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ADDRESSING DOMESTIC VIOLENCE THROUGH THE LAW

A GUIDE TO – THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

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EDITED BY Vrinda Grover

Multiple Action Research Group

Supported by Oxfam India
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A GUIDE TO – THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005
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Acknowledgements

This Guide to the Protection of Women from Domestic Violence Act, 2005 has been conceptualized and edited by Vrinda Grover, Executive Director MARG.

A very sincere thanks to Saumya Uma for researching and writing this Guide.

A special mention must be made of NALSAR interns Varun Vaish, Mrinal Meena and Ishita Bhardwaj for their enthusiastic assistance in research and editing.

MARG is grateful to its project partner Koshish in Bihar and particularly to Roopesh, Neelu and Advocate Shruti Singh for generously sharing information relating to Bihar.

A very warm thank you to the entire MARG team including Seema Misra, Varsha Chandra, Silky Grewal, Muqetullah Khan, Sudha Bharati, Noor Alam, Vipin Kumar, Manoj Kumar Thakur, Virender and Rajesh Sharma, who in many different ways contributed to the publication of this Guide.

We acknowledge that this Guide has drawn upon the existing literature and experience of survivors and lawyers with the PWDVA over the last 3 years. In particular the annual Monitoring and Evaluation reports prepared by Lawyers Collective Women's Right Initiative provide useful insights.

We express our deep appreciation for the support received from OXFAM Novib and OXFAM India that enabled the publication of this Guide under the project “Legal Empowerment of Women”.

Our deepest gratitude to Mr. Brijesh Sharma for the Hindi translation of this Guide at very short notice.

We are also indebted to our longstanding associate MATRIX printers, particularly Mr. Rajiv Sawhney and Mr. Suresh, for always meeting our deadlines.

MARG
The testimonies and experiences of women also reveal that women are subject to a range of abuses in different intimate relationships within the private sphere. Learning from these experiences the PWDVA was enacted to provide civil law remedies to protect women from all forms of domestic violence in all domestic relationships within the home. To make the PWDVA efficacious, this law incorporates penal provisions in the event of violation of protection orders issued by the Court.

The PWDVA is particularly relevant to our society where violence against women often enjoys socio–cultural sanction. Research and statistics establish that the home is not a safe place for women. Thus the PWDVA extends its protection to all women against violators, with whom they are related by marriage, consanguinity, adoption, joint family members, or a relationship in the nature of marriage.

The PWDVA understands the vulnerabilities of women's lives and seeks to address them to enable women to gain protection against violence in domestic relationships. The significance of the PWDVA lies in its explicit articulation of certain rights of women. It declares that women in all and any domestic relationship have the right to reside in a home free from all forms of violence -
physical, verbal, emotional, sexual and economic abuse. The PWDVA crucially grants women the right to reside in the 'shared household'. This right assumes significance in a society where few women own property and the threat of dispossession confronts any woman who dares to challenge domestic violence. The PWDVA provides to the aggrieved woman the right to secure redress including orders of protection, residence, custody of children, monetary relief and compensation. To ensure that women suffering from violence in intimate relationships are able to access justice, this law provides for an enabling apparatus through the appointment of Protection Officers (POs), service providers, shelter homes and speedy protection orders among others.

For the PWDVA to accomplish its objective of protecting women from domestic violence it is essential for the State to comply with its obligations under the law. The effective implementation of the PWDVA, to a great extent, depends on the appointment of full-time, qualified, trained Protection Officers equipped with adequate infrastructure and funds to facilitate their work. Protection Officers play a key role within the scheme of the PWDVA in ensuring that women can secure protection orders against violence, dispossession and destitution. Service providers, including medical facilities, who are oriented to assisting women facing domestic violence, need to be registered. Government is also required to build and designate shelter homes for women in distress.

As work took the MARG team to different parts of the country we found that women were keen to know and learn about the PWDVA. We also noticed that outside the metropolitan cities, activists, lawyers and others engaged with the legal system were not well-informed about the provisions of the PWDVA. Quite clearly there is a need to organise training workshops and orientation programmes on the PWDVA.

This Guide, we hope will to some extent, help in bridging that gap and spread awareness about the PWDVA. It has been written using a simple question answer format to make the PWDVA accessible and comprehensible for a range of stakeholders. It locates the PWDVA in the constitutional vision and as an integral part of India's commitment to international human rights. The provisions defining concepts, rights and remedies - both substantive and procedural - have been explained. Judgments of different High Courts and the Supreme Court have been included to help in understanding how the law is being interpreted.

