has not been specifically defined to make it specific to males only.⁵¹

Setting aside the judgements of the Sessions Judge and the Nagpur bench of the Bombay High Court, the Supreme Court held that both the Sessions Judge and the High Court were wrong in holding that the legislature did not intend to include female relatives of the husband or the male partner within the preview of a complaint under the Act. It directed that the Trial Court must proceed against the two women respondents: the mother-in-law and the sister-in-law on the complaint filed by the appellant.

The issue of whether women can be respondents under the Act has finally been settled and a clear case for their inclusion has been established by the Apex Court in the above judgement. The main contention with respect to inclusion of women within the ambit of the complaint under the Act related to the definition and the proviso to Section 2(q) and the same has been clarified by the Supreme Court in no unclear terms.

⁵⁰ Ibid, Para 12

⁵¹ Para 13

The judgement of the Apex Court has finally clarified the ambiguity in definition and the proviso to Section 2(q) claimed under numerous cases, settling finally the issue of the intention of the legislature to include women as respondents under the provisions of the PWDVA by incorporating the proviso to this section.

4. Custody of children

Section 21 of the PWDVA deals with custody orders. It provides that, anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act, grant temporary custody of any child or children to the AP or the person making an application on her behalf and specify, if necessary, the arrangements for visits of such child or children by the respondent.

The proviso to Section 21 states if the magistrate is of the opinion that if any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

While orders are passed regularly in magistrates' courts granting temporary custody of children to the mother, the case mentioned below is the first on custody of children under the act, where the High Court has expressed its opinion on the way temporary custody orders should be passed by lower courts.

In the Labhubhai Babulbhai Desai vs. State of Gujarat⁵² case, the mother filed an application under PWDVA for interim custody of minor twins aged five years. The magistrate's court ordered the husband to hand over the custody of the two minor children to the mother. Aggrieved by this order, the husband appealed to the Session's Court but his appeal was rejected. After this he approached the High Court against the Session's Court dismissal.

The High Court in its judgment stated that it called the minor children in the chamber in order to ascertain their wishes in the presence of the advocates of both parties. It observed that the children have love and affection towards the father and grandfather but not towards their mother. Since the children live and study from their father's house, and are not willing to leave their father 'even for a single day', the court can see that it will take a long time for the children to get adjusted to the mother. Normally custody of minor children should be with the mother but since the children are already with the father and have been taken care of by him, it is in the 'best interest of the children in all respects' if the custody of the children is left with the father. This would make the children happier.⁵³

The High Court expressed concern that the lower courts had not made attempts to ascertain the wishes of the children and held that the magistrate's court order and the Session's Court order stand quashed and set aside. The

⁵² Labhubhai Babubhai Desai v State of Gujarat & 1 Cr.MA 1200 of 2011

⁵³ Ibid, para 4

courts below were directed to decide the DV case within three months and stated that parties are free to approach the civil court under the Guardianship and Wards Act for the custody of the children. If such proceedings are initiated by either party, the observations made by this court must not come in the way of the parties in deciding the application.

This case is the only one dealing with temporary custody of children under the PWDVA where the High Court has interfered with the interim orders issued by lower courts. While litigation under most custody laws has shown a natural propensity to grant custody of minor children to the mother who is seen as the natural caregiver, in this case, the High Court appears to be of the view that even for temporary custody orders, the lower courts must ascertain all facts and take the opinion of the children before granting custody orders.

The PWDVA deals only with temporary custody of children as an urgent measure - to insure that the AP is not harassed by denying access to the children. The lower courts have granted temporary custody orders with ease, especially given that the order of custody under the Act is only temporary in nature.

It is hoped that this judgment will not be used by respondent husbands

in denying custody to mothers in future cases.

5. Right to residence

5.1 AP's right to reside in the shared household

Since DV takes place in the privacy of the home, there is a strong relationship between DV and the "right to residence". Women, most of the time, don't have ownership rights of their homes.

The "right to reside" in the "shared household" provided by the PWDVA is in recognition of the need to correct this situation. The right aims to ensure that a woman can reside in the household without fear of being thrown out, provides for removing the perpetrator of violence, and ensures that the woman can continue to reside in a violence-free home. The PWDVA aims to ensure simply the "right to reside" in the "shared household"⁵⁴ irrespective of ownership or title.

The higher judiciary has interpreted the right to reside in the shared household for women by focusing on the purpose of the right as a protection against dispossession. The judgements examined in this section emerge from very different facts, yet in each case, High Courts have held in favour of ensuring that the woman must be provided a roof over her head.

⁵⁴ Section 2(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

In **Sri Sujoy Kumar Sanyal vs. Smt Shakuntala Sanyal (Halder) and Anr**,⁵⁵ the High Court of Calcutta upheld the interim order of residence passed by the lower court in favour of the wife. Dismissing the husband's appeal, the High Court observed that the wife was suffering from various ailments and is entitled, along with her minor daughter, to the care of her husband. The Magistrate's Court has, accordingly, granted her the "right to reside" in the shared household. Such an order is therefore neither illegal nor opposed to public policy, but consistent with the object of this beneficial legislation.

The contention of the husband that the impugned order suffers from illegalities as it had been passed *ex parte* was dismissed by the High Court. It was noted that Section 23 (2) provides that if the magistrate is satisfied that an application *prima facie* discloses the existence of DV, he may grant an *ex parte* order. The Magistrate has dealt with the matter in a manner specifically provided for by the law by granting temporary relief subject to final disposal and cannot therefore be said to have committed any illegality. The judgment affirmed that temporary "right to reside" in a "shared household" may be granted *ex parte*, if the facts of the case *prima facie* indicate that the woman is in urgent need of such relief.

The facts in **Natasha Kohli vs. Manmohan Kohli**,⁵⁶ that arose in a

suit, and not the PWDVA, before the Delhi High Court involved the right of the wife to access and occupation in the entire house and not just to the outhouse/guest quarters and a study, as ordered by the Single Bench. The judgment makes interesting observations with respect to 'warring spouses', stating that it is not unknown for one spouse to be residing separately from the other within the same household for short periods. It would, therefore, be out of context to see such action as abandonment by the withdrawing spouse from the matrimonial home itself. The wife's "right of residence must, therefore, be respected not only because of the statutory mandate of Section 17 of the PWDVA, which acknowledges a woman's right to reside in a shared household but also on the principles of equity."⁵⁷

Most importantly, Justice Vikramajit Sen observes, "Courts must abjure from adopting a feudal and archaic attitude by thinking that a wife can be relegated to the outhouse as if she were a mere chattel. On the contrary, efforts must be made to ensure that she can live a life of respect".⁵⁸ The Court held that the petitioner shall be entitled to use all remaining portions of the house with the exception of the master bedroom which is presently occupied by the husband. This is purely an interim arrangement pending final judgement on the suit property.

⁵⁵ CRR 1835 of 2010, MANU/WB/0597/2010.

⁵⁶ Natasha Kohli v Man Mohan Kohli, MANU/DE/2506/2010, 172(2010) DLT 516

⁵⁷ Ibid, Para 11

⁵⁸ Ibid, Para12

In **Ishpal Singh Kahai vs. Ramanjeet Kahai**,⁵⁹ the husband challenged the order of the Family Court of Mumbai directing him to remove himself from the flat and also from entering the flat, disturbing her possessions, pending disposal of the divorce petition filed by the aggrieved wife.

Justice Roshan Dalvi states that judicial notice must be taken of the fact that “persistent alcoholic husbands are invariably violative”⁶⁰ and notes that the entire case of the husband is based on ownership rights. However, “the human right of a person has little to do with her ownership rights in property. It is therefore immaterial to consider in whose name the matrimonial home stands. In a case of domestic violence the court has only to appreciate the abuse and protection against such abuse”.⁶¹

The judgement examines the evolution of the law on DV and observes that a wife is entitled to peaceable occupation of and protection in her matrimonial home and this right is available irrespective of title in the home.⁶² In this case, the wife and the mother-in-law are co-owners of the flat; Justice Dalvi states that this fact is irrelevant in deciding the matter with respect to her right to peaceful residence and by implication states that she would be entitled to this right even if she was not co-owner. The Writ Petition was accordingly dismissed and the interim

injunction by the Family Court was upheld.

In **Sabah Sami Khan vs. Adnan Sami Khan**, the wife petitioned the High Court challenging a part of the order of the Trial Court, which allowed the respondent husband to reside with his second wife, in the matrimonial home where she had been allowed to reside.

In this case, the parties owned and co-owned multiple houses in the city. Establishing the ratio that the “husband shall provide proper accommodation for the wife,” Justice Roshan Dalvi said the wife is entitled to choose to reside in either of the flats owned by the husband or the parties jointly. Once the choice is made, the husband and his relatives shall allow her to enter, reside and remain in such premises without any encumbrance, disturbance and interference. The husband would not be allowed to sell, alienate, encumber or otherwise create any third party rights or renounce the title claimed by him to the flat. However, once such an offer is made and is seen to be a reasonable offer, the wife would not be entitled to residence in the shared household where she is presently residing.

In **Sheetal vs. Hitesh and Vijaya**,⁶³ the Nagpur Bench of Bombay High Court held that merely because divorce proceedings are pending between the husband and the wife, the same

⁵⁹ High Court of Bombay, Civil appellate Jurisdiction, Writ Petition No. 576 of 2011

⁶⁰ Ibid, Para 6

⁶¹ Ibid, Para 10

⁶² The Hon'ble Judge is referring to the English Common law and the doctrine of The Deserted Wife's Equity established in *National Provincial Bank Ltd v Hastings Car Mart LTD and Ors* (1964) 1 Ch. D.665

⁶³ Cr Application No 1534 of 2010, Bombay High Court, Nagpur Bench, decided June 2011.

cannot deprive the wife, who had been subjected to DV from claiming residence in the shared household in the two storey building consisting of about eleven rooms. The Court stated that the liability of the husband is to comply with the interim orders passed during pendency of the final orders to provide residence to the wife.

5.2 Right to reside in the shared household when the husband has no ownership rights in the property

S.R. Batra vs. Taruna Batra⁶⁴ decided by the Supreme Court has continued to affect the right of women to reside in a “shared household” owned by the husband’s parents or relatives, where the husband has no ownership rights in the house. The judgement in Batra v Batra had denied a woman the right to claim residence in the house owned exclusively by the mother-in-law.⁶⁵

The judgement in **Eveneet Singh vs. Prashant Choudhury, Kavita Choudhury vs. Eveneet Singh**,⁶⁶ delivered by Hon’ble Justice R. Bhat of the Delhi High Court has very effectively put the Batra vs. Batra judgment in the context of the facts and circumstances of each case. The judgment examines the PWDVA and the “right to residence” succinctly yet very effectively, thereby possibly ending any controversy that could arise due to the Batra Judgment.

In this case, the High Court was ceased with applications in two suits, one

by the mother-in-law in an eviction suit, seeking mandatory injunction restraining her daughter-in-law and son from occupying the premises on the ground that she is the sole owner of the property and they are simply licensees.

The daughter-in-law had filed an application against her husband and mother in law, seeing residence in the premises owned by the mother in law, claiming that the suit premises stating that this was her “shared household” and she had a right to reside there and that the mother and son are conniving to dispossess her from the same.

The mother-in-law’s case was based entirely on the judgment in Batra vs. Batra, since she is the sole owner and her son has no title to the premises. Since her son and daughter-in-law had moved out of the premises and set-up house independently, the daughter-in-law could not claim that the suit property was her matrimonial home or “shared household” as it had ceased to be so.

The High Court observed that excluding the right of residence against properties where the husband has no right, share, interest or title, would severely curtail the extent of the usefulness of the right to residence and states that introduction of the remedy of “right to residence” is a revolutionary and path-breaking step,

⁶⁴ (2007) 3 SCC 169.

⁶⁵ For a critique on the judgment in Batra v Batra see, Handbook on Law of Domestic Violence, Lawyers Collective, Ed I, Jaising, Lexis Nexis, Butterworths, Wadhwa. Nagpur (2009)

⁶⁶ CS (OS) 1307/2010

taken to further the objects of the Act and any attempt at restricting the scope of the remedy would reduce the effectiveness of the Act itself.

Therefore, it would be contrary to the scheme and objects of the Act to restrict its application to only such cases where the husband owns some property or has a share in it, as the mother-in-law can also be a "respondent" in the proceedings under the Domestic Violence Act. Remedies available under the same Act would necessarily need to be enforced against her.

The judgement further warns against the danger of accepting a restricted interpretation of joint family by equating it to a Hindu Undivided Family (HUF).

The PWDVA is a secular law that would result in discrimination since the concept of HUF was restricted to Hindus, and Hindu women would have more security, by reason of their professing and Hindu faith. Also, even among Hindus, women who are married into or live in HUFs would be better protected as compared to women living with their husbands in property owned by their parents, if *Batra and Batra* were to apply. It is precisely to avoid this anomaly that parliament clarified that irrespective of title of the "respondent" to the "shared household", a protection order can be made under Section 19 (1) (a).

The definition of "shared household" emphasises the factum of a domestic relationship and no investigation into

the ownership of the said household is necessary, as per the definition. Even if an inquiry is made into the aspect of ownership of the household, the definition casts a wide enough net. Therefore, there is no reason to conclude that the definition does not extend to a house which is owned by a mother-in-law or any other female relative, since they are encompassed under the definition of "respondent" under Section 2(q).

If the court can look beyond the facts, and in a given case, conclude that the overall survey of circumstances, suggests manipulation by the husband or his relatives, to defeat a right inherent, in the wife, to any order under Section 19, such "lifting of the veil" should be resorted to. Therefore, the plaintiff indeed has a "right of residence" under the Domestic Violence Act.

The above approach is consistent with the power under Section 19 (1) (f), which enables the court to direct "the respondent to secure the same level of alternate accommodation for the AP as enjoyed by her in the "shared household" or to pay rent for the same, if the circumstances so require." The plaintiff is thus entitled to residence in a property commensurate with her lifestyle and her current residence.

While the court upheld the daughter-in-law's right to reside in the "shared household", the court gives due consideration equally to the mother-in-law's cardiac condition, and therefore, holds that the daughter-in-law should be given alternative accommodation within the specified time. The court

maintains that the husband, without a doubt, is under obligation to offer alternative accommodation. The process is to be monitored by the court dealing with the complaint under the Domestic Violence Act. In the event of alternative accommodation being "made available" to the wife, her right to continue in the mother-in-law's house would cease.

In **Shumita Didi Sandhu vs. Sanjay Singh Sandhu and Ors**,⁶⁷ Badar Durrez Ahmed and Veena Birbal, JJ held that is no doubt that the appellant/plaintiff has a "right of residence", whether as an independent right or as a right encapsulated in the right to maintenance under the personal law applicable to her. But, that "right of residence" does not translate into a "right to reside" in a particular house. More so, because her husband does not have any right, title or interest in the said house.

In the present case, the learned single judge had recorded that alternative premises had been offered to the appellant/plaintiff, but she had refused to accept the same and insisted on retaining the second floor of the property in question, claiming it to be her 'matrimonial home'. Therefore, no interference is called for with the impugned order and the learned single Judge amply protected the appellant/plaintiff by directing that she would not be evicted from the premises in question, without following the due process of law.

The Bombay High Court in **Ajay Kumar Madanlal vs. Mrs Neha Vishal Bajila**, noted that the wife has not only shown that the suit flat is her matrimonial home, but also shown that the husband has paid the EMI on the loan. The father-in-laws claim that the house belonged to him and the petitioners husband had no title in it was rejected by the court. The court questions why the husband would be paying the EMI if the flat is not purchased out of the joint family funds, or if the flat is purchased individually and exclusively by his father, or if both the parties are not joint owners? The payment by the husband must, therefore, put the court on guard that there must be some interest of the husband in the suit flat. In which case, the suit flat would be the shared residence and the wife would be entitled to protection of her possession therein.

5.3 Concept of temporary residence

In **Sharad Kumar Pandey vs. Mamta Pandey**,⁶⁸ the appellant husband contended that the residence of the wife with her sister at Delhi cannot give jurisdiction to the Court at Delhi, since none of the incidents of DV had taken place at Delhi - the marriage had not taken place in Delhi and the wife, before filing the petition, did not live in Delhi, nor the parents of the wife were living in Delhi and nor had the parties lived together at Delhi.

The judgement notes that jurisdiction under the Act can be invoked by

⁶⁷ MANU/DE/2773/2010,174(2010)DLT79, II(2010)DMC882

⁶⁸ MANU/DE/2179/2010,171(2010)DLT565

an AP on the basis of temporary residence, and that this provision has been made for APs, who may have lost their family residence and are compelled to take residence, though temporarily, either with one of their relatives or with a friend, at a place where the DV was not committed, or this was not the place of her matrimonial home.

The High Court holds that in such cases a woman can invoke jurisdiction of the court where she is compelled to reside in view of the commission of DV. This temporary residence, as envisaged by the Act, must be one in which an AP takes under the circumstances of DV; it must be the place where, after DV, an employed AP decides to take up a job at some other place and has to shift her residence. The jurisdiction of the court would not be applicable where an AP starts residing deliberately, only for the purpose of filing a case under DV against the “respondent”.

It must be noted, observes the court, that the PWDVA is the first Act where a temporary residence of the AP has also been made a ground for invoking the jurisdiction of the court.

The expression “residence” means 'to make an abode' - a place for dwelling. This temporary residence, as envisaged under the Act, is such a residence where an AP is compelled to take shelter or compelled to take a job or do some business, in view of

DV perpetuated on her, or either she has been turned out or has to leave the matrimonial home.

Temporary residence does not include residence in a lodge, hostel, an inn or residence at a place only for the purpose of filing a DV case. This temporary residence must also be a continuing residence from the date of acquiring residence till the application is disposed of and must not be a fleeing residence, where a woman comes only for the purpose of contesting the case and otherwise does not reside there.

In the Sharad Kumar Pandey vs. Mamta Pandey case, the High Court dismissed the appeal filed by the husband and held that the AP is residing with her sister, and has filed the petition under the Domestic Violence Act. It cannot be said that her residence with her sister was a fleeing residence, or a temporary residence acquired for lodging the complaint of DV. Her sister's house is a place where she has taken shelter and temporarily resides.

5.4. Retrospective operation

In Gajendra Singh vs. Minakshi Yadav and Anr,⁶⁹ a judgment by the High Court of Rajasthan, Judge R S Chauhan, observed, that in this case, the marriage of parties is subsisting, though the parties have been living separately and the woman continues to face DV including threats, verbal and emotional and economic abuse. Therefore, she has a right to protection under the Act,

⁶⁹ MANU/RH/0338/2011, SB Cr Rev. Petition No: 449/2010

since civil wrongs are continued to be committed against her. It was held that these civil wrongs are in the form of denial of maintenance, access to “shared household” and continued threats, even after the Act came into force. Therefore, the question of retrospective operation of the Act does not arise, since the Act will control DV committed after the year 2006. The husband’s appeal was dismissed.

In the case of **Karimkhan vs. State of Rajasthan and Nahid Akhtar**,⁷⁰ a judgement was passed in August 2011. The High Court of Bombay, Nagpur bench, held that the petitioner husband cannot be allowed to defeat the provisions of the PWDVA by continuously depriving the “respondent” wife, who is legally entitled to a “shared household” on grounds that the denial to access to the “shared household” took place prior to the coming into force of the Act. Since the denial continued even after the Act came into force, it is continuing breach of a legal right as envisaged by the Act. Though the acts complained of took place before the Act came into force, the court has no hesitation to hold that the benefit of the rights under the Act will be available to the wife since deprivation of economic resources and continued prohibition and denial of access to the “shared household” continued even after the Act came into force.