Vrinda Grover
Executive Director
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<td>All India Reporter</td>
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<tr>
<td>All.</td>
<td>Allahabad</td>
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<td>ALT</td>
<td>Allahabad Law Times</td>
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<tr>
<td>AP</td>
<td>Aggrieved Person</td>
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<td>AP</td>
<td>Andhra Pradesh</td>
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<td>Bom CR</td>
<td>Bombay Cases Reporter</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of All forms of Discrimination Against Women, 1979</td>
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<td>CPC</td>
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<td>Cr LJ</td>
<td>Criminal Law Journal</td>
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<tr>
<td>Cr PC</td>
<td>Code of Criminal Procedure, 1973</td>
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<tr>
<td>DIR</td>
<td>Domestic Incident Report</td>
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<tr>
<td>DMC</td>
<td>Divorce &amp; Matrimonial Cases</td>
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<tr>
<td>FIR</td>
<td>First Information Report</td>
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<tr>
<td>HAMA</td>
<td>Hindu Adoption &amp; Maintenance Act, 1956</td>
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<tr>
<td>IA</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights, 1966</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights, 1966</td>
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<td>JT</td>
<td>Judgment Today</td>
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<td>KLJ</td>
<td>Kerala Law Journal</td>
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<td>MANU</td>
<td>Manupatra</td>
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<td>Mh LJ</td>
<td>Maharashtra Law Journal</td>
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<td>MLJ</td>
<td>Madras Law Journal</td>
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<td>MP</td>
<td>Madhya Pradesh</td>
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<td>MP</td>
<td>Miscellaneous Petition</td>
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<td>NGO</td>
<td>Non-governmental organization</td>
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<td>Privy Council</td>
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<td>Public Interest Litigation</td>
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<td>PO</td>
<td>Protection Officer</td>
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<tr>
<td>PWDVA</td>
<td>Prevention of Women from Domestic Violence Act, 2005</td>
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<td>S.</td>
<td>Section</td>
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<td>SC</td>
<td>Supreme Court</td>
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<td>Service Provider</td>
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Domestic violence is a form of gender-based violence, intended at subordinating women. The global dimensions of domestic violence are of great concern, both in terms of their scope and extent. Domestic violence is perhaps the most universal, yet one of the most invisible forms of violence against women. No country or society can claim to be free of domestic violence, but the patterns and trends may vary across regions and countries.

The United Nations Declaration on the Elimination of Violence Against Women, 1993, defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

1 How is domestic violence different from other forms of violence prevalent in society?

Domestic violence is a form of gender-based violence: violence that targets individuals on the basis of their gender. It is different

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from other forms of violence that exist in society, such as violence by state agents and the community, and violence targeted at groups (such as communal violence). Although individuals from disadvantaged groups are likely targets to most forms of violence, domestic violence is distinct because it is caused by persons in an intimate relationship with the victim/survivor, which often includes the husband.

2. Does domestic violence really occur in India?

Yes. Domestic violence exists worldwide, but is difficult to measure. Although there are many reports indicating the extent of domestic violence, the actual figures may be much higher. This is because many instances of domestic violence do not get reported, as many women feel a sense of shame. They fear that they will not be believed and the violence will escalate if they report the violence and seek intervention. Between 15% and 71% of the women around the world have suffered some form of domestic violence by an intimate male partner. India is no exception. Around 2/3 of all married women in India are victims of domestic violence. 16% of married women have experienced emotional violence by their husband. However, married women are not the only victims of domestic violence. Unmarried, widowed, deserted, separated and divorced women are also subjected to domestic violence, generally by a parent or sibling.

3. What is the nature of domestic violence in India?

Based on experiences shared by survivors of domestic violence, studies have compiled the nature of domestic violence. Physical violence against women in India includes slaps, beating, pushing, kicking, throwing injurious objects, beating with cane, burning with rod, assault with weapons, sexual abuse and coercion.

Domestic violence also includes placing women in fear of imminent serious bodily harm by threat of force. This includes threats of violence or any other conduct that would cause substantial emotional distress. Mental/emotional violence includes repeated insults in the presence of their children and relatives, blaming the victim for everything that went wrong in the family, compelling the victim to feel guilty without reason, threats of divorce, undignified treatment, strict monitoring of the woman’s movements, prohibition from meeting parents, friends and relatives, absence of freedom to express views on family matters, neglect of health needs, suspicion that the woman has extra-marital relations, verbal insults in filthy language, severe criticism of family background and lack of intelligence, threats of suicide by husband and verbal threats to use physical force.

Major forms of economic abuse includes preventing a woman from taking a job, forcing her to leave the existing job, collecting the full amount of her salary under force, pressurising her to bring money from her parents’ family repeatedly and prohibiting her from making purchases of her choice.

4. How can there be violence at home, when home is the safest place for women?

“The most dangerous situation for a woman is not an unknown man in the street, or even the enemy in wartime, but a husband or lover in the isolation of their own home.” Findings of a study conducted across 10 countries indicate that women are more
at risk of experiencing violence in intimate relationships than anywhere else. However it is particularly difficult to respond to domestic violence because many women believe that such violence is "normal" and "inevitable." Surveys conducted in India also indicate that the home is not the safest place for women. Other findings include:

- One in three ever-married women report having been slapped by their husband;
- Between 12 and 15% report having their arms twisted, being pushed, shaken, kicked, dragged, or beaten up, or having something thrown at them;
- 10% report that their husbands have physically forced them to have sex;
- One in seven ever-married women have suffered physical injuries as a result of spousal violence;
- For most women who have ever experienced spousal violence, the violence first occurred within the first two years of their marriage.

5. Isn't domestic violence a fiction of imagination of women who are getting more modernized, educated and intolerant?

No. Domestic violence arises because of historically unequal power relations between men and women, and is closely linked to the inferior status of women in society. The child sex ratio has dropped from 945 females per 1000 males in 1991 to 927 females per 1000 males in 2001. An estimated 50 million girls are ‘missing’ from the Indian population because of termination of female fetuses and neglect of girl children leading to their deaths. Women’s participation in the workforce is only 13.9% in urban areas and 29.9% in rural areas. Women’s wages, on average, are only 75% of men’s wages and constitute only 25% of the family income. Adult literacy rates are 69% for men and only 46.4% for women. Women occupy only about 9% seats in Parliament, less than 4% seats as judges of High Courts and the Supreme Court, and less than 3% are administrators and managers. The inferior status of women, as indicated by these statistics, makes women vulnerable to violence, particularly domestic violence.

Various forms of violence against women, including sexual violence, dowry harassment and deaths, desertion and denial of maintenance indicate that the tolerance level of women is irrelevant. Moreover, ‘modern’ and educated women are not the only targets of domestic violence. Statistics indicate that victims/survivors of domestic violence come from all social and educational backgrounds.

6. Are all the victims of domestic violence in India women? Are men not equally vulnerable to domestic violence?

Since a patriarchal society is the direct cause of domestic violence, most victims of domestic violence are women and not men. Men who perpetrate domestic violence do so, not because they cannot control their impulses, but because they believe it is their right to inflict domestic violence in order to suppress and subordinate women. Rather than arriving at a simplistic conclusion that men are “by nature” violent, studies have concluded that there is a complex linkage between masculinity and domestic violence,

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7 Derived from findings of National Family Health Survey 2005-6
8 The Indian Census report 1991 & 2001
10 Source: http://hdr.undp.org/statistics/data/city/city_f_IND.html
12 Source: http://hdr.undp.org/statistics/data/city/city_f_IND.html
13 Source: http://hdr.undp.org/statistics/data/city/city_f_IND.html
and that violence is used as an expression of power and control.\textsuperscript{14} In India, every 9 minutes, a woman is treated with cruelty by her husband and his relatives.\textsuperscript{15}

7. Aren’t the victims of domestic violence mostly poor, illiterate women from rural areas?

No. Victims of domestic violence come from all social, economic, educational, cultural and religious backgrounds. 27.5\% women from the lowest wealth status, 20.5\% from the middle wealth status and 6.6\% from the highest wealth status were subjected to domestic violence.\textsuperscript{16} While 25.6\% victims were women with no education, 6\% of the educated women also experienced domestic violence.\textsuperscript{17} Further, while domestic violence was prevalent in rural areas, urban areas are not free of domestic violence either.

8. A woman must be enjoying the violence by her husband / other relatives. Why else would she choose to continue living with the perpetrator despite the violence?

No woman ‘enjoys’ domestic violence. However, a woman often finds it very difficult to escape from a situation of domestic violence because of a number of reasons. She fears rejection from parents, brothers and sisters, and the society at large; she may not have shelter in her parents’ home; she may not have economic independence and may fear becoming dependent on her parents; a lack of literacy, educational qualifications, work experience, skills in finding a job and a general lack of familiarity in dealing with the outside world may deter her from moving out of the violent home; emotional attachment to the husband and his family members could also make the woman tolerate the violence, in the hope that the violence would stop and the situation would improve. Protecting the ‘reputation’ of parental family, and pressure from parental family are often factors that compel a woman to stay in a violent situation. A woman may also mistakenly believe that it is better for the children if she continues to reside in the violent home. Women have also been conditioned since childhood to view marriage as the ultimate goal of life and to accept violence within it as one’s own fate.