The two judgments passed in 2011 have adequately settled the law with respect to retrospective operation of the PWDVA, indicating that DV is never an isolated act but a continuing violation.

6. Monetary relief

Monetary relief, especially in the form of monthly maintenance, is one of the common reliefs sought by women.

Courts are inclined to pass orders of maintenance and these are most frequently appealed against by the respondent/s. In 2011, as in previous years, the High Courts have rejected a large number of appeals against orders for enhancement of maintenance amount.

Two judgements by the Karnataka High Court, **Shivprasad Gowda vs. Smt Tushara Mani**,⁷¹ and **B.M Venkatesh vs. Kum Hamsa**,⁷² held that maintenance granted by the lower court was not excessive given the cost of living, therefore, called for no interference.

The Punjab and Haryana High Courts similarly held that no interference is necessary in the maintenance order passed by lower courts in **Hajur Kaur vs. Smt Saranjeet Kaur**,⁷³ and **Yadvinder Singh and Ors vs. Smt Manjeet Kaur**.⁷⁴

⁷⁰ Cr Writ petition No : 252 of 2011, High Court of Bombay, Nagpur Bench

⁷¹ MANU/KA/0377/201

⁷² MANU/KA/0358/2011

⁷³ MANU/PH/0822/2011

⁷⁴ MANU/PH/2673/2010

The Rajasthan High Court, in **Shyam Kumar Alwani vs. Smt Dimpal Alwani**,⁷⁵ held that given inflation rates, maintenance granted is not excessive. In **Harish Bairani vs. Smt Meena, Riya Bairani**,⁷⁶ the same court once again upheld maintenance granted, stating in its judgement: a bare perusal of the disputed orders clearly reveals that the wife is suffering from kidney failure. *Prima facie*, the petitioner husband's omission in not maintaining his wife and not providing for her medical treatment falls within the definition of economic violence u/s 3 of the PWDVA.

In **Sukrit Verma and Anr vs. State of Rajasthan and Anr**,⁷⁷ Judge R.S Chauhan, held that the husband's claim that he has no income, while the wife is an artist and well, off cannot be maintained. The Rajasthan High Court held that once the fact of DV is clear, as in this case, the husband is liable to pay maintenance to his wife.

In **Om Prakash vs. State of Rajasthan & Anr**,⁷⁸ R.S Chauhan, J held that the Act does not require that the AP must stay with the offending husband.

Hence, merely because the respondent wife is not staying with the husband does not absolve him from his liability under the Act. His petition against the maintenance order is thus devoid of any merit.

Conclusion

The judgements by the Supreme Court and the High Courts in the fifth year of the working of the PWDVA have settled a number of issues which have posed challenges for DV victims in exercising their legitimate rights under the Act.

Many issues remain unresolved. It is hoped that in the coming years, judgements from the Higher Judiciary will lend better clarity to the debates that the PWDVA seems to have a tendency to generate. Issues that the Act had faced with respect to gender neutrality and procedural aspects have already been settled by the higher judiciary in the last four years. Therefore, these issues have not been taken up this report, as no litigation about these issues has come up in 2011.

⁷⁵ MANU/RH/1101/2010

⁷⁶ MANU/RH/0402/2011

⁷⁷ MANU/RH/0337/2011

⁷⁸ S.B. Criminal Revision Petition No 1220/2010- High Court of Rajasthan, Jaipur Bench

SECTION B. Analysis of Orders of Magistrate and Sessions Courts (2010 – 2011)

Introduction

The PWDVA empowers the Magistrate Courts⁷⁹ to entertain and pass orders on applications filed by the AP. Orders by the Magistrate Courts, therefore, not only indicate the nature and dimensions of DV faced by women, but also reflect on the nature of reliefs women expect from the courts and the protection given by the courts.

To measure the impact of the legislation, it is important to study whether the beneficiaries under the law are access the courts for justice and obtain the relief envisaged for them under the Act. This requires a thorough process of analysis of the orders.

This section presents an analysis of the implementation of the PWDVA as reflected through the orders of the Magistrate Courts and Sessions Courts during the period 2010-2011. As the PWDVA moves into its fifth year of implementation, it is hoped the order analysis allows for definitive assertions with respect to the effectiveness of the DV law in fulfilling its objectives.

1. Methodology

In the first year, the orders obtained from the offices of the Hon'ble Chief Justice of India were analysed focusing on the quantitative data to understand whether women had begun to use the law or not.

In the subsequent years, only judgments of the higher judiciary were analysed since the LCWRI was unable to obtain orders from the states. In the third year, analysis of orders from the states of Gujarat, Delhi and Maharashtra were undertaken to identify trends, track development of jurisprudence under the PWDVA, and examine the role played by the judiciary.⁸⁰

In 2010, the LCWRI received orders from seven High Courts, namely, Delhi, Mumbai, Guwahati, Himachal Pradesh, Jharkhand, Chhattisgarh and Andhra Pradesh. Of a total of 4,812 orders received, 3,493 orders were tabulated and subsequently analysed by the LCWRI.

For this report, orders from the Magistrate and Sessions Courts passed from April 2010 to March 2011 - under the PWDVA - in 16 states were examined.⁸¹ The LCWRI received 13,401 orders, of which 7,557 were tabulated and examined for analysis.

⁷⁹ Section 12 PWDVA, 2005

⁸⁰ Lawyers Collective & the International Center for Research on Women, "Staying Alive: Lawyers Collective & the International Center for Research on Women, "Staying Alive: Third Monitoring & Evaluation Report on the Protection of Women from Domestic Violence Act, 2005" (2009). Available at <http://www.unifem.org.in/PDF/Staying%20Alive%20Third%20M&E%20Report%202009%20%28final%29.pdf>.

⁸¹ See Annexures for state wise break up of orders analysed.

Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh and Rajasthan had the highest number of orders. A representative sample of 60 percent of the orders received from each state was analysed and each district from these states was proportionately represented. Orders written in vernacular languages were included in proportionate numbers, to ensure regional specificity within the states.

The LCWRI requested the Chief Justice of India and the Registrar, Supreme Court for the orders. They asked the High Courts to send the Magistrate Courts and Sessions Courts orders passed under the PWDVA.

Indicators were developed by the LCWRI and the orders received were tabulated. This was a time consuming process, as each order had to be read to extract the relevant information. To establish and understand state trends, with respect to each indicator, a narrative analysis was developed for each state from the data tabulated.

The major findings from the orders analysed are presented here as issue-based analysis. The state trends have been incorporated within each indicator wherever a significant discernible trend was noticed. Best practices have been highlighted under each indicator. Details of orders selected as best practice or an otherwise representative order has been narrated and boxed under each issue.

2. Limitations of the analysis

- A large number of orders received were brief and did not contain

details, either with respect to the nature of complaints or specific reliefs prayed for and granted by the courts. In some orders, information was missing.

- A large number of orders were hand written; therefore, an error in understanding the text cannot be discounted.
- Vernacular orders were translated and it is hoped that the context of the order was not lost in translation.
- A human error at the stage of tabulation cannot be disregarded.
- Details with respect to the procedure followed by the court in passing orders were not provided in most of the orders analysed; the insight provided on procedure in this chapter is therefore limited.
- Cases where a compromise was reached did not detail the procedure or the stage at which the compromise was brought about and the terms of the settlement in most states.

3. Goals of the PWDVA

To determine if the PWDVA has achieved its goals, it is important to look at the intent of the Act. Before 2006, DV could only be addressed under Section 498-A of the Indian Penal Code, which was essentially a criminal procedure requiring strict proof of violence in order to prosecute. Only married women could file a complaint under this section, and there was no provision

for any immediate relief to the women from DV.⁸²

When a Section 498-A case is pending trial, women are forced to continue to reside in the violent home. Often, women faced destitution and were maligned for causing harassment to the family. Cases where a husband filed a divorce petition on grounds of cruelty – as a reaction to criminal proceedings by the wife were common. The husband and his family continued to wield tremendous negotiation power over the victim.

The PWDVA aimed to transfer this power of negotiation to the victim, provide her with immediate protection and ensure that the perpetrator of violence is removed from the home and not the victim.

It was designed and passed with the hope that it would fulfill this need and empower the woman with a prompt protection order on prima facie evidence of DV. Under the Act, the “right to residence” was to ensure that women did not lose their households as a result of DV; temporary custody of children ensured that women were not forced to remain in violent homes for the sake of their children, and the monetary relief provided financial security.

The PWDVA extends protection to all women residing in “shared households” and sharing a “domestic relationship” with the perpetrators

of violence in the home, irrespective of their marital status. The Act aims to provide all women a violent free and safe home, irrespective of their marital status.

4. Access to the law

The PWDVA is a gender specific law. Applications under the Act are in all cases filed by the AP, the woman who claims reliefs under the Act. In a number of cases, children have been made party to the application. Courts have invariably granted relief, especially monetary, for minor children, even in cases where the child has not been made co-applicant.

The law allows applications to be filed on behalf of women.⁸³ In a relatively small number of cases, applications have been filed by POs and lawyers on behalf of the AP. Very few cases have been filed by SPs on behalf of the AP.

5. Marital status of the AP

DV, by its very nature, results in the woman being forcefully dispossessed from the household or the women leaving the household because of the violence. The present analysis shows that a very large number of applications have been filed by married women not residing in the “shared household”.

Married women continue to be the largest users of the PWDVA, followed

⁸² There is no intent to debate the relative merits and demerits of Section 498-A and the PWDVA. The differences between the two co-existing remedies against DV have been mentioned only to the extent necessary to focus on aspects of the PWDVA, which provide a clear advantage to the DV survivor, over Section 498-A.

⁸³ Section 12(1)

by divorced women and widows. Cases filed by married women not living in the “shared household” have been analysed separately.

Widows are the third largest users. **Unmarried women** filing against their natal family members, including parents, brothers, and sisters in law, also use the law, but this number is very small. The number of cases filed by women in “relationships in the **nature of marriage**” is relatively small.

The PWDVA is a secular law and women from various religions are filing under this law.

6. Respondents

The largest respondents under the PWDVA are **husbands**, followed by

the husband along with the in-laws (parents and other relatives of the husband) and the in-laws alone. In all cases filed by widows, the parents-in-law or/and other relatives have been named respondents.

7. The Indian family system

The AP’s relationship with the respondent/s reflects the uniqueness of the Indian family system and the profile of “shared households”.

In all cases where women have named their parents-in-law or other relatives of the husband along with the husband as respondents, it is assumed that all the respondents reside in a “shared household”. The role played by parents-in-law and other relatives of the husband in perpetrating violence against the AP is reflected through

Table 1: Patterns of violence and abuse

States	Physical abuse	Verbal and emotional abuse	Sexual abuse	Economic abuse
Andhra Pradesh	495	344	17	318
Assam	44	40	0	46
Bihar	10	14		10
Delhi	194	160	22	187
Himachal Pradesh	132	114	13	126
Jharkhand	9	7	3	19
Karnataka	333	311	31	338
Kerala	236	177	6	212
Madhya Pradesh	377	256	9	240
Maharashtra	689	802	72	870
Manipur	22	15	2	18
Orissa	71	40	6	73
Rajasthan	185	101	13	195
Sikkim	21	19	3	20
Tamil Nadu	181	228	25	168
Uttarakhand	216	98	7	98
Total	3215	2726	229	2938

a very large number of cases which name the in laws as respondents along with the husband.

The law allows relatives of husband or male partners of either gender to be named as respondents and this is corroborated by the orders.

Kinds of Abuse

Physical violence along with **emotional and verbal abuse** is the most common form of DV reported by women, closely followed by economic abuse. Courts have entertained complaints of emotional and verbal abuse where no physical abuse has been alleged, and relief has been granted in the form of protection order and residence order.

The PWDVA is the first law that recognises sexual violence in marital relationships and in other intimate domestic relationships. A large number of married women have complained of **sexual abuse** by their husbands; daughters-in-law against their fathers-in-law and brothers-in-law.

1. Physical abuse⁸⁴

Physical violence is the most common form of violence reported. It ranges

from being beaten under the influence of alcohol or otherwise, to severe gruesome acts of violence.

In Rajasthan, physical violence related to dowry harassment was commonly reported. Facts from three cases demonstrate the severity of physical violence suffered by women. In one case, the woman was hit with an axe, which led to her womb rupturing, resulting in excessive bleeding. Her womb had to be removed and she went into a coma.⁸⁵ In another case, kerosene was poured on the woman.⁸⁶ In yet another case, the woman was forced to wash clothes with caustic soda, which burnt her hands.⁸⁷ In cases of physical abuse, courts, in almost all cases, grant relief in the form of a protection order and often compensation.⁸⁸

2. Verbal and emotional abuse⁸⁹

Traditionally, courts have shown greater tolerance to this form of violence. Orders passed in 2011 reflect a greater sensitivity to verbal and emotional abuse. Protection orders and compensation for mental trauma and agony have been granted even in the absence of physical violence. For example, in two cases from Maharashtra

⁸⁴ Section 3 (i)

⁸⁵ CrI Case No. 60/11 No information is available as to whether a criminal complaint had been filed in this case

⁸⁶ CrI Case 429/10, 127/07 and 328/2008

⁸⁷ CrI Case No. 427/2009

⁸⁸ In Rajasthan in 7.6 percent cases, compensation was granted

⁸⁹ Section 3 (iii)

and Manipur, the court passed the following orders:

Maharashtra

“That the husband has performed a second marriage during the subsistence of his earlier marriage, this fact in itself amounts to mental cruelty. The applicant is therefore, entitled to a sufficient “amount” from the respondent.”

Where the respondent husband cast aspersions on the wife’s character, claiming that the child she has delivered is not his, the court observed: “that this denial itself is nothing but mental violence caused to the applicant, he has not only put stigma on the chastity of applicant, he has thrown the child in the category of bastardy.”

Manipur

The AP had alleged that the respondent told her that she is not worthy of being his wife and threatened her with divorce. She was told to go to her maternal house and not come back. The Court passed a protection order and compensation of Rs. 3, 00,000, although no physical violence had been alleged in this case.

3. Sexual abuse⁹⁰

Marriage is regarded as an exception⁹¹ under the offence of rape and other forms of sexual abuse are not always recognised in a marriage and in intimate domestic relationships.

While women are filing detailed complaints of sexual violence, courts do not specifically note the existence of sexual violence in the orders passed. Though Protection Orders are being passed in favour of the AP, the reason for passing the order is noted as DV and not sexual violence against the applicant. For example, in the following cases in Manipur and Maharashtra the courts ruled:

Manipur

An AP alleged that the father-in-law ill-treated and tortured her in the absence of her husband; he would watch her change her clothes secretly and asked her to massage his body.

Order: The court ordered Rs. 20,000 as compensation and Rs. 2,000 per month as maintenance to be paid by the husband. The court held that these acts amount to endangering the health, safety, life and well-being of the AP, both mentally and physically.

⁹⁰ Section 3(ii)

⁹¹ Exception to Section 375, Indian Penal Code.

Manipur

An AP alleged that after her husband raped her, she got pregnant and then the respondent married her. Order: Denial of interim maintenance stating that the Order cannot be passed at this stage without proper enquiry.

Manipur

An AP, in a case against her husband, mother-in-law and sister-in-law, alleged that she was kicked on her private parts for not bringing dowry, was forced to have sexual intercourse and penetration with a cloth and made to watch obscene photos. She was also thrown out of the house.

Order: The AP was granted Rs. 1, 00,000 as compensation and protection order. The reason for granting the relief was that the respondent had committed DV on the AP. Again, nothing was said about the sexual violence. This was an *ex parte* order.

There are some cases where the husband has refused to have sexual relationship with the wife and this has been alleged as a form of sexual

violence.⁹² Illicit relationships, forced to watch pornography are some other forms of sexual abuse are alleged by women. For example:

Maharashtra

The husband would show indecent mobile clips to his wife of his illicit relations with other women. He also had indecent relations with them in her presence in the house. Order: The court held that "In my view no lady can tolerate such hazardous acts and definitely this conduct of the non-applicant was beyond expectation of normal marital norms. Furthermore, at this stage, one important aspect has to be taken into consideration is that at the time of such above said indecent behaviour applicant was residing with the non-applicant at Qatar ... faraway from her nation, her relatives.... her friends. She was also not in a position to share her sorrow with anyone. In these circumstances what she has suffered is really unimaginable to humanity. Therefore *prima facie*, I have no hesitation to hold that act of DV has been committed."

⁹² Refusal to have sex with the wife or the partner should be considered a form of emotional abuse in addition to sexual abuse.

Forced sexual intercourse was the most common form of sexual violence alleged by women. In cases of sexual abuse alleged in relationships in the nature of marriage, most of the time the courts have not granted relief and the applications were rejected. In Delhi, there are several cases where the AP was molested and forced - to have sexual intercourse with her father-in-law, to indulge in unnatural sex, to please the respondent's friends sexually - these have come to light through the orders.

4. Economic abuse⁹³

Economic violence is the most common form of abuse complained of by women. Women complained of neglect to maintain the AP and her children, forced starvation, demand for dowry, taking away *stridhan*, confined to one part of the house, denial of medical care, and taking away the AP's salary.

Being thrown out of matrimonial home leading to dispossession is the most common form of economic abuse. Since dispossession is a complex phenomenon, this form of economic abuse is detailed in the next section.

In the majority of the cases analysed the courts are granting residence order and monetary relief in the form of monthly maintenance, relief for damages, medical expenditure and compensation order. Courts have stated that it is the moral duty of the

husband to maintain his wife and child according to the standard of living of the parties.

5. Dispossession⁹⁴

In the matrimonial or natal home, women have fewer rights than a tenant. While due procedure of law must be followed in evicting a tenant, no such procedure of law or protection by the law was provided to women victims of DV. DV almost invariably leads to the woman being evicted from her home, and the Act recognises this phenomenon and the women's right to residence in the shared household.

A very large number of women have sought right to residence. The law recognises, in addition, the right to residence also in cases where the woman has an apprehension of dispossession. For example in Jharkhand, an AP was tortured, called a barren woman, kept away from family functions, thrown out of her matrimonial home, dropped at her parents' home and never taken back. **Order:** Respondents were prohibited from restraining the APs continued access to her personal effects. The husband was directed to provide alternate accommodation and restrained from renouncing rights in the shared household; monetary relief of Rs. 2,89,800 and maintenance of Rs. 6,000 per month and compensation of Rs. 50,000 and Rs. 10,000 to be paid by each respondent.

⁹³ Section 3 (iv) PWDVA.

⁹⁴ Section 19(a) empowers the magistrate to pass a residence order: restraining the respondent from dispossessing or in any other manner disturbing the possession of the AP from the "shared household" whether or not the respondent has a legal or equitable interest in the "shared household".

Nature of Reliefs Granted By the Court

This section presents an analysis of the nature of reliefs granted by the courts under the PWDVA; highlights differences and examines the patterns in the reasoning provided by the court while granting or denying relief.

The first part analyses the pattern of reliefs granted by the courts to married women, married but living separately, divorced, widows, “relationships in the nature of marriage” and unmarried women complaining against their natal family members. **The second part** looks at different kinds of reliefs namely, protection orders, monetary relief, residence orders, compensation order, temporary custody orders and the nature of relief women get under these orders.