9. Don’t some women deserve domestic violence because of their behaviour?

No woman ‘deserves’ domestic violence. Many excuses are given for domestic violence, such as, that the husband was drunk, the woman had / was suspected of having an extra-marital affair, the woman was lazy, she did not do the housework, she was not obedient to the husband etc. Sometimes women are subjected to domestic violence for petty reasons such as not adding enough salt to the cooked food! No valid reasons exist for domestic violence; only flimsy excuses exist that both blame the woman for domestic violence, and shift the responsibility away from the perpetrator.

10. Even if domestic violence is a huge problem in India, is it not a private matter confined to the home? Why are we talking about it?

If women constitute nearly half the population, and a majority of them experience domestic violence in some form or the other, which adversely affects their physical and mental well-being, how does it remain a private matter? Domestic violence is a critical national issue that affects us all. By recognizing domestic violence in criminal and civil law, the Indian state has made it clear that

\textsuperscript{14} International Centre for Research on Women, Men, Masculinity and Domestic Violence in India: Summary Report of Four Studies, 2002.
\textsuperscript{15} The National Crime Report Bureau's report on Crimes Against Women in 2007
\textsuperscript{16} International Institute for Population Sciences (IIPS) and Macro International (2007), National Family Health Survey (NFHS-3), 2005-06: India, Mumbai: IIPS.
\textsuperscript{17} International Institute for Population Sciences (IIPS) and Macro International (2007), National Family Health Survey (NFHS-3), 2005-06: India, Mumbai: IIPS.
domestic violence is not a private matter to be dealt with, within the family, but a criminal offence, warranting state intervention and even sanctions. Yet, police, prosecutors, judges, medical professionals and other service providers often do not address domestic violence with the seriousness it deserves, because they continue to believe that it is best addressed within the privacy of the home. Silence is the perpetrator’s best friend. We have to break the silence around domestic violence in order to end the violence. A strong public response against domestic violence can prevent such violence from occurring in the first place.
I got flowers today. It wasn't my birthday or any other special day. We had our first argument last night and he said a lot of cruel things that really hurt me. I know that he is sorry and didn't mean to say the things he said – because he sent me flowers today.

I got flowers today. It wasn't our anniversary or any other special day. Last night he threw me into a wall and then started to choke me. It seemed like a nightmare but you wake up from nightmares to find that they aren't real. I woke up this morning sore and bruised all over. I know he must be sorry - because he sent me flowers today.

I got flowers today. And it wasn't Valentine's Day or any other special day. Last night he beat me and threatened to kill me. Makeup and long sleeves didn't hide the cuts and bruises this time. I couldn't go to work because I didn't want anyone to know. But I know he is sorry - because he sent me flowers today.

I got flowers today and it wasn't Mother's Day or any other special day. Last night he beat me again and it was much worse than all the other times. If I leave him what will I do? How will I take care of the kids? What about money? I'm afraid of him and too scared to leave him! But he must be sorry - because he sent me flowers today.

I got flowers today. Today was a very special day. It was the day of my funeral. Last night he finally killed me. I was beaten to death. If only I would have gathered enough courage and strength to leave him. So I got flowers today - for the very last time.

Author Unknown
The consequences of domestic violence are based on research conducted by international and national agencies. A majority of such studies include interviews with survivors of domestic violence. Such testimonies form the basis of documented findings on consequences of domestic violence on women. Given below are extracts from some testimonies of survivors:

One day he returned home very late. I asked him “You are so late ... where did you go?” He answered, “I went to the red light zone. Do you have any problems with that?” I started shouting at him and he instantly landed a blow on my right eye. I screamed and he grabbed my hair and dragged me from one room to another while constantly kicking and punching me. He did not calm down at that ... He undid his belt and then hit me as much and as long as he wanted. Only those who have been hit with a belt know what it is like.

– University-educated woman married to a doctor in Bangladesh

Emotional abuse is worse. You can become insane when you are constantly humiliated and told that you are worthless, that you are nothing.

– Woman interviewed in Serbia and Montenegro

He hit me in the belly and made me miscarry two babies – identical or fraternal twins, I don’t know. I went to the Loayza hospital with heavy bleeding and they cleaned me up.

– Woman interviewed in urban Peru

1. What are the consequences of domestic violence on the victim?

One of the most significant consequences of domestic violence on the victim is the denial / violation of her fundamental and human rights. Domestic violence leads to serious and long-term health consequences for women. In addition, the personal and social lives of the women are also affected, as indicated by findings, that survivors of domestic violence restrict their social contacts and are ashamed to mix with friends and relatives. Family life is also adversely affected by domestic violence, due to strained relations, lack of mutual trust, strain in conjugal relations and the negative impact on children.

2. Are the consequences of domestic violence on women imagined, or is it based on survivors’ testimonies and research?

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5 World Health Organization, Multi-country Study on Women’s Health and Domestic Violence Against Women, Summary Report, 2005 at p. 27.
3. What are the fundamental rights that women are entitled to?

- In the Indian Constitution, the chapter on Fundamental Rights is a charter of rights that essentially protects an individual's life and liberty from arbitrary acts of the government, state organs and agencies. Fundamental rights are rights that are so essential to life itself, that without these rights, it would not be possible for an individual to lead a life of dignity. It sets out the basic rights of the people, including women, which cannot be violated. Fundamental Rights include the following:

  - Right to equality and non-discrimination;  
  - Fundamental freedoms;  
  - Life and personal liberty;

6 Article 14 reads as follows: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 15(1) states: The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 16(2) states: No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

7 Article 19(1) states: All citizens shall have the right—
  (a) to freedom of speech and expression;
  (b) to assemble peaceably and without arms;
  (c) to form associations or unions;
  (d) to move freely throughout the territory of India;
  (e) to reside and settle in any part of the territory of India;
  (f) to practice any profession, or to carry on any occupation, trade or business.

8 Article 20 states: (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. (2) No person shall be prosecuted and punished for the same offence more than once. (3) No person accused of any offence shall be compelled to be a witness against himself.

Article 21 reads: No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 22 states: (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

9 Article 23(1) states: Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

10 Article 25(1) reads as follows: Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. See also Articles 26-28 which deal with various rights related to freedom of religion.

11 Article 29 states: (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 30(1) states: All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

12 Article 32(1) reads as follows: The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

13 Said by Alexis De Tocqueville, a French political thinker and historian in the 1800s.

4. Does domestic violence violate the right to equality?

Yes. Equality is the foundation on which all other rights are built. Since domestic violence primarily targets women, it violates the concept of equality and non-discrimination on the grounds of sex. Violence that is directed against a woman because
she is a woman leads to discrimination against women. The Supreme Court's judgment in Vishaka's case emphasizes the fact that violence against women amounts to discrimination, which violates a woman's basic human rights.

5. If the victim survives the act(s) of domestic violence, would such acts still amount to a violation of her right to life?

Domestic violence affects the woman's right to life, even if she survives the violence. The Supreme Court has clarified that the right to life means something more than 'mere animal existence' and includes the right to live with human dignity and decency.

In situations of domestic violence, the woman's right to live with dignity is under threat. Domestic violence often involves acts that undermine the victim's / survivor's dignity, by compelling her to do degrading acts against her will or by mental harassment that degrades her and effectively lowers her self-esteem. The right to live with dignity would include right against being subjected to humiliating sexual acts, verbal insults and other forms of physical assault.

In the words of the Bombay High Court: "the right to gender equality is intrinsic to the right to life under Article 21 of the Indian Constitution. The right to life comprehends the right to live with dignity. An affront to or invasion of gender is destructive of the right of every woman to live with dignity."

The right to life also includes the right to be free of violence – a right that is denied to victims / survivors of domestic violence. The Supreme Court has stated that any act that damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would attract the provision of the fundamental right to life. Since a victim of domestic violence is subjected to physical abuse and lives in a state of perpetual fear of violence and fear for her life, she is unable to live a life free of violence or fear of violence.

A woman's right to livelihood and the fundamental freedom to practice an occupation or profession has been recognized by the courts. In the context of domestic violence, the victim's work is often affected as she is either unable to report to work or her performance at work is adversely affected if she sustains physical injuries or psychological distress including depression. In extreme situations, it can result in her termination / resignation from work, resulting in her loss of livelihood.

Courts have further interpreted the right to life to include the right to shelter. In contexts where women are dispossessed from their matrimonial / parental home due to domestic violence, their right to shelter is violated.

6. What impact does domestic violence have on the woman's right to health?

The fundamental right to life has been interpreted to include the right to health. The judiciary has stated: "It is now a settled law that right to health is integral to right to life."

Domestic violence has critical consequences for the woman's health, some of which are non-fatal while others are fatal.