The analysis of orders indicates that the kind of reliefs claimed by the women do not differ much; if it is claimed by a married woman or women in all other relationships - divorced, widow, unmarried or in a “relationship in the nature of marriage”. **This affirms that the experience of DV of all women in shared households is similar, irrespective of the relationship they share with the respondent.**

All courts grant women similar reliefs. In some cases, courts have assigned reasons for grant or denial that are specific to the nature of the relationship shared by the women and the respondent. It is worth examining the reasoning of the

court where relief is denied to women in claiming reliefs and avoid frivolous litigations, such as bringing claims for property under the PWDVA.⁹⁵

1. Married women

Married women are the largest users of the law. The reliefs prayed for and granted by courts to married women are therefore, fairly representative of the entire spectrum of reliefs under the PWDVA. Orders passed by courts do not in any way specifically point to a special status granted to married women as such, under the Act.

2. Married - living separately

The order analysis reflects that married women, residing in shared households or residing separately, are being granted similar reliefs by the court. However, lack of evidence and individual facts have a bearing on reliefs granted to women residing separately.

In some cases where the woman has left her shared household on her own volition and no specific allegation of being thrown out has been made, courts are disinclined to grant residence orders. This is unfortunate since the court is not taking into consideration the fact that women leave home to escape the violence. In most cases, however, courts have decreed that the woman be provided with an alternate accommodation or rent for alternate accommodation in cases where the woman does not want to reside in the shared household.

⁹⁵ PWDVA confines itself to claims of right to residence only; this right is available irrespective of title. The Act cannot be used to resolve disputes related to title.

A strong trend is that the in-laws are as much party to woman's dispossession from the shared household. This is evident from the fact that women have complained against the in-laws.

In **Maharashtra**, an AP is living in her parent's house and no arrangement has been made for her residential accommodation. Hence, she is entitled to the residence order and Rs. 3,000 as compensation for DV. The applicant has also claimed a protection order against all non-applicants. Since it is the admitted position that the applicant is residing at her parents' house and the probability of non-applicants visiting her place of residence is not justifiable. Therefore, the protection order cannot be slapped against non-applicants.

In another case, where the woman was not residing in the shared household, she was abused verbally and aspersions were cast on her character. **Order:** respondents are directed not to enter or visit the parental house of the applicant and the place of employment of applicant's father. They are further restrained from causing any DV to the applicant and her relatives. Respondents are directed to pay a monthly interim maintenance amount of Rs. 1,000 to the applicant.

In another case, the applicant is suffering from diabetes and only because of this reason, the respondents have deserted her. After examining all the facts and the conduct of the respondents, the court concluded: "In deserting the applicant they all

are causing her mental and physical harassment. Hence the applicant is subjected to DV. The acts of the respondents are illegal acts and they have no right at all to assault the applicant. The applicant is entitled to the relief of protection order restraining the respondents from causing hurt to the applicant or her relatives. Applicant has every right to reside in the said house and is entitled to the relief of residence order."

A monthly maintenance allowance of Rs. 5,000 per month was granted. While declining interim maintenance order, it was said that she had maintained herself since December 2008, when she was driven out of the house. At that time, she was taking her education and for these years she has not approached the court by filing any kind of application. This shows that she is not in need of any kind of urgent monetary help. Hence, the applicant has not made out any prima facie case to seek maintenance.⁹⁶

3. Divorced women

Under the PWDVA, divorced women are covered as DV often continues till the divorce becomes final. In most cases, the custody of children may be shared and in almost all cases where custody is with one parent, visitation rights accrue with the other parent.

In purely legal terms, while divorce ends the marriage, in practical terms an association between the parties continues. Therefore, it is imperative

⁹⁶ M.A.No.2678/2010 JMFC, Court No.1, Pune.

that protection against DV is provided and the woman is given a chance to claim relief where no such claim was settled at the time of divorce. The PWDVA allows such claims under the definition of domestic relationship which includes cases where parties “live” or “have lived” together in the shared household.⁹⁷

DV is a continuing offence and not confined to a single incident or violation. The continuing nature of violence is relevant specifically for divorced women.

Andhra Pradesh has 13 cases of divorced women and six of these were compromised. For example, in two cases:

Case 1

The AP complained of physical violence. She had been thrown out of the house, harassed for dowry and deprived of food. She prayed for protection orders restraining the respondent from visiting the AP and causing DV, and entering the children’s school. Also a direction to execute a bond with surety for prevention of commission of DV, a lump sum maintenance of Rs25 lakhs for herself and the children, money for the daughter’s marriage, return of dowry articles and compensation of Rs. 7.5 lakhs. Order: Rs. 3,000 per month as rent, Rs. 3,500 for each child and Rs. 2 lakhs to the AP for mental agony suffered. The protection order was denied on grounds that they were divorced.

Case 2

The ex-husband and his second wife were named as respondents. The AP has prayed for residence order, restraining the respondent from disturbing her possessions in the house. No details were provided about whether this was her shared household or an independent residence. She also claimed maintenance of Rs. 10,000 per month and Rs. 2 lakhs as compensation for medical expenses. Order: Respondent to pay Rs. 1,000 per month and restraining the respondent from disturbing the residential possession of the petitioner. Lack of evidence cited as a reason for denial of other reliefs; medical expenses denied because she was divorced from the respondent. No details as to settlement at the time of divorce.

In Delhi, protection orders are generally denied as the courts note that no incidents of DV have occurred after the divorce. Similarly, compensation

orders have been denied on the grounds that in these cases no specific injury has been attributed. Residence orders have not generally been claimed while

⁹⁷ Section 2(f), PWDVA, 2005.

maintenance was claimed in all cases and was granted in all. In two cases in Delhi, the courts have relied on the *Shabana Bano vs. Imran Khan* case and held that a divorced Muslim wife is entitled to claim maintenance from her husband until she re-marries. In both cases, monthly maintenance was granted.

In Maharashtra, a case where a plea was made by respondents that personal law applies and that the contract of marriage ends with divorce, was dismissed by the Court. Maintenance was granted in this case and the order mentions that husband is liable to maintain the wife even after divorce.

In Maharashtra, a divorced Muslim woman filed for maintenance and recovery of *streedhan* given at the time of the wedding, against her husband and in laws. She was granted maintenance of Rs. 2,000, an amount lower than asked for. The amount claimed as recovery of Rs. 31,000, given at the time of wedding was denied; the court noted that no proof, documentary or otherwise, was produced in court. There is a mention of Section 498-A pending and also Sections 323, 324, 506 IPC pending in this case.

Again, in **Maharashtra**, where the respondent has obtained a decree of dissolution of marriage, the wife filed an application along with her major son and minor daughter, seeking monetary relief and compensation order. Only interim monetary relief was granted.⁹⁸ A maintenance order was awarded to the

minor daughter only. The court held that since all relationship had ended with the wife, her claim had to be rejected along with her son's since he was not a minor.

4. Judicial sensitivity: divorce by pronouncing *talaq* in public

In Nasik, **Maharashtra**,⁹⁹ the court noted that by pronouncing *talaq* in public the respondent has clearly shown his intention and unwillingness to reside with the AP. It further noted that to provide the applicant with maintenance is the legal, social and moral duty of the respondent, which he cannot deny. For the sake of argument, even if the court was to assume that his family members are also dependent on him, even then he cannot look away from his duty towards the AP. In most cases in Maharashtra, maintenance was granted.

In Rajasthan, three cases were filed by divorced women. In two cases, the AP was beaten for dowry and then thrown out of home. In all cases, maintenance was prayed for and in most cases compensation was asked for. In 33 percent cases protection order was asked for. In 67 percent cases, maintenance was granted. In 33 percent of the cases compensation was refused as the court felt it cannot be decided at this stage. In 33 percent cases, a protection order was refused as the parties were divorced and residing separately by relying on *Hemlata vs. Jitendra*¹⁰⁰ which states that parties living separately cannot claim relief under PWDVA.

⁹⁸ MA No. 94/2009, JMFC, Maharashtra.

⁹⁹ M. C.C no. 86/2010, Nasik.

¹⁰⁰ 2009 (1) CRL Raj 291

In Tamil Nadu, in four cases divorced women filed applications under the Act, mostly against the husband and the in-laws.

In one case, the respondent husband had filed an application for setting aside the interim *ex-parte* order for maintenance on the ground that both parties have obtained divorce in Singapore.¹⁰¹ This argument was rejected on the ground that both parties have to be heard and it is only an interim arrangement.

The application under the Act was rejected on the ground that the “effect of the divorce decree results in just basic needs of shelter, food, medical aid and the petitioner is already receiving maintenance from the respondent every month”.¹⁰²

In **Bihar**, in 2003, parties had arrived at a mutual compromise and the divorce settled all the disputes - by way of a one-time lump sum amount paid to the AP. She claimed maintenance for herself and the children and the matter is pending for evidence of parties. However, on the ground of maintainability, the court noted that in a petition under PWDVA, if the parties at any point of time lived in a domestic relationship, the petition is maintainable and relief will be granted, subject to leading the evidence to prove the source of income and details of requirements for maintenance.

In **Manipur**, an appeal was filed by the respondent, challenging the

maintainability of CrI.M.C. No. 04/10. The appellate court allowed the appeal and CrI.M.C. No. 04 of 2010 was dismissed, as not maintainable under the PWDVA, 2005. The appellate court held that whatever allegations made after 28.04.07 contained in the complaint of the AP cannot be treated as DV committed by the respondent in the context of objects and reasons stated. To protect women against violence of any kind - especially that occurring within the family - is also one of the objectives for the passage of the PWDVA. Normally, 'family' includes parents, spouse, brothers, sisters, sons or daughters, etc. In this case, from the moment of passing of divorce decree dated 28.04.07 by the Ld. Family Court, Manipur in between the AP and the respondent, the status and character of the AP has been altered and changed and hence excluded within the meaning of 'family'.

5. Widows

The third largest users of the PWDVA are widows, claiming reliefs from their parents-in-law or their sons under the Act. The number of widows using the law has steadily increased over the years. In 2011, some 210 cases have been reported from the 16 states that were analysed. Widows have filed under the Act for relief mostly against their parents-in-law, brother-in-law, sister-in-law, in addition to relief claimed against their son/s and daughters-in-law.

In most cases, dispossession from the shared household has been

¹⁰¹ C.M.P. No. 668/2010 in M.C. No 7/2010.

¹⁰² MC No 12/2010.

alleged along with complaint of economic abuse in other forms, such as not being maintained by the respondents and not being provided with basic necessities.

In all cases where the application has been filed against the son, protection order, residence order and order for maintenance have been commonly claimed. Applications against relatives of the husband make similar claims with respect to the nature of violence and reliefs claimed. Across all states the courts have been granting reliefs to widows. In cases where the application has been filed against the son, the courts are more inclined to grant reliefs and the magistrates have held - without any ambiguity - that the son is bound to maintain his mother, and more so, if after the death of her husband, she has no source of income of her own.

A Residence order is also granted by the courts directing the respondent to either remove himself from the shared household or to refrain from dispossessing the AP from the shared household in any manner. Some examples:

Maharashtra: In an application against her sons and daughters-in-law, a widow alleged that the respondents continued in their demand to transfer the flat in their name or to sell it. The respondents broke open the lock behind her back and dispossessed her from the shared household. She prayed that the respondents be restrained by an order of injunction from disturbing, prohibiting and/or restricting the applicant from entering the premises, and further restrain them from dispossessing or throwing her

out of the flat and from alienating or disposing off the shared household. She also prayed for monthly maintenance of Rs. 3,500 for her daily necessities.

Order: The respondents were restrained from committing DV and causing obstruction to the applicant while residing in the shared household. Order restrained them from dispossessing the applicant from the flat. Each respondent was directed to pay Rs. 2000 per month to the applicant for food, clothes, medicines and other basic necessities of the applicant from the day of application.

Observation: The applicant being an old aged lady and suffering from old age infirmities was not willing to sell or transfer the flat. The applicant had no source of income for her livelihood and it appears that for her maintenance she has chosen to let the flat on rent. But, the respondents raised an objection and insisted that the applicant either sell the flat or hand it over to them. Since the applicant has no source of income, she refused. So, the respondents tried to dispossess her and tried to take forcible possession.

A large number of cases are filed against the in-laws claiming maintenance and residence orders. In a positive trend that has been noticed this year, courts have directed the in-laws, mostly the father-in-law and brother-in-law, to maintain the AP.

Maharashtra: An application was filed by a widow, against her father-in-law and brother-in-law. The respondents had claimed that the property is a self-acquired property. The court held that "It is to be noted that the respondents

have mentioned in their reply that the agricultural field has been purchased by respondent no.1 in the name of his sons and it is a self-acquired property. They have also not disputed that the tractor is in their possession. These facts show that the respondents have a sufficient source of income from the agricultural field and tractor. Hence, it may be inferred that they have the ability to pay interim maintenance amount to the applicant and her minor daughter.”

The court directed the respondents to pay Rs. 1,500 per month to the applicant and her children and also provide a room in the shared household to the applicant and her minor daughter.¹⁰³

6. Personal laws and maintenance

Referring to the provisions of the Hindu Adoptions and Maintenance Act, 1956,¹⁰⁴ which provides that a Hindu widow is entitled to be maintained by her father-in-law, the court stated that it is the duty of the father-in-law to provide her with food, shelter and clothes. The applicant has no other residential house except the flat in which she is residing. So, she is eligible for interim maintenance.¹⁰⁵

In the majority of cases, courts are granting protection orders to widows. The court, while granting protection

order in a case, held that a protection order was granted to the widow even though she was residing at her parental home. The court held that “though it is contended by the respondent that presently the applicant is residing with her parental family members and she is well protected, but in order to prove the same, no concrete evidence has been brought on record. Considering the relation between the applicant and the respondents, it appears that presently the applicant is in immediate need of a protection order from this court.”

6.1 Impact of *Batra vs. Batra*

While hearing applications filed by widows against their in-laws, the judges have gone beyond the *Batra vs. Batra* Judgment, passed pro-active orders and secured the right of widows to reside in the shared household, irrespective of the fact that the house belonged to the in-laws.

In a case, distinguishing the facts from *Batra vs. Batra*, the court stated that the circumstances are different in this case and held, “Tax receipts which are placed on record reveals the name of the husband and therefore, if at all, the husband of the applicant was a member of the shared household”, and granted residence order to the widow.

¹⁰³ MCA No.22/2010, Maharashtra.

¹⁰⁴ Section 19 HAMA:

- (1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance-
 - (a) from the estate of her husband or her father or mother.
 - (b) from her son or daughter, if any, or his or her estate.
- (2) Any obligation under sub-section (1) shall not be enforceable if the father in law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the re-marriage of the daughter-in-law.

¹⁰⁵ M.A. No 13/09, Maharashtra

In another case where the respondent had relied on the *Batra vs. Batra* judgement, the judge considering the definition of domestic relationship, said that it is clear that the family members who were residing as a joint family can be said to be in a domestic relationship. As such the house of the respondent appears to be a “shared household” as defined under the Act and granted residence order to the widow.

In Delhi, the Court once again distinguished the facts of the case from those of the *Batra* judgment, in an appeal filed by a widow, against the impugned

order of Trial Court dismissing the application for residence. Allowing the appeal, which had been opposed placing reliance on the *Batra* judgement, the appellate Court, held that the AP shall be provided a right to residence in a room in the house where she was residing.

In Delhi, a widow had filed a case against her daughter-in-law: The case was dismissed. Held: *“By no stretch of imagination can a daughter-in-law be said to be a relative of the husband of her own mother-in-law. Thus, she cannot be permitted to be a respondent in terms of section 2(q) of PWDVA read with its proviso.”*¹⁰⁶

Delhi: Applications by widows

Across the 15 states that were analysed, the courts are recognising the right of the widow to be maintained by her in-laws and her right to reside in the shared household. However, this is being denied in Delhi on various grounds. Of the 27 cases analysed, relief has been granted in favour of the widow in only six cases.

In Delhi, protection orders are being denied to a widow, in cases where she is staying separately and hence does not need a protection order or that there have been no incidences of DV after separate residence was established. The general trend observed indicates that monetary relief claimed from the in-laws is also often denied to widows on the ground that the women can claim maintenance only from their husband. Courts are, however, granting monetary relief in all cases, to widowed mothers claiming against their sons.

When the property in question belongs to the late husband of the woman, the courts have granted residence order, otherwise, placing reliance on the *Batra vs. Batra* Judgement, relief is denied if the house is owned by the parent-in-law, or if the AP is not able to prove that the property is a joint family property.

¹⁰⁶ C.C.No.259/1

Daughter vs. Father

The father was living with his second wife and children, while the applicant and her mother were residing in government quarters allotted to the respondent. Order: Since the last seventeen years the respondent has not taken any care of her own daughter i.e., the applicant. He has not given any satisfactory reason as to why he is residing separate from the applicant since her childhood. No father would neglect or refuse to maintain his daughter and would not reside separately for a long period of 17 years. While granting maintenance of Rs. 3,000, the Court said that while fixing the maintenance amount not only the income of the respondent is to be seen, but also at the same time, the increasing prices of essential commodities are to be taken into consideration so that the applicant may fulfil her basic need and live with dignity. However, residence order was denied stating that the applicant has been residing with her maternal uncle for the past three years.¹⁰⁷

7. Unmarried woman

Single or unmarried women are also entitled to legal protection under the Act against the members of their natal family. The trend of single woman filing cases against their fathers, brothers, sisters and mothers seems to be on the rise. A total of 22 such cases have been filed in 2011 in Delhi, Himachal Pradesh, Maharashtra, Orissa, Tamil Nadu, Andhra Pradesh, Kerala and Karnataka.

The courts seem to have a sympathetic attitude, as they have passed orders in favour of the AP in a majority of cases. In cases where the father has been named respondent, courts are granting orders with the view that it is the duty of the father to maintain his unmarried daughter.

Maharashtra: The applicant is a 61 year old woman, who has stated in

her affidavit that her brother, his wife and children consistently troubled her, subjecting her to verbal and emotional violence. They used vulgar language and obscene gestures. She was told that she should be in an asylum. Interim relief was granted by the court directing the respondents to refrain from abusing and disturbing the peaceful life of the applicant till the final disposal of this complaint.

Tamil Nadu: An application was filed by the AP against her elder brother stating that she was beaten by him, scolded in abusive language, and the respondent undressed in front of the AP. She lost her income from her tailoring work due to the respondent. She prayed for protection and residence orders. The court held that since the elder brother is the respondent and constant perpetrator of DV final orders were passed in favour of the AP.¹⁰⁸

¹⁰⁷ MCA No.1208/2007, Maharashtra.

¹⁰⁸ CrI.M.P3936/09.

Interestingly, the courts are granting relief to the AP even in cases where the respondent is the mother of the AP, and no other male member has been made a party to the suit. In these cases, the courts have not discussed the question of women being made the main respondent in the suit. For example:

Tamil Nadu: The applicant was a minor girl who had filed the case against her mother, alleging that her mother was forcing her to marry against her will and was threatening to kill her - by pouring kerosene over her - if she did not agree to her mother's wishes. The petitioner had prayed to stay at a government home for unprotected women or in a private women's hostel till the disposal of the case. **Order:** The court held that the petitioner should be under the care and custody of Sagodhari Illam, Reddiarpalayam, Puducherry until further orders. It held that the mother of the minor girl cannot compel her to marry against her will and that too

when she is a minor, which is against the law of marriage. It is the duty of the court to protect her from forceful marriage and from life threat.¹⁰⁹

Andhra Pradesh: An AP filed an application against her mother and sister, alleging that her mother beat her and blamed her for having an illegitimate relationship with her father. She further alleged that the respondent did not let her and her father enjoy the residence. She forced them to live in the penthouse and in their absence got the stairs connecting to the penthouse broken. Also, she disconnected the lavatory from the house. The AP has claimed protection and residence orders. **Order:** The court directed the respondent to not disturb the possessions of the petitioners from the pent house or any other portion of the house they intend to reside in. The court held that the evidence proved that the mother did get the stairs broken down and did not get them reconstructed despite continued request.¹¹⁰

Extension of protection order to the relatives of the applicants

A case was filed by the AP against her maternal uncle, aunt and their son. The AP had alleged the respondents were forcing her to marry the son and threatening to kill her and her mother if she failed to come and reside and cohabit with the son and his family. **Order:** The court passed a protection order restraining the respondents from committing any acts of violence, or from entering the place of employment of the AP or from visiting any place where the applicant and her mother frequently visit, including any public place or communicating with them in any form. The court further held that though the present application had been filed only by the applicant but as the applicant is interested in and is residing with her mother the protection order granted to the applicant under section 18 shall also extend to her mother.¹¹¹

¹⁰⁹ Cr. M.P. No. 2203/2010 in MC No. 4/2010.

¹¹⁰ D.V.C. No. 8 of 2009

¹¹¹ M.C.A no 284/2010, Maharashtra.

8. Relationship in the nature of marriage

The PWDVA affords protection to unmarried woman who are in a “relationship akin to marriage”.¹¹²

This is a unique aspect of the law as it extends its scope beyond providing reliefs to married women.

In 2011, 17 cases of women in relationships “in the nature of marriage” have become public in the states of Delhi, Himachal Pradesh, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Andhra Pradesh and Kerala. The highest number of cases has been noted in **Delhi**, where women have filed applications against their male partners claiming relief in five cases.

It is heartening that in a majority of cases the courts have granted reliefs to women, a trend indicating acceptance that women in such relationships need protection from violence. In most cases, the courts are granting interim maintenance to women stating that the respondent has sufficient means to pay the same.

In a case in **Delhi**, the appellate court dismissed the appeal of the respondent stating that a “live in Relationship” is a

proper ground to claim maintenance. In a case in **Andhra Pradesh**, an interim protection order was granted to the AP to save her from further DV and to protect her peaceful life and liberty.¹¹³

In two cases in **Delhi**, the appeal of the respondent was allowed and the appellate court, in two separate orders, reduced the quantum of maintenance granted to the AP by the trial court and set aside the order of the trial court on the grounds that the AP had failed to establish that she was an AP as per the definition of the term under Section 2(a) of the Act. In another instance the case was dismissed on the ground that “*the AP being a lawyer herself has filed the petition only for the purpose of harassing the respondent.*”¹¹⁴

Since the orders are brief, no information is available as to whether the courts are looking into the duration of the relationship while granting orders.

Type of Orders

1. Protection order

This is the most vital order provided for under the Act, as it empowers the woman and provides her with immediate relief from violence.

Maharashtra: A court, while granting relief to the AP stated “due to this court case and cheating by respondent, as well as, defamation of her parents, the AP has been thrown out by her parents. She requires shelter for herself and her children. It would be just to make separate arrangements for her residence as the relationship between the family members of the respondent and the applicant is not good.

¹¹² Section 2(f) of PWDVA, 2005.

¹¹³ CrI. M.P. No. 147/2010 in DVC No. 44/2010.

¹¹⁴ CC No 38/1/08.

Protection orders are given liberally by the courts in cases where *prima facie* evidence of DV has been provided. Courts have deduced the existence of DV from bare facts and taken the woman's word since all that the order does is to restrain the respondent from committing specific acts of violence against the applicant. A threat to the life of the AP is considered by the courts while granting a protection order.

In cases where a protection order has been denied to the AP, courts have held that since the AP is not residing with the respondent, imminent threat of DV is not present, or that the AP has mentioned no incidents of DV after separation. In a particular case **in Rajasthan**, a Protection Order was denied, as the parties were divorced and residing separately. The court relied on the Hemlata vs. Jitendra case, wherein it is stated that parties living separately cannot claim relief under PWDVA.¹¹⁵

An analysis of the orders passed indicates that the courts are most commonly passing protection orders, restraining the respondent from committing any further acts of DV on the AP, or from creating any disturbance in her day-to-day life.

In other cases, the respondent is restrained from communicating with the AP in any form or manner and/or threatening the AP, or from using bad language against her. In certain cases the court has restrained the respondent from entering the workplace of the

AP or her daughter/son and further the respondent or his relatives are restrained from going into the portion of the shared household where the AP is residing.

The protection order should encompass detailed restraints on the respondent in light of the facts and circumstances of each case. It has been seen that when Protection Orders are detailed, the implementation of the order becomes easier, since it is simpler to show a breach.

1.1 Model protection order

The following *ex parte* protection order passed by a court in **Manipur** can be presented as a model protection order as it incorporates all the elements required to provide the AP with adequate protection. "The Respondent is prohibited from committing, aiding or abetting in the commission of acts of domestic violence; entering the place of employment of AP; attempting to communicate with the AP in any form; alienating any assets used/held/enjoyed by both parties, jointly by the AP and respondent or singly by respondent including her *Streedhan*; causing violence to the dependents/relatives of the AP."

2. Residence order

While granting residence orders the courts have held that the AP, being the wife of the respondent, is entitled to stay in the matrimonial home or being provided with the rent for her accommodation.

¹¹⁵ 2009 (1) CRL Raj 291

In **Assam, Manipur and Sikkim**, a large number of women are claiming the return of their *streedhan*. The courts - stating that the AP will need her *streedhan* for her day-to-day life - are granting the same. However, in cases where the AP has failed to provide any details of her *streedhan*, the courts deny the relief.

The most common reason stated by courts for denying residence order is that the AP is staying at her parental home and hence is not in the immediate need of such a relief.

In **Delhi**, the courts are relying on the *Batra vs. Batra* Judgment to deny residence order to the AP. Relief is denied, as the property is owned by the father-in-law, mother-in-law, brother-in-law, etc., or if the AP is not able to prove that the property is a joint family property. Another common reason for denial is that the application is for enforcement of property rights, for which she should use the remedies available under other laws. The court dismisses the petition citing that it does not have jurisdiction over Title disputes.

Typically, a residence order passed by the court is in the form of restraining the respondent from dispossessing the AP from the shared household and alienating or disposing off any of his immovable properties, without the permission of the court.

In some cases, where the application has been filed against the son, the respondents are directed to vacate the

premises where the AP is residing. There has been a slight increase in the number of cases where the court has directed the respondent to provide the AP with a separate accommodation or pay the rent for her accommodation.

In **Assam**, the courts have been granting residence order u/s 19(6) of PWDVA, imposing obligations on the respondent relating to discharge of rent and other payments and u/s 19(3), the courts are directing the respondent to execute a bond for preventing the commission of DV. In a particular case in **Manipur**, the court granted the following residence order: The respondent shall extend a room from his house to be constructed inside his premises, where the AP shall reside.

3. Monetary relief

Monetary relief, in the form of interim maintenance, is the most commonly claimed relief by women and is being easily granted by the courts in all the states analysed.

The courts, in unequivocal terms, have stated that it is the moral duty of the husband to maintain his wife and children and provide for their basic needs. If the AP has no source of income to maintain herself and her minor child, refusal on the part of the husband to do so - in spite of having sufficient income - has been held to be an economic abuse and thus a form of DV perpetrated on the AP.

In two cases in **Delhi**, the courts have relied on *Shabana Bano vs. Imran Khan*¹¹⁶ case and held that a divorced Muslim wife is entitled to claim maintenance from her husband till she remarries. In both the cases monthly maintenance has been granted to the wife.

Medical expenses are being granted by the courts, when the AP can show proof of injury.

In a few cases relating to widows, the courts have granted maintenance order against the father-in-law. The court has opined that the widowed daughter-in-law has the moral right to be maintained by her father-in-law and thus moral obligation is transformed to legal obligation. In a particular case in **Tamil Nadu**, the father-in-law of the respondent was told to pay maintenance, as the husband was an alcoholic with no permanent source of income.¹¹⁷

In **Delhi**, the courts are looking at the employers certificate, the salary slip of the respondent and the Income Tax returns filed by the respondent in order to estimate his salary. Whenever there is a dispute in the income of the respondent, the courts use the Minimum Wages Act to fix the respondent's salary. In a particular case the court stated that as the respondent has neither filed any reply nor appeared to contest the case, he is deemed to have admitted

the allegations as regards the source of income. An adverse inference may be drawn against him that he is trying to conceal his sources of income.

In another case, where the AP has not submitted any documents in support of her averments that the respondent is earning Rs. 50,000 per month, the court held that as per the *Meharnama*, the *mehar* fixed at the time of the *nikah* was approximately Rs. 16,500. Therefore, the status of the parties can be discerned and the income of the respondent should be between Rs. 8,000 to 10,000 per month.

Sikkim: A positive trend from this state is worth special mention where in a majority of cases, the court has directed that a copy of the order should be forwarded to the Drawings and Disbursing Officer of the respondent, so that the amount of maintenance can be deducted from his salary. This practice will reduce the chances of the respondent in faulting with the payment of the maintenance amount. In certain cases, the courts have held that on instances of failure of the respondent to pay the monthly maintenance, he will be liable to pay the amount with a simple interest of nine percent.

Litigation expenses: Courts are also granting litigation expenses to the AP. This is a departure from the usual practice where earlier the petitioner was left to bear her own costs.

¹¹⁶ 2010 (1) JCC 146

¹¹⁷ MP No. 4/2010 in CMP No. 49/2010

Karnataka: In a noteworthy order, the appellate court ordered an increase in maintenance of five percent per annum. The court held that awarding Rs. 1,000 as maintenance to a child does not appear to be a sufficient amount for consolidated maintenance because as the child grows older, their requirements also increase. The requirement under Section 125 CrPc is entirely different from the requirement under Section 20 of PWDVA, which has got wider scope to consider all such necessities and requirements of the spouse and the minor child.¹¹⁸

Denial of monetary relief has been noted in a relatively small number of cases. The reasons for denial include no proof of earning of the husband submitted in the court by the AP, sufficient income being earned by the AP herself or in cases where the AP is getting maintenance under Section 125 of CrPc. In a few cases examined, maintenance was refused on the ground that the no-maintenance can be claimed from the in-laws. In a particular case in **Rajasthan**, maintenance was denied to the AP as she was staying away from the matrimonial house on her own volition.

4. Temporary custody

In the majority of cases analysed, the temporary custody of the minor child is granted to the AP, till the competent court decides on the issue of the custody.

The courts, across states, have held that the mother is the natural guardian of the child. In a particular case in **Sikkim**, the court granted the following interim order: The temporary custody of the child to be with the AP; the fees for the education of the children to be paid by the respondent; no benefits attached to the children shall be withdrawn by the respondent and expenses concerning the children shall be exclusive of the maintenance amount to be paid to the AP.

Under Section 21, the Magistrate is empowered to specify, if necessary, the arrangements for visiting the child by the respondent. Visitation rights are granted to the respondent in most cases, keeping in mind the best interest of the child. However, in a particular case the court declined visitation rights to a mother. It held that *“Section 21 of the Act provides for temporary custody of the children to the applicant and for visits of opponent, in the case in hand, applicant has come up with an application whereby she is asking for permission to visit to her children. The Act nowhere provides for the same, therefore considering children themselves are refusing to meet the applicant, the application is rejected.”*¹¹⁹

In a case in **Tamil Nadu**, the court refused to grant temporary custody order and directed the AP to file a petition under the Guardian and Wards Act.¹²⁰

¹¹⁸ Criminal Appeal No. 21/2010

¹¹⁹ M.A.No.3089/2008, Maharashtra.

¹²⁰ MC 7/2010, Tamil Nadu.

5. Compensation order

There is a clear distinction between the monetary relief granted under Section 20 and Compensation Order under Section 22. While monetary relief is granted for the actual expenses incurred by the AP, e.g., medical expenses, as a result of the DV committed by the respondent; compensation is granted to compensate for the injuries caused to the victim of DV above and beyond the actual monetary loss or expenditure.

In **Manipur**, the court granted Rs. 3 lakhs as compensation by way of an *Ex parte* order. The court stated that the respondent has caused the AP mental shock, emotional and economic abuse and deprivation of her access to the respondents shared household - which amounts to DV within the meaning of Section 3 of PWDVA.

The highest amounts of compensation awarded in 2011 have been noted in cases from **Tamil Nadu and Karnataka**. While in a case in Tamil Nadu, the matter was compromised between the parties on payment of Rs. 7,75,000 as compensation; in Karnataka, the matter was compromised by paying a compensation amount of Rs. 20,00,000 to the AP.¹²¹

In a case in **Sikkim**, interim compensation was granted to the AP against her step mother. The details of the order are as follows: The AP filed a case against her 5 step mother, who is respondent No. 2.

The details of respondent No. 1 were not available in the order. The court passed the following *ex parte* order: 1. Respondents are restrained from committing any act of DV against the AP. 2. Respondents are restrained from alienating any immovable properties without leave of this court. 3. Respondent No. 2 is directed to pay a sum of Rs. 5,000 to the AP as interim compensation.

The court held that as seen from the petition and the materials on record, it is clear that the AP was subjected to DV by the respondents and also that the AP was deprived of the share and maintenance from the property of her father.

5.1 Highest amount of compensation and maintenance granted by the court

In a case from **Tamil Nadu**, the following order was passed: The respondent is directed to pay **Rs. 2 crores as maintenance** to the AP for her future. Even though the AP is a journalist and is earning a reasonable amount, however she is 64 years old and her employment might terminate at any time and she does not have any pension to support her in the future. The respondent is also directed to pay **Rs. 3 crores as compensation** to the AP for the mental agony caused to her due to the activities of the respondent like deserting the AP for 12 years, living in an extra marital relationship with another woman and leaving the petitioner to face court cases under Section 138 of N.I. Act, and also under Debt Recovery Tribunal.

¹²¹ DVP 01/2007, Karnataka.

Enforcement and Procedures of the Orders

Courts follow procedures while dealing with cases under PWDVA and use implementing agencies such as POs, SPs and the police. (See Annexures, Table 2 showing procedure followed by courts).

1. Use of multi-agency system by the courts: role of implementing agencies

1.1. Role of the PO

The PWDVA incorporates a multiple agency mechanism to oversee a coordinated response to help victims of DV. The role of the PO is primary to the mechanism under the Act. It is hoped that the Office of the PO is being utilised by the court and by the applicant as envisaged by the Act.

All states, except **Manipur**, mention the presence of the PO. However, in just 6.3 percent of the orders analysed, the specific role of the PO, with respect to the case, has been discussed. In 216 cases the DIR or report by the PO has been brought on record; in 39 cases notices were issued through the PO; and in two cases, where the *tehsildar* has been appointed as the PO, it was stated that notices be served through their subordinates. The PO was directed to submit a report on the assets and liabilities of the respondents in four cases, while in 25 cases in which an order of maintenance was granted, the court has ordered that bank account details of the applicant be given to the respondent through the

PO. Three orders analysed from Tamil Nadu show that the PO has deposed as a witness in these cases.

1.2 Role of the PO and the DIR

The PWDVA mandates that the PO is obliged to record a DIR upon receiving a complaint of DV.¹²²

No clear distinction between the DIR and HVR could be discerned from the orders. In a case in **Maharashtra**, the PO had visited the house of the applicant and filed the report. Whether the report was a HVR or a DIR could not be determined from the order.

In another case, the site visit report and site plan submitted by the court was taken into account while passing the Order.¹²³ However, the courts are passing orders based on the DIR filed by the PO.

In Maharashtra, the court directed the respondent to repair the AP's house and reinstate her, along with her child, in the house with all the necessary household items and further all *streedhan* articles to be returned to the AP, in the presence of the PO. The order passed was based on the report of the PO.

Commenting on the need for a DIR while passing interim orders, the court held that, "While passing an order u/s 23, the magistrate has to consider the urgency of the matter and pass any order as it deems just and proper. If a magistrate has to wait for a DIR to pass an interim order then it would be

¹²² PWDVA 2005, Rule 5(1)

¹²³ Case No. 41, South West district, Delhi

difficult to meet the urgency in the case and thus the object of Section 23 would be defeated".¹²⁴

A DIR is meant to be a faithful record of the complaint presented and is not a report of investigation. The PO need not conduct any enquiries at the time of recording the DIR.¹²⁵ In two cases, the DIR was filed by the PO after conducting enquiries.

1.3 Role of PO in enforcement

To ensure effective implementation of an order passed by the courts under PWDVA, the PO has been entrusted with the duty of ensuring that orders are implemented.

To that effect, the courts have directed the POs to do the following: Bring the *Streedhan* items lying in the custody of the opponent, hand it over to the applicant, supervise the return of household articles to the applicant, file a report to the court, make contacts from time to time with the complainant, intimate the concerned police station to take steps, if necessary and to have

regular vigilance - supervising that the respondent is not perpetrating any further acts of DV on the AP.

1.4 POs and counselling

A case from **Andhra Pradesh** reported that the PO had filed a counselling report.¹²⁶

In Tamil Nadu, the court directed counselling by the PO. The AP had sought an order from restraining the respondent from contracting second marriage. The court held that the interim petition is forwarded to the PO to enquire into the matter and if necessary, to give counselling with the SP to the applicant and respondent and if the PO finds that the respondent is going to have a second marriage when there is a valid marriage, to serve this notice and give a counselling to both of them.¹²⁷

1.5 Role of the SP

The role of the SP has been mentioned in only 37 cases. Their role includes filing the DIR, counselling the parties, and in a few cases sending the copy of the order to the SP.

Case Study: A promising initiative

The SHO was directed to personally visit the shared household and file a report regarding the existing factum, as to whether or not the respondent has vacated the said premises and has removed all his articles from there. The Commissioner, MCD and the Superintendent of Police were requested to oversee and ensure compliance of orders by getting the amount of Rs. 12,500 deducted from the salary of the applicant and respondent and get it deposited in the joint account. The SHO was further directed to file a compliance report.¹²⁸

¹²⁴ Cri. Appeal No. 141/09, South East, Delhi.

¹²⁵ Page 67, Ending Domestic Violence though Non-violence: A manual for PWDVA Protection officers, Lawyers Collective.

¹²⁶ DVC No. 23/2009 II CMM, Vijaywada, Andhra Pradesh.

¹²⁷ Case No. 13236/2010 Pudukkottai, Tamil Nadu.

¹²⁸ Case No.18, Delhi.

1.6 Role of the police

In 199 cases, the role of the police was mentioned in the orders analysed from sixteen states. In 37 cases, the court directed the police to depute a lady constable on a periodical basis to ensure that no act of DV is committed on the applicant. In most other cases, the role of the police was mentioned in terms of filing of the complaints by the women in the police station.