14 This has been clarified by General Recommendation 19 of the UN Committee on Elimination of Discrimination Against Women 1992.
15 Vishaka & Others vs. State of Rajasthan AIR 1997 SC 3011
17 Arati Durgaram Gavandi vs. Managing Director, Tata Metaliks Limited and others 2008 III CLR 767
18 Francis Coralie Mullin vs. Administrator, Union Territory Delhi (1981) 2 SCR 516
19 Madhu Kishwar vs. State of Bihar (1996) 5 SCC 125; Bar dancers’ case - Indian Hotels and Restaurants Association & Others vs. The State of Maharashtra & Others, judgment of Bombay High Court dated 12 April 2006
21 State of Punjab and Others vs. Mohinder Singh AIR 1997 SC 1225
Domestic violence affects physical health, through injuries such as bruises, abrasions, cuts, bites, fractures, injuries to ears and eyes and internal injuries to organs. It could result in dizziness, palpitation, fatigue and loss of consciousness. Where sexual violence is involved, it can result in unwanted pregnancies, pelvic pain, sexually-transmitted diseases including HIV / AIDS; violence during pregnancies can lead to miscarriage and other gynecological complications. Domestic violence can also result in chronic headache, asthma and permanent disabilities.

The consequences of domestic violence on mental health are often ignored, as they are not as obvious as the physical consequences. These include depression, fear, low self-esteem, anxiety, loss of sleep, loss of appetite, loss of self-confidence, memory loss, problems in sexual performance, eating disorders and disorders related to trauma (post-traumatic stress disorders). In extreme situations, domestic violence can even result in the death of the woman – either by murder or suicide.22 Studies point out that the physical and mental effects of domestic violence on a woman’s health last long after the actual violence has ended.23

7. Are there any other fundamental rights that are violated through domestic violence?

Freedom of speech and expression are some of the other rights that are violated through domestic violence. Where domestic violence results in detention within the home, it amounts to wrongful confinement and curtails the woman’s freedom of movement.

CHAPTER 3

INDIA’S OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS TREATIES

1. How is the Indian state responsible for domestic violence caused by individuals in the private sphere?

Though domestic violence is caused by individuals in the private sphere, international human rights law makes the state accountable for the same, and places on states the responsibility to eliminate domestic violence through numerous measures. These include creating legal and policy frameworks for addressing domestic violence (including formulating and implementing laws), ensuring a responsive criminal justice system, providing for social and support services to victims / survivors of domestic violence, and formulating and implementing policies for empowerment of women.

Further, such policies should specifically address prevention, protection, investigation, prosecution, punishment and reparations1 to victims / survivors of domestic violence. State responsibility does not end with merely formulating laws and policies; it has to ensure that these are properly implemented. This is a standard of ‘due diligence’ that all states, including India, have an obligation to fulfil. The extent to which the state fulfils due diligence can be assessed through the existence of laws, policies and programmes to address domestic violence, and their effective implementation.

2. Which human rights treaties spell out India’s obligations?

The International Covenant on Civil and Political Rights (ICCPR) has the following provisions that are relevant in the context of domestic violence:

- equal rights of men and women to the enjoyment of all civil and political rights set forth in it;2
- inherent right to life, and right against arbitrary deprivation of life;3
- equality before the law and equal protection of the law;4
- prohibition of discrimination on grounds including sex;5
- the right not to be subjected to torture or cruel, inhuman and degrading treatment or punishment;6 and
- the right to liberty and security of person.7
- the right to hold opinions without interference;8
- equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.9

The relevant provisions in the International Covenant on Economic, Social and Cultural Rights (ICESCR) are:

1 In international law, ‘reparations’ includes compensation, rehabilitation and restitution.

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2 Article 3 of the ICCPR
3 Article 6 of the ICCPR
4 Article 26 of the ICCPR
5 Article 26 of the ICCPR
6 Article 7 of the ICCPR
7 Article 9(1) of the ICCPR
8 Article 19(1) of the ICCPR
9 Article 23(4) of the ICCPR
• equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in the Treaty;\textsuperscript{10}
• right to work, including the right to opportunity to gain one’s living by work that is freely chosen or accepted;\textsuperscript{11}
• widest possible protection and assistance to the family and special protection to mothers for a reasonable period before and after childbirth;\textsuperscript{12}
• right to adequate standard of living;\textsuperscript{13}
• right to be free of hunger;\textsuperscript{14}
• right of everyone to the highest attainable standard of physical and mental health;\textsuperscript{15} and
• right to take part in cultural life.\textsuperscript{16}

India is a party to both ICCPR and ICESCR and is therefore bound to respect and implement the standards set by the same.