1.7 Breach of order under section 31

In 15 cases, section 31 was applied for the breach of the orders. In a particular case where the respondent had breached the protection order on the report of the police, the bail of the respondent was cancelled and a personal bond of Rs. 5,000 was forfeited. However, the case was later compromised.¹²⁹

1.8 Delaying tactics by the respondent assailed by the court: Section 126 CrPC In Maharashtra, the use of this provision

was noted. The application seeking personal exemption as contemplated under Section 126 clause-2 of Code of Criminal Procedure was dismissed by the court. Opponent No. 1 was directed to remain present on the next date failing which, necessary orders would follow. The court held that *“It is pertinent to note that Section 126(2) CrPC lays down that all evidence in proceedings initiated under Section 125 is to be taken in presence of person against whom an order of payment of maintenance is proposed to be made. Meaning thereby personal presence of the opponent is held to be required in those cases as well. For seeking personal exemption he must come before the court and make out an exceptional case wherein his personal presence could be dispensed with. It is also evident that the present miscellaneous application is stalled for appearance of opponent no.1 for the last one and half year. The act intended to provide relief to the Applicant within 60 days of first institution. However, it appears that for one reason or*

Case Study: A promising initiative

The applicant made an application under Section 31 when the respondent failed to comply with the maintenance orders. While dealing with the application under Section 31, the court held that *“there is no reason to disbelieve the intention of the Respondent to disobey the order of court with an intention to deprive legal right of applicant guaranteed under article 14, 15 and 21 of the constitution. The Statement of the Object and Reasons clearly states that the purpose behind enactment of Act is to protect the right of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. Hence the respondent is convicted under Section 31 of PWDVA and sentenced to pay fine of Rs. 10,000 and in default to suffer simple imprisonment for one month. Out of fine amount, Rs. 8,000 be given to the applicant and remaining amount be credited to the state. Fine recovery arrest warrant to be issued against the respondent.”*¹³⁰

¹²⁹ Case No. 2 of 2011, South Sikkim

¹³⁰ Case No. 2 of 2011, South Sikkim

*another, the miscellaneous application is being protracted. Help of the procedural laws cannot be taken to create impediments in smooth functioning of proceeding.”*¹³¹

2. Procedures adopted by the court

Ex parte orders were passed on the basis of the affidavit submitted by the applicant while filing the application in the Court. In only 15 cases, there was a specific mention of summary trial being conducted by the court.

While passing the interim order, both the parties are heard and on the basis of the arguments the order is passed. However, while passing the final orders, proper trial i.e., evidence is taken on record, witnesses are examined and arguments are conducted.

2.1 Final disposal of applications

Of the total number of orders analysed this year, interim orders have been passed in 21.3 percent of cases, while *ex parte* orders are 6.1 percent. The increase in the number of interim orders being granted by the courts is encouraging, as it ensures immediate relief to the woman. Interim and *ex parte* orders also assume significance in the light of the consistent problem of delay in passing final orders by the courts.

2.2 Appeals

Approximately 13 percent of the total numbers of orders analysed in 2011

are appellate court orders that include appeals and revisions. In 68 percent of the orders examined, the appeal has been filed by the respondent. This is a continuing trend from 2010, where in all states, except for **Assam**, the appeals preferred by the respondents were higher than the appeals from the AP.¹³²

In 47.5 percent of appellate court orders examined, the appeal was preferred against the final order while 33.4 percent were appeals against the interim orders. In **Madhya Pradesh**, there is a huge difference in the number of appeals filed from interim and final orders. While appeals against interim orders have been preferred in 10 cases, 102 orders have noted appeals from final orders.

2.3 Appeals filed by the AP

It is important to identify the reasons for which the AP is filing an appeal as it indicates that women are not satisfied with the reliefs being granted to them by the courts.

One of the foremost reasons for filing an appeal seems to be against the order of the trial court dismissing the AP's claim for maintenance.

The appellate courts are deciding the appeal based on the facts and circumstances of each case and as such, a particular trend in this aspect was not discernible.

¹³¹ M.A.No.662/2009, Maharashtra.

¹³² Page 118, Staying Alive, Fourth Monitoring and Evaluation Report 2010 on the Protection of Women from Domestic Violence Act, 2005.

In a particular case from **Tamil Nadu**, the session court allowed the appeal filed by the mother/petitioner against her son from her first husband. The AP had filed for maintenance from her son. The son argues that the mother remarried after his father's death and had children from the second husband. The mother is getting benefits from the second husband's pension fund. The son contended that the mother deserted him while he was young and he grew up in a boy's home. However the son currently lives in the house that belonged to his late father, in which the mother has raised a claim.

The lower court dismissed the mother's petition for maintenance. The Appellate court, however, dismissed the lower court's order and allowed the appeal and directed the son to pay maintenance of Rs.700 a month to the mother.

In another case from **Tamil Nadu**, an appeal was filed by the wife against the order of the trial court refusing to grant maintenance from the father-in-law. The appeal was dismissed and the appellate court held that no recovery can be made from the pension of the father-in-law.¹³³

The courts still seem to have a divided opinion in cases where the AP is getting maintenance under the Hindu Marriage Act.

In a case from **Rajasthan**, the appeal of the AP was dismissed by the court on the ground that she was getting maintenance under the Hindu Marriage Act.¹³⁴ In another case in Rajasthan, the appellate court stated that even if there has been a compromise under the Hindu Marriage Act, it does not disentitle the AP from getting maintenance under PWDVA.¹³⁵

Enhancement of the maintenance is the second most important reason for an AP to prefer an appeal for the amount granted by the trial court.

Where the appeal is against an interim order of maintenance, the courts are disinclined to increase the amount on the following grounds, "*the impugned order is only interim in nature and the court is still dealing with the matter and it has to decide the real issue as to what maintenance has to be awarded in favour of the appellant herein. In the absence of any documentary proof and other material on record, the magistrate was justified in adjudging the monthly income of the respondent herein between Rs. 5000 to Rs. 7000 per month.*"

When the appeal has been filed by the AP for enhancement of the maintenance amount against the final order passed by the lower court, the appellate courts are taking into consideration the income of the respondent and the cost of living of the AP and dependents, if any, and in the majority of cases, the amount is increased.

¹³³ Crl Appeal 149/2010

¹³⁴ Crl Appeal No. 6/08, Rajasthan.

¹³⁵ Order No. 54, Jaipur District, Rajasthan.

In a particular case in **Delhi**, the appellate court increased the maintenance granted to the AP from Rs. 10,000 to Rs. 25,000. The respondent was also directed to pay the balance cost of interim maintenance, failing which, he shall be liable to pay interest @ 7.5 percent. The appellate court relied on the judgment of the Delhi High Court, *Abhishek Khanna vs. Smt. Ritika Seth*, which stated that while adjudicating claims under Section 24 of the Hindu Marriage Act, the following factors should be taken into consideration: the status of parties, their wants, independent income and property of the claimant, the number of persons the applicant has to maintain, etc.¹³⁶

Denying residence order is another reason for filing an appeal against the order of the Trial Court to the AP. In a case in **Delhi**, the Appellate Court dismissed the appeal of the AP on the ground that she already has a residence where she is staying comfortably, and hence there was no urgency which would merit the passing of an interim residence order in favour of the AP. In most other cases, the courts are allowing the appeal of the AP and the parties are referred back to the lower court to be heard on the issue of grant of residence order.

2.4 Appeals filed by the respondents

In around 68 percent of the appellate court orders examined this year, the appeal has been filed by the respondent. The high number of appeals filed by

the respondents against the interim and final orders passed by the lower courts goes to demonstrate the need to examine whether such a trend defeats the rights of the aggrieved woman.

A large number of appeals have been filed against the order of the lower court to pay interim maintenance and maintenance order. A promising practice, which deserves mention is that the courts are directing the respondents to pay the arrears of maintenance amount before entertaining the appeal. This is a continuation of the trend that was noticed last year.

In Delhi, the appellate courts are dismissing the appeal filed by the respondent relying on the judgment of *Sanjay Bhardwaj vs. State*, which states that payment of maintenance is a pre-condition for hearing the appeal.¹³⁷

In most cases, the reason given by the court for dismissing the appeal of the respondent is that the respondent being the husband of the AP is bound to maintain her and that he has sufficient income to maintain her. In cases where the appeal of the respondent has been allowed, the appellate court has reduced the amount of maintenance granted by the lower court, taking into consideration the ability of the respondent to pay and his other liabilities.

A relatively smaller number of cases have been filed by the respondents against the residence order passed by the lower court.

¹³⁶ 146 (2008) DLT 316

¹³⁷ 2010 VII AD LHI

In a case from **Delhi**, the respondents contended that the property in question is not a shared household and therefore no order under section 19 could have been passed by the lower court. The appellate court dismissing the appeal of the respondent held that *“the denial of residence itself is an act of domestic violence. Section 3 Explanation -1 (IV) (c) provides that prohibition or restriction to continued access to resources which the AP is entitled to use or enjoy by virtue of the domestic relationship including access to shared household would be considered economic abuse. The fact that the AP is staying in India without being provided with a residence by her husband cannot be denied.”*

The appellate courts have also passed orders with respect to the retrospective operation of PWDVA. Different states, however, have held contradictory views with respect to retrospectivity of the Act.

In a case in **Manipur**, while allowing the appeal filed by the respondent to set aside the impugned interim ex parte order passed by the lower court, the appellate court held that *“the alleged domestic violence appears to have been committed before the enforcement of the PWDVA, 2005 and the DIR submitted by the Service Provider has not clearly mentioned about the violence committed by the appellant after the enforcement of the said act. So the court below has committed an error while passing the order.”*

In **Tamil Nadu**, the appeal filed by respondent was dismissed by the Appellate Court and it was held that *“though the act of violence committed was prior to the Act coming into force, the Act has retrospective effect and for grant of interim maintenance there is no necessity of a report from social welfare department.”*¹³⁸

3. Compromise

The analysis of orders indicates that Section 14¹³⁹ is hardly invoked and in most cases, the parties settle the matter out of court. Furthermore, very little information about the process of counselling and settlement was available in the orders.

Cases of compromise have been recorded in all 16 states examined for the purpose of the analysis. Around 18 percent of the total number of cases analysed this year have been compromised and settled or withdrawn by the AP or not pressed by the AP. A majority of the cases have been dismissed for default, as the AP has been absent from court proceedings or not pressed by the AP. The remaining cases have been settled by the parties in an out of court settlement. (See Annexures Table 3 for cases of Compromises in states).

In 2011, Sikkim, with 66 percent has the highest percentage of cases that have been compromised, while in Manipur, a compromise was reached in 52.5 percent of the cases analysed. Kerala accounts for around 42.8 percent of cases being compromised.

¹³⁸ Crl Appeal No. 20/10, Tamil Nadu.

¹³⁹ 14. Counselling.-(1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the AP, either singly or jointly, to undergo counselling with any member of a SP who possess such qualifications and experience in counselling as may be prescribed.

1.1 Role played by counselling in settlement

The courts have used the provision of counselling under Section 14 of PWDVA sparingly. They have referred the parties for counselling in eight cases.

In **Maharashtra**, four cases were sent for counselling by directing the parties to the SP. Interestingly, in one of the cases, the court appointed an advocate as a counsellor. No other details were mentioned in the order. This is a disturbing finding, as under the PWDVA, counselling should be done by a SP possessing such qualifications.

1.2 Authority effecting the settlement – Lok Adalat & mediation

In previous years, it was noted that the courts transferred cases to the Alternative Dispute Redressal mechanisms like the *Lok Adalats* (People's Courts). In continuation of this practice in 2011, the *Lok Adalats* initiated a compromise in 32 cases in Madhya Pradesh and in eight cases in Maharashtra. A few cases were also transferred to the *Lok Adalats* in Tamil Nadu, Rajasthan, Himachal Pradesh, Karnataka and Andhra Pradesh. Since the terms of settlement have been recorded in very few orders, the details of the settlement arrived at by the *Lok Adalats* remains unclear.

In Kerala, Maharashtra and Sikkim, the courts have been referring the cases for mediation. While the courts

transferred 14 cases for mediation in Kerala, in Sikkim and Maharashtra the number of cases referred for mediation was seven and three respectively.

In a case in Maharashtra, an advocate was appointed as a mediator by the court. This is a continuing practice in Maharashtra, as in the past two years, three such cases have been reported. In Sikkim, the court is passing the final order on the terms of the settlement agreement signed by both the parties at the Mediation Centre. The orders from Sikkim mention the details of the settlement agreement.

1.3 Terms of settlement and compromises

In the majority of the cases analysed, the respondent either agrees to pay a monthly maintenance to the AP and to restrain from committing any further acts of DV against her. Otherwise, a one time lump sum amount is paid to the AP as maintenance and the AP agrees to withdraw all pending litigation against the respondent. In a case in Karnataka, a compromise was reached and the respondent agreed to pay Rs. 20 lakhs as compensation to the AP.¹⁴⁰

A common form of settlement reflected in the orders is a mutual consent divorce. In this, the respondent agrees to pay a final settlement amount as the divorce settlement and the AP agrees to not claim any alimony or future maintenance from the respondent.

¹⁴⁰ DVP 01/2007

In a case in **Karnataka**, a Muslim woman had filed an application under the Act and a compromise was reached by paying a one time alimony of Rs. 5.5 lakhs.¹⁴¹ A reconciliation of the parties is also a common form of settlement, where parties settle their dispute mutually and agree to live with each other.

1.4 Attitude of the courts on settlements and compromises

In an application filed by the AP against her husband, the court stated, *“Time is given by the court to both the parties if they want to amicably settle the dispute outside the court. The Court has observed the possibility of a settlement between the parties.”* This might refer to the possibility of the court directing the parties to settle the matter.¹⁴²

In an appeal filed by the AP, the parties reached a compromise. The court stated, *“The case is regarding matrimonial relationship where emotions, vanity & ego have a definite role in such matters. As is seen, good sense prevails b/w the parties & this court after hearing the parties do feel that it is a case which can be settled for the best interest of the parties.”* The details of the settlement arrived at were not mentioned in the order.¹⁴³

1.5 Sikkim: A best practice

In 2011, Sikkim has the highest percentage of cases that reached

a compromise or were settled. Of 44 cases analysed, 29 reached a compromise.

This constitutes a best practice in the orders passed by the courts in compromise and settlement cases, because in most cases a settlement deed has been filed and the terms of settlement have been clearly stated by the courts.

In 16 of the 29 cases analysed, a compromise has been reached between the parties, either in an out of court settlement, or on the case being transferred to the Mediation Centre, after an *ex parte*/interim/ad interim order has been passed by the courts.

Most of the time, the case is then disposed of as withdrawn, as per the terms of the settlement agreement filed by the parties. The reasons for granting the *ex parte* is when there is *prima facie* material to show that the AP suffered DV or where the AP apprehends physical threat from her husband.

This is a good practice as the courts are granting *ex parte*/interim reliefs to the women in cases of emergency, before looking into the details of the case. See Sikkim Example 1.

¹⁴¹ DVP 26/2009

¹⁴² 489C/07, Assam.

¹⁴³ CR 335/2010, Assam.

Sikkim: Example 1

An application was filed by the AP against her husband, claiming protection order, residence order, and monetary relief. An interim protection order was granted. The case was disposed of, and withdrawn as per the terms of the mediation agreement. The parties amicably settled the matter on the following terms: 1) Both parties have mutually decided to file for divorce. 2) The respondent is restrained from torturing or disturbing the AP. 3) The AP will reside where she is residing now, but she cannot sell the land. 4) The respondent will transfer the land where the AP is residing in the name of his son when he attains majority. 5) The respondent to pay a sum of Rs. 1,50,000 to the AP for her eye treatment. 6) The AP agrees that if she remarries she will hand over the land to the respondent subject to the provision of clause (4). 7) Custody of the children to be with the AP. 8) The respondent to be responsible for the education of the son, till he reaches 18 years of age. 9) The AP will allow the children to meet the respondent.

In order to ensure the payment of monthly maintenance by the respondent, the magistrates in Sikkim have been intimating the

Drawings and Disbursing Officer of the respondent's office to make the necessary deductions from his salary. See Sikkim, Example 2.

Sikkim: Example 2

The parties filed a compromise deed and amicably settled the matter on the following terms: 1) The respondent shall not commit any act of DV against the AP 2) Since the AP will be living separately, the respondent is restrained from attempting to disturb the AP. 3) The respondent shall pay maintenance allowance of Rs. 3000 to the AP. Intimation will be sent to the Drawings and Disbursing Officer of the Respondent's office for the necessary deduction from his salary. 4) The respondent shall pay Rs. 1, 00,000 to the AP within three months, which shall be treated as monetary relief under section 20 of PWDVA, 2005.

CHAPTER 5

Conclusions and Recommendations

This chapter contains conclusions and recommendations of the major findings during the 2011 Monitoring and Evaluation survey.

Protection Officers (POs)

1. Appointment and Placement of POs

POs are appointed in three ways:

- Public servants in government employment have been given additional charge as POs. Most commonly the Child Development Project officers (CDPOs) appointed under the ICDS scheme have been given the additional charge as POs.
- Public servants in government employment with exclusive charge as POs. This is a recent trend observed in Karnataka.
- POs appointed on contract basis, often with a qualification in social work.

There is consensus among NGOs and civil society that public servants with additional charge cannot function successfully as POs and discharge their duties in court.

The Karnataka model of appointing POs is too new to draw conclusions about how they function, but there are expectations that they will function well. The POs appointed on contract basis have the time to devote to the

work. The 2011 survey shows that this model has been successful in Delhi since 2006 till 2011.

The POs holding additional charge, as opposed to those with full time charge, have the advantage of the government infrastructure and support staff. They are placed in their own offices, in their respective departments and can use their existing office infrastructure to carry out their duties under the Act.

In contrast, the POs appointed on contract basis do not have the infrastructure required to function well. They are usually placed in the office of the nodal departments. In such a situation the POs share the infrastructure of the office where they are placed, and while this may be a convenient way to place POs, they face acute lack of privacy when interacting with the AP and for the paperwork such as filling up the DIR. In addition to lack of space, they do not have the authority of public servants, and are therefore taken less seriously by the courts and the police. Poor salaries and inconsistent reimbursement for official expenses have resulted in demotivation.

2. Functioning of POs

The role of the POs within the Act requires them to provide information to the AP on her rights and remedies under the PWDVA. The complaints of domestic violence must be recorded by filling up the DIR, irrespective of whether or not she files an application for relief under the PWDVA.

3. Filling the DIR

Filling of the DIR is one of the basic functions and the first duty of the POs after contact with the women is established for the first time, irrespective of whether the women approach them directly or through the courts. The DIR is meant to be a record of the violence the woman has faced as reported by her to the PO. Unfortunately, this function suffers due to lack of clarity with regard to its significance and purpose.

The survey conducted by ICRW in Rajasthan clearly indicates that the POs believe that the basic purpose of the DIR is to record the history of violence, yet they do not fill in the DIR every time a woman approaches them. The DIR is filled only when a decision is made to take the case to court, and not otherwise.

A majority of the POs interviewed in Maharashtra consider the role of the DIR as initiating legal proceedings only. Hence, they do not understand the significance of recording the violence faced by the woman, when first reported to the PO. Thus, the information on cases that do not go to court is lost. This information is not recorded in any way – such as a register or a diary entry – on first and subsequent contacts with the woman.

The interviews of POs in Delhi also reveal that they fill DIRs only when the

case goes to court or on the directions of the court. In Maharashtra, one-third of POs interviewed stated they fill a DIR only when courts direct them to do so.¹ In Rajasthan too, the filling of the DIRs is largely court directed. The POs in Rajasthan report that courts refuse to accept the DIR filled directly by the PO, and instead accept applications filed by lawyers without the DIR. Thereafter, the court directs the PO to file a DIR, if necessary.

The POs are not clear as to who is required to fill the DIR. The knowledge of filling of the DIR seems to be impacted by the practices set out by the courts; and across states more POs report that under the PWDVA, the lawyers can fill out the DIR.

The survey conducted by ICRW in Maharashtra indicates that there is a significant increase in POs who have reported that lawyers can fill the DIR. Around 30 percent of POs reported that the AP could fill it herself. In Rajasthan too, there is a sharp and significant increase in POs who report that lawyers and police can fill in the DIRs. The provision that an application can be filed by ‘any other person on behalf of the woman’² has often been interpreted to imply that a DIR can be filled by a variety of individuals, including the police.

4. Counselling by POs

The discussion on ‘counselling’ needs to begin with the pre litigation role

¹ However, 50% of the POs interviewed by ICRW in Maharashtra mentioned that they fill a DIR when a woman approaches them first, irrespective of her intention to file a case.

² Section 12(1) of PWDVA

of the POs. In the PWDVA, in the pre litigation stage, the POs are to provide information to the AP about her options under the existing laws, which courts broadly describe as legal counselling or informing a woman of her legal rights. However, over the years it has been noticed that POs have been speaking to the AP and have sometimes called the husband to bring about a settlement. Most often, the woman has made this request, a process which has been loosely termed as 'counselling'.

It is this practice that creates a concern that POs were going beyond their designated role to conduct 'counselling' and have often misconstrued 'settlement' and 'compromise' of the cases as a benchmark of their success in the implementation of the PWDVA. The ICRW findings indicate that in Delhi and Rajasthan, with the exception of Maharashtra, there has been a sharp increase in counselling perpetrators not to continue violence and in counselling the AP to go back home.

This role was not visualised for POs under the Act, and needs to be discouraged. It raises serious concerns about the role of the POs assisting the courts. The POs are often called by court and sometime subjected to cross-examination. At this stage, they may be asked about the entire pre-litigation 'counselling' and this could prejudice the outcome of the case.

On the other hand, when mediation is directed by courts in pending applications, either by POs, SPs or professional mediators, it has been found to be more effective.

There is an unmet need for pre-litigation counselling. However, this need is best met by professional counsellors, SPs and NGOs, who have experience and training in counselling and gender sensitivity and have been doing it for years. The Act now gives them recognition as registered SPs with the power to record DIRs, if necessary. Hence, it is important that the role of POs be confined to that of officers of the Court and the interface between the Court and the women facing violence with no role in 'counselling' 'mediating' 'settling' or 'compromising', prior to filling up of DIR.

5. Special cells in Haryana and Maharashtra

There are POs designated and placed in Special Cells. The recently drafted NCW scheme³ similar to the Special Cells has proposed that the POs be placed in the police station. However, placement of POs in police stations goes against the basic mandate of the PWDVA, which was enacted to help women so they could avoid going to police stations, thereby avoiding the social stigma attached to the same. Having a PO in a police station reinforces the state of affairs that the PWDVA sought to avoid. It is not in the interest of proper implementation

³ "Centrally Sponsored Scheme for Providing Matching Assistance to State Governments for Effective Implementation of PWDVA, 2005"

of the Act to locate the POs in police stations. Separating the POs from the police stations will leave the police and the POs to perform their respective law enforcement duties.

Recommendations

The recommendations are for nodal departments responsible for the implementation of the Act.

- **The DIR:** The interpretation and purpose of the DIR needs standardisation. Nodal departments and the Higher Judiciary need to issue instructions to POs in their jurisdiction/state directing that a DIR must be filled in all cases when a woman approaches a PO, whether she wishes to go to court or not.
- **Maintaining Registers:** Nodal departments must issue direction to the POs instructing them to maintain a register, and that all subsequent meetings with the AP must be recorded in the register, with brief details of each visit.
- **No Counselling:** Nodal departments must issue a direction to the POs that under no circumstances, should they counsel women. Any woman wanting reconciliation must be referred to a professional counselor or an SP. In coordination with the SP and the woman, the PO must ensure that all settlements are recorded in writing and a copy maintained.
- **Recording Settlements:** If the AP and the respondent arrive at a settlement in pending court proceedings, the PO must ensure that the settlement is recorded in order of the court.
- **Appointments of SPs:** States must appoint SPs in all districts, who should be well linked with the POs and the police, so their services can be used if counselling is required in any case under the PWDVA.
- **Appointment of POs:** The 12th Five Year Plan must include adequate provision for appointment of POs as public servants with exclusive charge of the work. The POs must be designated as Class I Officers of the state government. Appropriate government identity cards must be mandatorily issued to the POs. No POs with 'additional charge' should be appointed.
- **Remuneration of POs:** When appointing POs on a contractual basis, the state government must offer remuneration of a Class I Officer of the state, which will motivate them to discharge their duties effectively.
- **Location of POs:** The POs should **not** be located in the police stations but in court premises. This is because they should not be influenced by the authority of the police within the police station, and nor should they have privacy issues as they do in the office of the nodal departments. It will also help in the realisation of their role as officers assisting the court.

- **Qualifications of POs:** All POs must be qualified social workers. If they have professional and/or academic qualifications other than social work – such as law, psychology, staff from preventive and social medicine (social workers attached to the PSM Department of Government and Municipal hospitals), Superintendent of Shelter homes – then they should be trained adequately when inducted as POs under the Act.

Service Providers (SPs)

Since the first year of enforcement of the PWDVA, the role of the SPs has been restricted to counselling only. However, the law gives wide powers to the SP, which are almost akin to those given to the POs.

Since 2007, the primary role of the SPs has been counselling. Over the years SPs have started to fill DIRs and the courts have been using them for home visits. They are also assisting in the service of notice and legal aid.

However, SPs say that a lack of a uniform protocol for them leads to confusion. Additionally, there are SPs who do not know their roles under the PWDVA.

Recommendations

All nodal departments and the higher judiciary, in their jurisdiction/state, must issue a clarification with directions on the following:

- **Recording FIRs:** SPs should have the legal capacity to record DIRs

as laid down in the PWDVA. In cases where the SPs have counselled the AP, it is preferable to refer to a PO for recording a DIR.

- **Uniform Protocol:** There must be a uniform protocol for SPs across the state on the action to be taken when an AP approaches them for action under the PWDVA. The SPs must maintain a register and record all details of the meeting with the AP.

Police

The police remain the first point of contact for women who are victims of domestic violence. However, it is alarming to notice that even with increased training initiatives by the concerned departments the police continue to ‘counsel’ and ‘settle’ cases at the police station, without taking appropriate legal action.

In most cases, it has been observed that the police do not provide adequate information to the AP regarding her options under various Acts. They continue to discourage her to file a FIR under Section 498A of the Indian Penal Code, and do not provide her with possible alternatives. This apart, the police have also been reluctant to help POs and SPs with enforcement and breach of orders, saying that their hands are tied without specific directions from the Court. They have however, rendered help in service of notice even without specific directions from the Court.

Recommendations

The highest authority of the state must clarify the role of the police under the PWDVA. A case in point is the 2007 direction issued by the office of the DIG, Andhra Pradesh. Such a direction needs to be widely circulated in all police stations including local *thanas* and be displayed in the premises of the same.

Judiciary

The Judiciary is responsible for making the Act a reality for the domestic violence victim and interpreting the various provisions of the PWDVA such as reliefs, among others.

In the initial years after the Act was passed, it was observed that judges had some difficulty in understanding the basic purpose and objective of the Act. The analysis of Orders undertaken in 2011 suggests that the PWDVA has gradually succeeded in fulfilling its objective of empowering of women, as judges are readily passing stop violence orders and residence orders under the Act.

In 2011 it was observed that courts passed Protection Orders on prima facie evidence of domestic violence. Women seek Protection Orders, and many have reiterated that it has given them the much-needed space to negotiate a violence-free relationship. The Residence Orders are passed and the provision for directing respondents to provide for alternate accommodation

is being used by courts wherever necessary.

The most common form of relief granted is monetary relief for economic abuse. Compensation orders are being passed in cases of severe emotional and/or physical traumas. Interim and *ex parte* maintenance orders have also been passed. In some states, particularly Himachal Pradesh, which has a tradition of *Nagar Panchayats*, it has been noticed that there are a large number of 'compromises' in courts.

Incorporated in the PWDVA is a timeline of 60 days for passing of orders.⁴ In 2011, as in previous years, none of the courts have been able to achieve this, resulting in delays in the court process.

Judges have no definitive practice with regard to accepting applications with a DIR by a PO. Some do, others do not and some direct a DIR by the PO. The LCWRI welcomes the trend of courts to accept applications under section 12 without a DIR from a PO, as this enables direct access to courts for women who are clear that they need a judicial remedy. The POs should not become gateways to justice, deciding who can and who cannot access courts.

From the orders analysed in 2011, it seems there is no clear distinction between the DIR and Home Visit Report. The orders stated that the PO had visited the house of the Applicant

⁴ According to Section 12(5) of PWDVA, final orders under the PWDVA are to be passed within a period of 60 days from the date of filing of the application.

and filed the report. Whether the report was a Home Visit Report or a DIR could not be ascertained.

Differing interpretations lead to diverse practices, often in contradiction to the spirit and intent of the law. This can be corroborated by the findings of ICRW, where it was noted over time that in Delhi, few POs seem to have mistakenly believed that the DIR and Home Visit Report is the same. On the other hand, in Maharashtra, although initially there was some confusion on the subject of the DIR and Home Visit Report, however, that has significantly reduced, as seen from the 2011 survey.

Some courts are utilising the services of a PO and directing them to help the aggrieved woman in retrieving the *Streedhan* in the custody of the respondent. They also make contacts with the complainant and intimate the concerned police Station to take steps, if necessary. Further, the POs are to be vigilant and ensure that the Respondent is not perpetrating any further acts of domestic violence on the AP. The POs are also required to assist the courts in several capacities.

The POs are directed by the courts to serve notices on their own or with the assistance of the police, filling of DIRs on the court's direction, attach a medical report and an application for legal aid along with the DIR, if required.

The analysis of the 2011 orders from lower courts obtained from 16 states reiterates that in terms of assistance

provided to court, only 6.3% of the Orders analysed specified the role of the PO. In cases of breach of orders, most states have reported that police take action when a breach of order is reported while POs do not play an active role.

Recommendations

- **Training:** The Judicial Magistrates receive intensive training under the PWDVA and other related laws, to enable them to pass appropriate orders and grant relief to APs. The new inductees to the judicial services must be trained to deal with cases of domestic violence during their induction programme.
- **Recording the DIR:** Courts need not direct the recording of a DIR in every case which is filed without a DIR, but only in those cases where the court is of the opinion that essential facts are not clear from the application, or there is an ambiguity that may need clarification.
- **Distinction between Home Visit and DIR:** Courts must distinguish between a 'home visit' and a DIR, as the latter does not necessarily need a home visit. Home visits may be required only to clarify disputed facts at the stay of passing orders.
- **Opinion Reports:** In no case must courts ask POs to make 'opinion reports' as forming an opinion is a judicial function which requires training in law and evaluation of evidence, a function which cannot be delegated to the courts.

- **Standard Practice Directions:** These should be issued by the concerned High Courts clarifying important aspects of the law including, but not limited to passing of interim and *ex parte* maintenance orders. They should be issued by concerned High Courts laying down a time period within which final orders are to be passed under the PWDVA, emphasising that the very essence of the Act may be lost if such time bound action is not taken by the Courts.
- **Guidelines for Granting Compensation to Women:** Courts must develop these for women who have suffered domestic violence.
- **CEDAW and its General Resolutions:** Judges must be aware of the provisions of this international protocol.
- Prosecutors must be aware that an application can be made to court in pending Section 498A of Cr.P.C proceedings.
- Judges must view all forms of DV against women as grave violations of human rights.

Stakeholder Awareness and Training

The 2011 surveys conducted by LCWRI and ICRW reveal that all stakeholders – the police, the POs and the SPs – lack a clear understanding

of the difference between right to Property and the Right to Residence under the PWDVA.

They also erroneously conclude that the division of property and divorce are reliefs that can be claimed under this Act. However, compared to earlier year's findings, some improvement among the POs has been observed. But, no improvement on this has been noticed among the police. There is still confusion among the POs in Delhi and Rajasthan, where they reported incorrect knowledge that the 'first' respondent under the PWDVA can be a female relative. It is critical to clarify these misunderstandings, as these are likely to influence responses towards women facing DV.

Recommendations

All concerned nodal departments should issue specific clarifications to stakeholders appointed under the Act regarding the concepts of Right to Property, Right to Residence and reliefs that can be claimed under the Act. And, clear articulation of who can be the 'first' respondent under the PWDVA.

1. Medical Facilities (MFs) and Shelter Homes (SHs)

The PWDVA, recognising the need of a victim of domestic violence to access medical help and shelter services, spelt out the role of MFs and SHs. Medical professionals continue to remain the first port of call for many women who receive injuries due to the violence faced at home.

However, over the years, within the framework of the effective implementation of the PWDVA, health professionals and medical institutions have been absent. They have been absent in the trainings organised by Lawyers Collective in collaboration with government agencies. And, the nodal departments have not been able to collect adequate data – regarding the cases of domestic violence – from the notified health centres under the Act.

The SHs face funding crises and many have shut down due to this. The authorities in the SHs are not trained under the PWDVA or oriented to handle cases of domestic violence. The MFs and SHs have not been trained about their roles under the Act and fail to meet the expectations set out in the PWDVA.

Their low visibility under the PWDVA may be directly related to the low awareness and lack of adequate training under the Act. As stated within the Act,⁵ it is the obligation of the state to take all measures to ensure that periodical trainings are conducted to sensitise the stakeholders. However, the state must also spread the message of zero tolerance of domestic violence and awareness of the PWDVA and its provisions to the public by the use of print and electronic media.

Recommendations

Training and Awareness: The nodal departments must increase the level of training and awareness among the

notified MFs and SHs. Such training must incorporate:

- Gender sensitive approach towards victims of domestic violence.
- Understanding of the nature of injury and/or wounds, so as to enable them to identify these as being caused by violence at home.
- Legal knowledge under the PWDVA and other related laws.
- Processes of coordinating with other stakeholders such as POs, SPs and the police so as to assist women who are victims of domestic violence.
- A circular from the concerned department/appropriate authorities regarding the detailed role of MFs and SHs, which includes, but is not limited to, the filling of a DIR.

2. Gender sensitisation of the stakeholders

An encouraging finding of the 2011 study has been the increase in positive attitudes on gender and domestic violence, by POs across the three states.

In both Maharashtra and Rajasthan, where gender attitudes was adverse at baseline, a positive shift was more pronounced at end line. In comparison to other states, POs in Delhi reported

⁵ Section 11 of the PWDVA

more equitable attitudes at baseline, and there was a further increase in the positive direction at end line.

However, there are many POs in some states that continue to hold rigid and harmful attitudes towards domestic violence. Several of the stakeholders are still not gender sensitive, as was evident from the responses during the interviews. The police seem to continue to look upon domestic violence as a law and order problem, and do not deal with cases from a human rights perspective.

On the other hand, attitudes towards law show a more mixed trend across the states. Delhi POs demonstrated a more positive attitude towards the law than POs of other states. However, in both Maharashtra and Rajasthan, the overall attitude of the POs towards the law has shown a slight decrease over time.

The PWDVA is a progressive law which introduces aspects such as live-in relations, and Right to Residence. These would require time and discussion to be truly appreciated and imbibed. Against this backdrop, it is essential for the stakeholders to develop a comprehensive understanding of these notions.

Recommendations

All stakeholders must receive gender sensitisation training from their respective departments from time to time, and be oriented towards dealing with cases of gender based violence as well.

Legal Services Authority: Appointment of Lawyers Dealing Exclusively with Domestic Violence Cases

The Legal Services Authority has been invisible in the implementation of the PWDVA, and none of the stakeholders have been able to use their services effectively.

This has been a consistent observation since the Act has been enforced and is shocking, since women are entitled to free legal aid under the Legal Services Authorities Act, 1987.

Recommendations

Directions must be issued by the National Legal Services Authority to have a panel of lawyers in all State and District Legal Aid Services who would exclusively deal with the cases of domestic violence.

Multi-agency Coordination and the Reporting System: Effective Response Systems within the Public Model

The PWDVA was enacted with the express recognition that a woman who is a victim of domestic violence might need legal services and require access to other forms of services. It was with this idea that the office of the PO was proposed and set up, NGOs were included as service providers under the PWDVA, and MFs and SHs were brought within the ambit of the Act as well.

Over the last few years, the LCWRI has been emphasising the need of all agencies to work together to effectively implement the Act and help the intended beneficiaries—the aggrieved women-access justice.

Andhra Pradesh, since 2007, is the only state in the country which has consistently followed the structure of a “Public Model” where all the stakeholders under the Act have worked together to implement the Act. This year LCWRI’s study of the model indicated that in Andhra Pradesh the POs and SPs have been well connected throughout and both these stakeholders are linked very well with the police and most cases come through referrals from the police stations. Magistrates have been using the services of the POs and SPs in conducting home visits and filling of DIRs.

But such a system has still not been well developed in the other states, with the police officials often having no idea about the details of the POs and SPs in their jurisdictions. In some states, the Magistrates have refused to take the office of the POs seriously and have reduced their roles to filling of DIRs only.

In Maharashtra, introducing POs in Special Cells is a flawed understanding of a ‘multi agency response’. When POs are located under one roof, there is a collapse of roles, which results in improper implementation of the Act. In the long run, the services of the POs will not be available to the court, as they get more involved in pre-litigation counselling. Allowing POs to do more

counselling may lead to conflict of interest which will eventually throw them open to allegations of being biased, by all parties at the stage of trial.

Locating the POs in a police station defeats the purpose of having a civil option to relief for domestic violence and may discourage women from using the PWDVA. While women need both, the criminal remedy and civil remedy, there is a need for clear demarcation between the two remedies.

Recommendations

- **Circular Specifying Role of Stakeholders:** The nodal department must issue a circular for all the stakeholders in a particular jurisdiction, specifying the role of each stakeholder within the Act, and any other information. The circular must be shared with all stakeholders. This is to ensure that all stakeholders are inter linked with each other for better implementation.
- **Trainings Must be Conducted Jointly:** With all stakeholders present – so that they have a common platform to interact with each other, share best practices, discuss issues and find solutions, in carrying out their duties under the Act.
- **District and State Level Coordination Committees:** These were created to monitor the activities of all stakeholders, and all stakeholders must be represented in such committees. The functions of the committees

and the frequency of meetings must be laid down clearly. The minutes of the meeting of the coordination committee must be submitted to the nodal department.

Absence of Mandatory Reporting System

A primary hurdle in assessing the status of implementation of the Act has been the lack of available data. This has happened due to the absence of a mandatory reporting system in the nodal departments. In 2010 an observation was made that some states have developed reporting formats for all stakeholders, which are either monthly or quarterly, but there has been no implementation of this. As a result, the data received is inconsistent and the figures cannot be explained by the authorities in the nodal departments. Unless a reporting system is developed and data uniformly collected all across the country, it would be almost impossible to effectively monitor and evaluate the implementation of the Act.

Recommendations

- A uniform reporting system be developed to collect data from all stakeholders under the Act
- Incentives and/or strict action to ensure mandatory submission of the data. Either incentives should be designed to encourage officers who submit such complete data, or non-submission of such data

must invite strict action from the concerned nodal department.

Monitoring and Evaluation of the PWDVA

Monitoring and evaluation are essential tools to ensure accountability of the state for the effective implementation of the law. They are also needed to assess that the mechanisms provided by the state in dealing with domestic violence, meets international standards required by treaty mechanisms under CEDAW. Monitoring and evaluation is the only way to ensure that proper reporting standards are followed by the state.

State parties to CEDAW have an obligation to ensure that a mechanism – legal and systemic – be created and followed to ensure that a zero tolerance policy towards domestic violence is followed by the state.

Recommendations

All states, through their agencies, must collect the necessary data on implementation of the Act, and publish annual monitoring and evaluation reports.