3. Is India a party to any international treaties that specifically focus on women’s rights?

India is a party to the UN Convention on Elimination of Discrimination Against Women (CEDAW), often referred to as the Women’s Bill of Rights. CEDAW imposes

• an obligation on states to eliminate discrimination against women;\textsuperscript{17}
• elimination of prejudices and practices, based on the

stereotyped roles of men and women;\textsuperscript{18}
• elimination of discrimination against women in marriage and family relations;\textsuperscript{19}

By becoming a party to CEDAW, as a part of its commitment to eliminate all forms of discrimination against women, the Indian government has not only recognized the need to address domestic violence through legal and other measures, but is also duty-bound to do so.

Obligations of state parties that are spelt out in the CEDAW include:

• take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to eliminate prejudices and customary practices based on the idea of superiority / inferiority of the sexes or stereotyped roles for men and women;\textsuperscript{20}
• to ensure right to work, on the basis of equality, and the right to same employment opportunities;\textsuperscript{21}
• to provide special protection to women during pregnancy;\textsuperscript{22}
• to eliminate discrimination in health care and to ensure equal access to health care services;\textsuperscript{23}
• equality with men before the law;\textsuperscript{24} and
• to eliminate discrimination against women in all matters relating to marriage and family relations on a basis of equality of men and women, including same rights and

\textsuperscript{10} Article 3 of the ICESCR
\textsuperscript{11} Article 6(1) of the ICESCR
\textsuperscript{12} Article 10(1) and (2) of the ICESCR
\textsuperscript{13} Article 11(1) of the ICESCR
\textsuperscript{14} Article 11(2) of the ICESCR
\textsuperscript{15} Article 12(1) of the ICESCR
\textsuperscript{16} Article 15(1)(a) of the ICESCR
\textsuperscript{17} Article 2 of the CEDAW
\textsuperscript{18} Article 5 of the CEDAW
\textsuperscript{19} Article 16 of the CEDAW
\textsuperscript{20} Article 5(a) of the CEDAW
\textsuperscript{21} Article 11(1)(a) and (b) of the CEDAW
\textsuperscript{22} Article 11 (2)(a) of the CEDAW
\textsuperscript{23} Article 12(1) of the CEDAW
\textsuperscript{24} Article 15(1) of the CEDAW
responsible for private acts if they fail to act with due diligence to prevent violations or to investigate and punish acts of violence, and for providing compensation.28

In 1993, the United Nations General Assembly adopted the Declaration on the Elimination of Violence against Women. This is a path-breaking document, as it is the first international instrument to deal exclusively with violence against women. Its important provisions are as follows:

- it defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”;29
- Violence against women includes “physical, sexual and psychological violence occurring in the family, including battering…dowry-related violence, marital rape…non-spousal violence…”30
- States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination;31

Under the domestic violence law and to provide them with necessary facilities for their proper functioning.

Although the CEDAW does not contain any provisions directly on violence against women, the definition of discrimination against women has been interpreted to include gender-based violence.27 Further the CEDAW Committee has clarified that state obligation is not restricted to discrimination in action by or on behalf of governments; states may be responsible for private acts if they fail to act with due diligence to prevent violations or to investigate and punish acts of violence, and for providing compensation.28

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- States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination;31

- to respect: this implies recognition of the issue of domestic violence by enacting laws and formulating policies. These set standards and norms of acceptable and unacceptable behaviour. A law on domestic violence enacted by the Indian state sends out a clear message that domestic violence will not be tolerated and that it is both a crime and a civil wrong. However, enacting a law alone is not enough. It should be supported by condemnation of domestic violence from important people in power when a violation takes place.
- to fulfill: to actually realize the standards set through laws and policies and ensuring that women are not subjected to domestic violence. This would mean that the government is obliged to create an environment where women can enjoy secure and peaceful existence within their homes. In its obligation to fulfill, the state has a duty to provide counseling centres, make shelter homes available, raise awareness among key players such as the police, medical professional and members of judicial services and take efforts to change the power relations and attitudes that are some of the root causes for domestic violence.
- to protect: to set up institutional frameworks and mechanisms for implementing the standards set through law and policy, and to ensure that such mechanisms function in an efficient manner. In the case of domestic violence, the obligation to protect requires the government to appoint, register and allocate funds for different agencies set up

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27 General Recommendation No. 19, issued by the CEDAW Committee in 1992
28 General Recommendation No. 19, issued by the CEDAW Committee in 1992
29 Article 1 of the Declaration on the Elimination of Violence Against Women
30 Article 2(a) of the Declaration on the Elimination of Violence Against Women
31 Article 4 of the Declaration on the Elimination of Violence Against Women

25 Article 16(1)(c) of the CEDAW
26 For a detailed discussion of state obligation, see Partners for Law in Development (2004), CEDAW: Restoring Rights to Women, Partners for Law in Development & UNIFEM, New Delhi, pp. 32-35
• States should exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.32

This document is a Declaration and hence its provisions are not binding on the states, however its provisions have inspired formulation of laws as well as judgments addressing violence against women.