Budget for the PWDVA

Since the enactment of the PWDVA, the Central Government has not committed any resources for its implementation. To gather information on the budgetary practices adopted by states, RTI applications were filed by the Centre for Budget and Governance

Accountability (CBGA). The findings reveal:

- Of the 33 States and UTs, 13 have a Plan Scheme for implementing the PWDVA. The remaining 19 States do not have a scheme as yet. No information was received from Lakshadweep and the RTI was not filed in Jammu & Kashmir. Several states that had not committed any resources for PWDVA continue to do so. These are also states – Bihar, Jharkhand, Rajasthan and West Bengal – that report a higher incidence of violence, according to the third round of the National Family Health Survey.
- The range of allocations varies widely. In Delhi, Meghalaya and Uttarakhand, the allocations varied from Rs. 40 to 80 lakhs. In the other states, the allocations were between Rs. 1 to 5 crores.
- States with consistently low expenditures are Madhya Pradesh and Karnataka. In fact, Karnataka has the largest budget of all states providing allocations for PWDVA, but, in the last two years, the utilisation figures have not been impressive.
- In terms of components of expenditure, a positive trend across states is that many have allocated funds for training and capacity

building of different stakeholders and awareness generation or Information, Education & Communication (IEC). These are two extremely important components for the Act to function effectively. However, again, a component that remains neglected is support to Service Providers. Madhya Pradesh is the only state that has budgeted funds for SHs run by private organisations.

- The centrally sponsored scheme⁶ drafted by the NCW raises issues – both at the conceptual and operational level. To be effective, a scheme must have Flexible Pool of Funds to take care of local specificities as well as the fiscal health of the states.
- The total budget for the effective enforcement of PWDVA would be around Rs. 1522 crores, according to rough estimates. This assumes that full time POs, on contractual basis, are appointed at the block level. It further assumes that there are full time CPO at the district level who will coordinate the work of POs at the block level. This is at best, a conservative estimate.

The LCWRI, taking stock and analysing the national situation on the implementation of the PWDVA, has come up with the aforementioned conclusions and recommendations.

⁶ In 2011, the National Commission for Women (NCW) drafted a scheme, “Centrally Sponsored Scheme for Providing Matching Assistance to State Governments for Effective Implementation of PWDVA, 2005”.

We have been witness to several debates around the Act and its implementation and conclude that there is an overall shift in a positive direction, in terms of understanding of the Act. The Magistrates have been reading the Act in a more purposive manner and have been giving encouraging orders under the Act.

While there seems to be a greater involvement of lawyers in filing cases under the Act, more and more women are accessing the law now and obtaining reliefs.

There is a better overall understanding of the phenomenon of 'domestic

violence'. Services of the POs, in almost all states, are being utilised by the courts, thus granting the office of the POs the recognition that was necessary for the proper working of the Act.

Several states have developed and employed various means of implementing the Act. Some of the methods have worked, while some have not.

The proposed recommendations are made to ensure the implementation of the PWDVA is effective, meets the needs of women who suffer domestic violence.

ANNEXURE 1

ACKNOWLEDGMENTS

The LCWRI expresses special thanks to the following individuals and organisations for their contribution. We regret any inadvertent omissions in the list below.

Judiciary

- Hon'ble High Courts of Delhi, Maharashtra, Andhra Pradesh, Gauhati, Patna, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu, Uttarakhand
- Mr. Mohammed Akram Sayeed, Registrar, Supreme Court
- Tamil Nadu State Judicial Academy

For the state visit study, thanks to the following individuals

Delhi

- Ms. Renu Love, Assistant Director, Women Empowerment Cell, DWCD, Delhi
- Ms. Kiran Sharma, PO
- Ms. Madhu Manvi, PO
- Ms. Jyoti Sirohi, PO
- Ms. Diksha, PO
- Ms. Neha Walia, PO
- Ms. Preeti Saxena, PO
- Ms. Kirti, PO
- Ms. Priti Mudgal, PO
- Ms. Puja Rai, PO
- Ms. Neeraj, PO
- Ms. Madhulika, PO
- Ms. Aradhana Singh, PO
- Ms. Paramesh Tokas, PO
- Mahila Pratiraksha Mandal
- Mahila Dakshata Samiti
- Navjyoti Delhi Police Foundation
- All India Women Conference
- Guild of Service
- Prayatan
- Sanjivni Health Services
- Shakti Shalini
- Bharat Sewak Samaj
- Adv., Pervez Siddiqui

- Adv., Chirag Jamwal
- Adv., Geeta Luthra
- Adv., Kiran Singh
- Adv., Seema Mishra
- Adv., Trideep Pias
- Adv., Kirti Singh

Rajasthan

- Mr. Sudhir Kumar, Consultant, Department of Women & Child Development, Rajasthan
- Ms. Asha Maan, PO
- Ms. Manju Chauhan, PO
- Ms. Santosh Jain, PO
- Ms. Gayatri Shukla, PO
- Ms. Manju Parikh, PO
- Mr. Jagwant Beniwal, PO
- Ms. Khurshida Khan, PO
- Ms. (Dr.) Prem Lata Vyas, PO
- Ms. Munni Bhandari, PO
- Ms. Simla Baresa, PO
- Ms. Urmila Joshi, PO
- Mr. Shakti Singh Rathore, PO
- Mr. Pokar Ram Bishnoi, PO
- RUWA
- Meera Sansthan
- Vikalp
- Adv., Kailash
- Adv., Virender Godika
- Adv., Pramod Gupta
- Adv., Gurnam Singh
- Ms. Ekta (Sub-Inspector)
- Mr. Ram Deo Singh (Inspector of Police)
- Mr. Lal Chand (Head Constable)
- Ms. Hina Singh (Inspector)
- Ms. Pana Chowdhary (Sub Inspector)
- Mr. Rajinder Chowdhary (Sub-Inspector/ SHO)
- Ms. Sita Chowdhary (Constable)

Haryana

- Ms. Karminder Kaur, PO
- Ms. Rajini Gupta, PO
- Ms. Madhavi Lohchab, PO

- Ms. Hema Kaushik, PO
- Ms. Meena Kumari, PO
- Ms. Bhanu Gaur, PO
- Red Cross Society
- Adarsh Rural Development Society
- Adarsh Saraswati Shiksha Sansthan
- Ms. Ompathi (ASI)
- Mr. Udmiram (Inspector)
- Mr. Ajit Singh (Constable)
- Ms. Sushila Yadav (SI)
- Ms. Sunita (SI)
- Ms. Surender Kaur (Inspector)
- Ms. Nirmla Devi (SI)
- Ms. Kavita (SI)
- Ms. Pramila (SI)
- Ms. Dhanpati (SI)
- Ms. Saroj (ASI)
- Adv., R. N. Yadav
- Adv., Meena
- Adv., Jyoti

Andhra Pradesh

- Smt. Rajya Lakshmi, PO
- Ms. Indira, PO
- Mrs. Y. Ratna Kumari, PO
- Mr. T. V. Srinivas, PO
- Divya Disha
- COVA
- Shaheen
- Chaitanya Mahila Mandali
- BREADS (Bapuji Rural Enlightenment and Development Society)
- Mahila Margdarsi
- Gramin Chaitanya Vedika
- Smt. Kalpana Naik (Superintendent of Police)
- Smt. Nalini (Sub-Inspector)
- Smt. Sriram Jyoti (Inspector)
- Smt. Lakshmi (Inspector)
- Mr. S. Suresh (SHO)
- Sri D. Ramakrishnaiah (Inspector of Police)
- Mr. Ch. G. V. Prasad Rao (Inspector of Police)
- Mr. A.V.L. Prasanna Kumar (Deputy Superintendent of Police)
- Mrs. Bongu Narimani (Sub-Inspector)
- Adv., G. Venkat Reddy

- Adv.,Rakesh
- Adv.,Mujib
- Adv.,G. Prasad
- Adv.,Bhupal
- Adv.,Vishalakshmi
- Adv.,Usha Devi
- Adv.,K Padmaja
- Adv.,Neelam Santhi Rajyam
- Adv.,Nirmala Dayavathi

Organisations/Individuals

- Ms. Mamta Sharma, Chairperson, National Commission for Women
- Mr. S.C. Kaushik, Law Officer, National Commission for Women
- Ms. Zohra Chatterji, Former Member Secretary, National Commission for Women
- Ms. Anita Agnihotri, Member Secretary, National Commission for Women
- Ms. Meenakshi Ghosh, National Commission for Women
- Lilabati, Coordinator, Legal Cell, National Commission for Women
- Dr. Dinesh Paul, Director, NIPCCD
- Dr. Sulochana Vasudevan, Former Joint Director, Women Development Division, NIPCCD
- Ms. Saroja Thiruvengadam, Assistant Director, Social Welfare Department, Tamil Nadu
- PWDVA -Maharashtra Network
- Special Cell for the Women and Children, Maharashtra (Anjali Dave, Trupti Panchal and the team)

Pre-national Conference Meeting Participants

- Assam: Monideepa Sarma, District Social Welfare Officers (Nagoan)
- Tripura: Mr Sukhomoy Dey, Protocol and Liaison Officer
- Gujarat: Ms. Darpana Dhimmal, Deputy Secretary, Department of Women and Child Development
- Gujarat: Jigna Sarkar, Programme Officer, Gender Resource Centre
- Meghalaya: Ms. C Marak, Directorate of Social Welfare
- Haryana: Mr. Shashi Dhoon, Joint Director, Department of Women and Child Development
- Haryana: Ms. Surinder Kaur, Department of Women and Child Development
- Madhya Pradesh: R K Tiwari, Assistant Director, Department of Women and Child Development
- Uttar Pradesh: Mr. J. B Gour, Probation Officer(Meerut)
- Uttar Pradesh: Mr. J. B Gour, Deputy Probation Officer(Meerut)
- Uttar Pradesh: Ms. Usha Kiran, DWCD

- Karnataka: Mr. Ramesh Halbhavi, Deputy Director, Department of Women and Child Development
- Orissa: Ms. Namita Palo, Gender Consultant, Department of Women and Child Development
- Chandigarh: Ms. Suman Lati
- Maharashtra: Mr. R. S Patil, Deputy Commissioner of the Department of Women and Child Development
- Andhra Pradesh: Ms. Chaya Ratan, Principal Secretary, Dept. of Women and Child Development

NGO Consultation Meeting Participants

- EKTA, Tamil Nadu: Bimla Chandrasekhar
- SWATI, Gujarat: Poonam Kathuria
- Swayam, West Bengal: Anuradha Kapoor
- Anweshi, Kerala: K Ajitha
- Task Force on Violence Against Women, Orissa: Srabani Das
- North East Network, Assam: Pallabi Barthakur
- North East Network, Nagaland: Wekowe- U Tsuhah
- Sangini, Madhya Pradesh: Sangarika Dantry
- Saad Angaan, Goa: :Maria Angelica DeSouza

Interns

- Amity Law School, New Delhi: Aaditya Sharma, Aditi Pradhan, Amrita Sodhi, Aniruddh Singh, Gourav Arora, Nikita Sayam, Pranavakshar Kapur, Rahul Mehrotra, Shruti Mahalingam.
- NUJS, Kolkata: Sanchari Ghosh
- Ram Manohar Lohiya Law University, Lucknow: Shilpi Rana
- D.E.S Law College, Pune : Shikha Sandhu
- Army Institute of Law, Chandigarh: Shubhangi Singh
- NLU, Jodhpur: Ameya Vikrama Thanvi

ANNEXURE 2

Chapter 2

GOVERNMENT OF ANDHRA PRADESH

From
Smt. V. Usha Rani IAS.,
Director,
Women Development & Child Welfare Department,
AP, Hyderabad

To
The Superintendent of Police
(All Districts in A.P.)

Lr. No.765/B3/08, Dt. 13/08/2010,

Madam,

Sub: - WD & CW Dept. – Implementation of Protection of Women from Domestic Violence Act 2005- Implementation of Court orders- Cooperation & Coordination from Police Department – Request – Regarding.

Ref: - 1. The Protection of Women from Domestic Violence Act-2005.
2. Lr.No.1055/EO-III/2010, Dt: 29.06.10 of P.D, DW & CDA, Hyderabad.

Copies of references cited are herewith enclosed.

In the reference 1st cited, The Government of India issued an order “The Protection of Women from Domestic Violence Act-2005, to protection of women who are victims of violence of any kind occurring within the family, as detailed below under Sec.3 of Act.

- a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person relate to her to meet any unlawful demand for any dowry or other property or valuable security; or

- c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in Clause(a) or Clause(b); or
- d) otherwise injures or causes harm, whether physical or mental , to the aggrieved person.

Further, the Government of India has instructed the State Government to appoint Protection Officers in each State. Accordingly the A.P.State Government WD & CW Dept, has considered the Departmental officer i.e, Project Director, DW & CDA, and appointed them as Protection Officers in each district in A.P.State Vide G.O.Ms.No.22 WDCW &DW Department, Dt. 9-11-2006. And also appointed the Revenue Divisional Officers as Protection Officers in the districts to each Revenue Division vide G.O.Ms.No.314, Revenue (Services – I) Dept., Dt.1-3-2008, by the Revenue Department (Copies enclosed).

It is informed that the duties and responsibilities of the said Protection Officers as detailed below

The Protection Officer may assist the Magistrate, in the discharge of his/her functions under the Act, make a domestic incident report to the Magistrate, make an application to the Magistrate if the aggrieved person so desires praying for issuance of a protection order, ensure legal aid to the aggrieved person, maintain a list of service providers, make available a safe shelter home if the aggrieved person so requires, get the aggrieved person medically examined if she has sustained bodily injuries, ensure that the order for monetary relief under Section 20 of the Act is complied with and executed in accordance with the provisions of the Code of Criminal Procedure, 1973 and perform such other duties as may be laid down by the Central Government, by rules. It also stipulates that the Protection Officer shall be under the control and supervision of the Magistrate and perform the duties assigned to him/her by the Magistrate and the Government by or under the Act.

It is informed that while performing the above duties by the Protection Officers, the Cooperation/Coordination of Police is necessary.

Recently, a proposal from our Departmental Officer i.e, Protection officer of Hyderabad district received, with requirement that the Cooperation/ Coordination of Police Department is very much need as she was suffering such a drastic position for implementation of Court orders under D.V. Act-05 as she stated that she has been facing lot of inconveniences with the Police Department and without their Cooperation & Coordination in the situations like executing the nonailable warrants, implementing court orders like Residence order, Protection order etc is difficult. (Copy enclosed)

Therefore, it is requested to issue directions/instructions to all Station House Officer under your jurisdiction of the district concerned to give their Cooperation/ Coordination to the Protection Officers i.e, Project Director DW & CDA of WD & CW Department, when they approach to the Station House Officer with Domestic Violence case along with Court orders/ warrants, since the Protection Officers are discharging their duties under Cr.P.C and PWDV Act-05 for the interest of Justice to the aggrieved women .

The list of Protection Officers (latest) of WD & CW Department is herewith enclosed.

Early directions may be issued to the Station House Officer of the concerned Police Stations in the district.

Yours faithfully
Sd/-V.Usha Rani
Director

Encl: As above
For Director

Copy submitted to the Special Chief Secretary to Government, WD & CW Dept for information

Copy submitted to the Secretary to Government Law Department for information and necessary action

CHAPTER 2

Table 1: Appointment of POs by state

State	Total Population	No. of districts	No. of POs	Level	Additional charge: Nature of Post/s held
Andhra Pradesh	84,665,533	23	104	District (23) and Block (81) level	Project director DW and CDA, revenue divisional officer/sub-collector
Bihar	103,804,637	38	27	District	Project Manager Women Helpline- on contractual basis
Chandigarh	1,054,686	1	3	District	Child Development Project Officers and Superintendents of <i>Nari Niketan</i>
Gujarat	60,383,628	26	47	District level	Social Defence Officers, Zonal dowry prohibition officers and Independent protection officers
Haryana	25,353,081	21	20	District	Protection cum Child marriage prohibition officer on contractual basis
Karnataka	61,130,704	30	215	District and Taluk (30 +185)	Child Development Project Officer (192) and Independent cadre of POs(23)
Kerala	33,387,677	14	14	District	Full time Independent cadre of POs
Madhya Pradesh	72,597,565	50	453	Taluk	Project officers and ICDS
Maharashtra	112,372,972	35	3774	District, Block and Taluk	Sub divisional officers, <i>tehsildars</i> , <i>nayab tehsildars</i> , block development officers, extension officers, district women and child development officers, CDPOs (urban), community development officers, counsellors of 16 counselling centres.
Meghalaya	2,964,007	7	7	District	District social Welfare Officers
Orissa	41,947,358	30	30	District	ICDS programme officers
Rajasthan	68,621,012	33	574	District(33) and Block level (541)	Deputy Directors, DWCD in districts (33), CDPO (304), <i>Prachetas</i> (237)
Tamil Nadu	72,138,958	32	33	District	Full time Independent cadre of POs
Tripura	3,671,032	4	64	District and Block	4 District Inspector of social education, 56 CDPO, 4 female members from an NGO
Uttar Pradesh	199,581,477	72	72	District	District Probation Officer
West Bengal	91,347,736	19	20	District	Independent cadre of POs on contractual basis

¹ Census 2011

² Prachetas are public servants appointed for three years to work under the women's Development Project, Government of Rajasthan.

CHAPTER 2

Table 2: Stakeholders serving notices in states

States	Service of Notice through	Support services
Andhra Pradesh	POs, their supporting staff, Home Guards or the SPs	SPs are assisting the POs by serving notice on their behalf
Bihar	Speed Post or the counselors appointed to assist the POs	In 2010, Project Managers assigned as POs were serving notices themselves. However, this year, the counselors appointed to assist the POs have been serving notice on their behalf.
Chandigarh	Police	-
Gujarat	POs	Representative from the Nodal Department had informed that on the request of the POs, aggrieved women would accompany the POs in serving notice.
Haryana	Branch of district police or the police staff of the special cell for women and children	-
Karnataka	POs, service providers, messengers or the police	SPs are assisting the POs by serving notice on their behalf.
Kerala	POs	State government has proposed to provide a messenger to each protection officer with the assistance from the <i>Mahila Samakhya Society</i> .
Maharashtra	POs	-
Madhya Pradesh	POs, police or SPs	SPs are assisting the POs by serving notice on their behalf.
Meghalaya	POs or police	In the event of the POs not being provided with proper addresses, the PO is supposed to approach the Village Headman to verify the correct address.
Orissa	POs or the Home guards of the concerned police stations	-
Rajasthan	POs, police or through speed post	The POs have been advised regularly in their trainings to use provisions of Cr.P.C. for service of notices. Copies of the relevant provisions have also been forwarded to the POs for their reference.
Tripura	POs	-
Uttar Pradesh	Supporting staff of the POs	-
West Bengal	Police, Process server of the District Magistrate office, radiogram/ wireless and sometimes through registered post	-

“-“ indicates that the nodal departments have not provided information regarding support services established within their respective states.

CHAPTER 2

Table 3: Data on the service providers notified under the Act, by states

State/ union territory	Total number of SPs notified	Services provided	Funding
Andhra Pradesh	72	Counselling, shelter and filling DIRs	No government funds provided
Bihar	NIL A proposal has been sent for government approval	Counselling, shelter, medical aid	76 Short stay homes and Helpline services have been functioning as service providers in the meanwhile, receiving government funding
Chandigarh	13	Counselling and Shelter	No government funds provided
Gujarat	249	Counselling, legal assistance, provide medical facility to the victim as and when required, fill up and file DIR in court	All notified Service Providers receive funds by the government
Haryana	26	Counselling	SPs have been receiving funds from different government departments
Karnataka	116	Counselling, Shelter, filling up DIRs	No government funds provided
Kerala	58	Helpline, Counselling, Mediation and legal action.	Service Providers are provided with Rs. 5000/- per month for a legal counsellor posted in each centre in consultation with the legal service authority. Rs. 10,100/- is provided to each centre to extend psychological and medical attention to the victims of domestic violence. A total of Rs.. 27, 98,928/- has been released to the Kerala State Social Welfare Board to meet the above expenses
Madhya Pradesh	56	Counseling and short stay homes	50 SPs have been receiving government funding as they are FCCs based in the police stations

State/ union territory	Total number of SPs notified	Services provided	Funding
Maharashtra	148	Counselling	62 FCCs and 39 Counselling centres have been notified as service providers as per G.R. dated 30/10/2007. These organisations receive funding from the govt. Whereas 47 NGOs have registered themselves as service providers and they do not receive any government funding.
Meghalaya	7	Counselling, shelter homes and medical assistance	They are not funded by the government
Orissa	129	Counselling, shelter homes, medical assistance and fill DIR	All are government funded.
Rajasthan	91	Counselling	No government funds provided but there is a provision for reimbursement of actual expenditure incurred by them on any aggrieved person
Tamil Nadu	44	Counselling, Shelter	All are government funded
Tripura	23		-
Uttar Pradesh	115	Counselling, short stay homes and Medical facilities	No government funds provided
West Bengal	69	Counselling, short stay homes, legal aid	No government funds provided. However the state government has recently asked SPs to put together a budget.

CHAPTER 2

Table 4: Data of MFs and SHs by state

States	Medical facilities and their profile	Shelter homes and their profile
Andhra Pradesh	All government hospitals have been notified as medical facilities	52 shelter homes have been notified
Bihar	Yet to be notified	29 shelter homes have been notified; 9 other shelter homes are in the process of being notified. They all run under a government scheme
Chandigarh	Not notified	No special notification, however, there are 3 short stay homes in Chandigarh (<i>Nari Niketan, Swadhar</i> short stay home and <i>Savera</i>)
Gujarat	59 notified medical facilities in the state: All Chief district health officers (CDHO) in Civil Hospitals	There are 22 SHs: 21 shelter homes notified since 2007 and 1 shelter home notified in June 2009
Haryana	All government hospitals, primary health centres and community health centres have been notified	3 shelter homes have been notified
Karnataka	2748 medical facilities have been notified. (All facilities provided in all hospitals owned, maintained or controlled by the State Government to be a medical facility- notification no. HFW 2003 FRP 2007 dated 1-2-2008)	154 shelter homes notified – all run under government scheme
Kerala	99 medical facilities notified	23 shelter homes notified
Madhya Pradesh	All medical colleges, district hospitals, community health centres, primary health centre and sub health centre	25 shelter homes notified - all run under government scheme
Maharashtra	Not notified, but the Director of Health has given direction to all the civil surgeons, district hospitals, medical superintendent, rural hospitals to make available medical services to the aggrieved women on priority basis.	117 shelter homes notified - all are run under government scheme
Meghalaya	Not notified	No information
Orissa	Not notified	No special notification, however all short stay homes, <i>Swadhar</i> shelter homes and <i>Ujjwala</i> homes have been designated as service providers under the Act.(Notification no. 15823/WCD dated 11.9.09)

States	Medical facilities and their profile	Shelter homes and their profile
Rajasthan	Hospitals: 50, Dispensary: 2, PAHC: 402, CAHC: 51 Total no. of MF notified: 505 (All district hospitals, sub divisional hospitals, Community health centres along with satellite hospitals and dispensaries have been notified as medical facilities)	14 shelter homes have been notified
Tamil Nadu	PAHC: 1531, Medical colleges and Hospitals:15, all non Taluk level hospitals: 80, Taluk level hospitals: 155, headquarters: 28 & other hospitals: 40 Total no. of MFs notified: 1849	98 shelter homes have been notified
Tripura	Not notified, but aggrieved persons are provided with free medical facilities in the state	6 shelter homes run by NGOs have been notified.
Uttar Pradesh	All government District Hospitals, all government CAHC & PAHCs have been notified	10 shelter homes running under government. scheme have been notified
West Bengal	All primary health centres, rural hospitals, state general hospitals, district hospitals and medical college hospitals have been notified	43 shelter homes run under government scheme

CHAPTER 2

Table 5: Budget (Estimated) for implementation of PWDVA

Heads of Expenditure	Details	Total/Year (in Rs. Crores)
1. Salary Expenses		
1.1. At the Block Level		
1.1.1. Protection Officers	1 PO* Rs. 20,000/ month* 12 months*6315 blocks	151.56
1.1.2. Counsellor	1 Counsellor*Rs. 10,000/ month*12 months*6315 blocks	75.78
1.1.3. Legal Assistant	1 Legal Assistant*Rs. 12,000/ month*12 months*6315 blocks	90.93
1.1.4. Data Entry Operator	1 Data Entry Operator* Rs. 5,000/ month* 12 months*6315 blocks	37.89
1.1.5. Messenger	2 Messengers* Rs. 4,500/ month*12 months*6315 blocks	68.2
1.1.6. Clerk	1 Clerk*Rs. 4,500/month*12 months*6315 blocks	34.1
1.2. At the District Level		
1.2.1. Chief Protection Officer	1 PO* Rs. 30,000/ month* 12 months*641 districts	23.07
1.2.2. Data Entry Operator	1 Data Entry Operator* Rs. 6,000/ month* 12 months*641 districts	4.6
2. Office Expenses of the PO at the Block Level		
2.1. Setting up of the Office of PO	Rs. 4,00,000*6315 blocks	252.6
2.2. Maintenance of the Office	Rs. 50,000*6315 blocks	31.57
2.3. Telephone Expenses (Mobile + Landline expenses)	Rs. 4,000/ month*12 months*6315 blocks	30.31
2.4. Vehicle hiring	Rs. 50,000/ year*6315 blocks	31.57
2.5. Contingency	Rs. 20,000*12 months*6315 blocks	151.56
3. Office Expenses of the Chief PO at the District Level		
3.1. Setting up of the Office of Chief PO	Rs. 4,00,000*641 districts	25.64
3.2. Maintenance of the Office	Rs. 1,00,000*641 districts	6.41
3.3. Telephone Expenses (Mobile + Landline expenses)	Rs. 5,000/ month*12 months*641	3.84
3.4. Vehicle hiring	Rs. 10,000*12*641 districts	7.69
3.5. Contingency	Rs. 20,000*12 months*641 districts	15.38
3. Assistance to Shelter Homes		
Yearly assistance to shelter homes where the domestic violence victims will be referred.	Rs. 2,00,000*10 shelter homes*641 districts	128.2
4. Training & Capacity Building		
Periodic training of all stakeholders including POs, Health care providers, police personnel, service providers etc.	Rs. 25,00,000*641 districts	160.2
5. Awareness Generation		
5.1. Advertisement and Publicity	Rs. 2,00,000*6315 blocks	126.3
5.2. Setting up and running of a web portal	Rs. 10,00,000*641 districts	64.1
6. Monitoring & Supervision of PWDVA		
Annual review of implementation of PWDVA (Including field based studies)	Rs. 5,00,0000	0.5
TOTAL		1522

संचालनालय महिला एवं बाल विकास,

प्लॉट नं. 28 नवीन भवन, अरेरा हिल्स, भोपाल (म.प्र.) 462011

फोन : 2550923, 2550909 फैक्स 2550912 ई-मेल commwed@mp.nic.in

क्रमांक/मबावि/उ.कि./2011/177
प्रति,

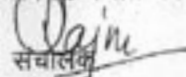
भोपाल दिनांक 7 .01.2011

पुलिस अधीक्षक,
जिला समस्त (मध्यप्रदेश)

विषय:-हेल्प लाईन हेतु टोल फ्री नम्बर 1091 स्थापित किये जाने बावत।

घरेलू हिंसा कानून के प्रभावी क्रियान्वयन के लिये मंथन 2009 में गठित समूहों द्वारा यह निर्णय लिया गया कि परिवार परामर्श केन्द्र द्वारा ही हेल्प लाईन का संचालन किया जाये एवं बजट व्यवस्था महिला एवं बाल विकास विभाग द्वारा की जाये के, परिपेक्ष्य में हेल्प लाईन संचालन हेतु टोल फ्री नम्बर 1091 प्रदेश के सभी जिलों में स्थापित किया जाना है। स्थापित करने संबंधी लगने वाली राशि भारत संचार निगम लिमिटेड मध्यप्रदेश, भोपाल को भुगतान कर दी गई है। इसके देयकों का भुगतान संचालनालय महिला एवं बाल विकास विभाग द्वारा किया जायेगा।

अतः टोल फ्री नम्बर 1091 स्थापित करवाकर संचालनालय को अर्पित कराने का कष्ट करें।

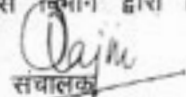

संचालक

महिला एवं बाल विकास, म.प्र.

भोपाल दिनांक 7 .01.2011

पू०क्र./मबावि/उ.कि./2011/178
प्रतिलिपि:-

1. निज सचिव, मानव राज्यमंत्री (स्वतंत्र प्रभार), म०प्र०शासन, महिला एवं बाल विकास विभाग की ओर सूचनार्थ प्रेषित।
2. पुलिस महानिरीक्षक (अजाक) पुलिस मुख्यालय भोपाल की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु।
3. कलेक्टर जिला समस्त मध्यप्रदेश की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु।
4. संभागीय संयुक्त संचालक, महिला एवं बाल विकास समस्त संभाग मध्यप्रदेश की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु।
5. जिला कार्यक्रम अधिकारी/जिला महिला एवं बाल विकास अधिकारी, महिला एवं बाल विकास जिला समस्त, मध्यप्रदेश की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु।
6. श्री आर. के. नारंग, डीविजनल इंजीनियर (वाणिज्य) महाप्रबंधक दूर संचार कार्यालय, टी.टी.नगर, भोपाल मध्यप्रदेश को निर्देशित किया जाता है, कि मध्यप्रदेश के सभी जिलों में टोल फ्री नम्बर 1091 जिले के पुलिस अधीक्षक से सम्पर्क कर स्थापित करें तथा संचालनालय को अवगत करायें। उक्त टोल फ्री नम्बर के संचालन संबंधी देयकों का भुगतान संचालनालय, महिला एवं बाल विकास विभाग द्वारा किया जायेगा।


संचालक

महिला एवं बाल विकास, म.प्र.

ANNEXURE 3

Chapter 3

Table 1: In depth interviews with stakeholders – Haryana

District Total no.=20 Districts chosen for study=6	Rationale	No. of stakeholders interviewed
Rohtak	PPO in this district has been working very pro-actively and has been actively attending the trainings under the PWDVA organised by the government departments.	PO: 1 SP: Nil Police: 2 Lawyer: 1
Jhajjar	- Do -	PO: 1 SP: Nil Police: 2 Lawyer: Nil
Sonepat	Follows a standard model of Special Cell where the PPO is housed in the office of the Superintendent of Police	PO: 1 SP: 1 Police: 2 Lawyer: Nil
Panipat	Without any Service Providers	PO: 1 SP: Nil Police: 2 Lawyer: Nil
Faridabad	Proactive nature of the Judicial Magistrate First Class (JMFC) who has ensured better coordination between the court, the PPO and lawyers. In Faridabad, all the cases of filed under the PWDVA is committed to this particular court.	PO: 1 SP: 1 Police: 2 Lawyer: 1
Gurgaon	Cosmopolitan and urban	PO: 1 SP: 1 Police: 2 Lawyer: 1

There is only one PPO per district in Haryana and hence the PPOs in the above mentioned six districts were interviewed for the purposes of this study. One service provider was interviewed from each Gurgaon, Faridabad and Sonapat. It is important to note that in Gurgaon there is only one Service Provider which is actually a Shelter Home and Sonapat also functions with only one Service Provider. Two Police Officers from the rank of Inspector and Sub Inspector were interviewed from the Women Cell of each of the six districts. In order to understand the functioning of the law in Courts, three lawyers were interviewed, one each from Gurgaon, Rohtak and Faridabad. There does not seem to be much coordination between the lawyer and the PPO except for filling of a DIR that too when it is directed by the court.

Table 2: In depth interviews with stakeholders: Andhra Pradesh

District Total no.=23 Districts chosen for study=4	Rationale	No. of stakeholders interviewed
Hyderabad	Urban, cosmopolitan and capital state	PO: 1 SP: 3 Police: 3 Lawyer: 3
Rangareddy	Close to the capital city so much so that it circumferences the city and forms the rural / semi- urban part of Hyderabad. The more developed part of the district is called Cyberabad.	PO: 1 SP: 2 Police: 3 Lawyer: 2
Krishna	Maximum number of cases (1925) for the period of 2010- 2011 under the PWDVA in Andhra Pradesh was filed	PO: 1 SP: Nil Police: 2 Lawyer: 3
Srikakulam	The lowest number of cases i.e. only 82 was filed in this district during the time period of 2010-11. Also, this is a rural and remote district in the border of AP and Orissa which is primarily inhabited by the tribal population.	PO: 1 SP: 3 Police: 3 Lawyer: 2

The interviews in Hyderabad and Rangareddy were carried out by LCWRI while for the interviews in Krishna and Srikakulam, LCWRI collaborated with their partner, Divya Disha. One Protection Officer from each district was interviewed. In Hyderabad, only three Service Providers were interviewed since there as several of them who do not deal with or have stopped dealing with issues relating to women.

An interview with a Service Provider also had to be cancelled since the location of the office was more than a hundred miles from the city itself. The three registered SPs in Srikakulam were interviewed while two out of the three registered SPs in Rangareddy could be interviewed.

In Krishna there were no registered SP and hence no information on SPs could be gathered from this district. Two Police Officers up to the rank of Superintendent of Police and Sub-Inspector were interviewed at the Women Protection Cell, CID, Hyderabad.

Out of the total three Women Police Stations at Hyderabad, police officer from only one station was interviewed. There is only one Woman Police Station in Rangareddy from where a Police Officer of the rank of Inspector of Police was interviewed. One Station House Officer at Raidurgam Police Station was interviewed, however, the Inspector of Police at Rangareddy district could not be interviewed in spite of a scheduled interview as he was busy elsewhere on that particular day. There is only

One Woman Police Station in Srikakulam district from where one police officer of the rank of Sub-Inspector was interviewed. The remaining two interviews were conducted with the Police Officers up to the rank of Inspector of Police and Deputy Superintendent of Police at the Local Police Stations. There is one Woman Police Station in Krishna from where a police officer of the rank of Sub-Inspector was interviewed. The remaining interview was conducted with the police officer of the rank of Circle-Inspector at the Local Police Station. In Hyderabad and Krishna, three lawyers were interviewed from each district whereas in each Rangareddy and Srikakulam two lawyers were interviewed.

Table 3: In depth interviews with stakeholders: Rajasthan

District Total no.=33 Districts chosen for study=2	Rationale	No. of stakeholders interviewed
Jaipur	Urban and capital city	PO: 6 SP: 1 Police: 5 Lawyer: 2
Jodhpur	Has adjacent rural areas	PO: 6 SP: 2 Police: 4 Lawyer: 3

In Rajasthan, the Child Development Programme Officers have been given the additional responsibility of POs under the PWDVA. For the purposes of this study six POs were interviewed from each district. In both Jaipur and Jodhpur two POs were especially selected for the interview since they are in charge of rural area. There are only two SPs in each district. However, the interview with one of them in Jaipur could not be scheduled since due to lack of response on their part. For the purpose of this study police officers in two Mahila Thanas, City and one Mahila Thana, Rural in Jaipur, and one Mahila Thana City and one Mahila Thana Rural in Jodhpur. Interviews at both the city and rural thanas were conducted to understand the functioning of the PWDVA better. The LCWRI conducted interviews with two lawyers in Jaipur and three in Jodhpur.

Table 4: In depth interviews with stakeholders: Delhi

District Total no.=9 Districts chosen for study=9	Rationale	No. of stakeholders interviewed
<ul style="list-style-type: none"> ● Central ● North ● South ● East ● North East ● South West ● New Delhi ● North West ● West 	The capital city with urban and semi urban areas. Also one of the intervention states for LCWRI.	PO: 13 SP: 9 Lawyer: 27

In Delhi, of a total of 17 POs, 13 were interviewed. The remaining POs were contacted later but were not available for the interviews. One SP from each district was interviewed in Delhi while seven lawyers were interviewed to understand their experience of dealing with the PWDVA.

Table 5: In depth interviews with stakeholders: Maharashtra

District Total no.=35 Districts chosen for study=3	Rationale	No. of stakeholders interviewed
Mumbai	<ul style="list-style-type: none"> Urban and capital city Where the Special Cells first started and where the cells continue to work only as Service Providers accounted for 9% of total crimes committed against women (NCRB 2008) Also one of the intervention states for LCWRI. 	PO: 6 SP: 6 (including 3 Special Cells) Lawyer: 3
Pune	<ul style="list-style-type: none"> Urban city. The model of one PO and one SP is functioning within the same Special Cell accounted for 5% of total crimes committed against women (NCRB 2008) 	PO: 7 (including one Special Cell PO) SP: 4 (including one Special Cell) Lawyer: 5
Solapur	<ul style="list-style-type: none"> Rural district Absence of Special Cell accounted for less than 3% of total crimes committed against women (NCRB 2008) 	PO: 7 SP: 2 Lawyer: 2

Maharashtra being a relatively large and diverse state and taking in to account our constraints, three districts were chosen i.e. Mumbai, Pune and Solapur. Besides reasons of approachability these districts were chosen keeping in mind the presence of the Special Cell. Ten Lawyers were also interviewed to understand their experience of dealing with the PWDVA.

ANNEXURE 4

Chapter 4

Table 1: Sample states for order analysis

S. No	States	Districts Covered	Number of Orders Received	Vernacular Orders	Number of Orders Tabulated
1.	Andhra Pradesh	23	1197	18	994
2.	Assam	16	416	78	259
3.	Bihar	16	80	54	60
4.	Delhi	10	418	0	394
5.	Himachal Pradesh	10	885	0	448
6.	Jharkhand	7	77	37	77
7.	Karnataka	25	1142	209	756
8.	Kerala	14	2045	750	827
9.	Madhya Pradesh	29	730	730	438
10.	Maharashtra	32	4087	2138	1543
11.	Manipur	4	82	0	78
12.	Orissa	27	681	0	511
13.	Rajasthan	33	685	685	410
14.	Sikkim	3	44	0	44
15.	Tamil Nadu	30	557	293	443
16.	Uttarakhand	15	275	259	275

Table 2: Procedures followed by courts

States	Role of PO	Role of SP	Role of Police
Andhra Pradesh	61		15
Assam	16		3
Bihar	7		6
Delhi	36		6
Himachal Pradesh	7		1
Jharkhand	4		2
Karnataka	23	3	3
Kerala	11	15	25
Madhya Pradesh	17	3	11
Maharashtra	224	8	109
Manipur	0	0	0
Orissa	6	1	1
Rajasthan	1		2
Sikkim	9	3	2
Tamil Nadu	51	4	11
Uttarakhand	6		2
Total	479	37	199

Table 3: Cases of compromise

States	Number of compromise cases	Total Number of Orders
Andhra Pradesh	249	994
Assam	38	259
Bihar	5	60
Delhi	17	394
Himachal Pradesh	155	448
Jharkhand	27	77
Karnataka	65	756
Kerala	354	827
Madhya Pradesh	105	438
Maharashtra	56	1543
Manipur	41	78
Orissa	38	511
Rajasthan	82	410
Sikkim	29	44
Tamil Nadu	75	443
Uttarakhand	65	275
Total	1401	7557



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