“The message of international instruments:- Convention on the Elimination of All Forms of Discrimination Against Women, 1979 ("CEDAW") and the Beijing Declaration, which directs all State parties to take appropriate measures to prevent discrimination of all forms against women is quite clear. India is a signatory to CEDAW having accepted and ratified in June, 1993. The interpretation that we have placed … gives effect to the principles contained in these instruments. The domestic Courts are under an obligation to give due regard to International Conventions and Norms for construing domestic laws when there is no inconsistency between them.” (para 14)

– Gita Hariharan and another vs. Reserve Bank of India & Another 1999 (1) CTC 481, judgment of the Supreme Court of India

32 Article 4(c) of the Declaration on the Elimination of Violence Against Women

1. When was the PWDVA enacted?

The PWDVA was passed unanimously in both Houses of the Parliament in 2005. The Rules under the Act were passed and notified in 2006. The law was brought into force on October 26, 2006.

2. What was the need for a separate law on domestic violence, when matrimonial and criminal laws to address the issue exist?

In the 1980s the women’s movements in India foregrounded the issue of violence against women with a special emphasis on dowry related violence suffered by married women. Consequently criminal law was amended, to create offences criminalizing conduct of cruelty to a married woman both in terms of domestic violence, and dowry-related harassment / deaths. Matrimonial laws provide for cruelty as a ground for divorce. Lawyers working on behalf of women have been able to successfully obtain
injunction orders preventing a woman from being dispossessed from her matrimonial home, or from violence being inflicted upon her.\(^1\) Despite these success stories, the laws existing prior to PWDVA were inadequate to counter domestic violence, for the following reasons:\(^2\)

- Most of these provisions could only be used by women in legally valid marriages;
- Under the provisions of criminal law, while the perpetrator of domestic violence could be prosecuted and punished, women's need for shelter, maintenance, custody of children and compensation remained unaddressed;
- Criminal law did not allow space for any negotiation of rights;
- The use of matrimonial law involved prolonged legal proceedings;
- There was no explicit law enabling courts to issue orders and injunctions restraining domestic violence or to give monetary relief when the aggrieved women approached the court complaining of domestic violence;
- Most remedial measures on domestic violence were considered 'ancillary reliefs' in matrimonial proceedings, and domestic violence was not treated independently as a situation warranting immediate legal intervention;
- Women had to approach different courts for different remedies (family courts / district courts / criminal courts), leading to multiple litigations in multiple courts, causing considerable hardship to women; and
- There was no explicit recognition, in law, of women's right to residence in their matrimonial homes.

The Statement of Objects and Reasons of the PWDVA states that because criminal law does not deal with the issue of domestic violence in a holistic manner, a separate legislation needed to be enacted “to provide for more effective protection of rights of women, guaranteed under the constitution, who are victims of violence of any kind occurring within the family”. The recognition of domestic violence as an issue warranting a separate legislation has broadened the understanding of what amounts to domestic violence, who can seek remedies under the law and what types of protection can be sought.

3. What are the main features of this law?

The main features of this law are as follows:

- The law clearly states its basic objective - preventing domestic violence.
- The right of women to be free from domestic violence has been recognized.
- Domestic violence has been explicitly recognized as a violation of women's human rights.
- It gives a definition of domestic violence that is broad and covers various aspects of domestic violence - physical, mental, emotional, economic and sexual - based on women's experience of domestic violence.\(^3\)
- It recognizes, in clear terms, a woman's right to reside in the matrimonial home ('shared household') and protects her from being dispossessed and becoming a destitute.\(^4\)

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\(^1\) For more details, see Flavia Agnes, 'Making Laws Work for Women: The Potential of Existing Laws Against Domestic Violence', Manushi, No. 156 (September – October 2006), pp 25-31.


\(^3\) S. 3 of the PWDVA

\(^4\) S. 17 & S.19 of the PWDVA
Main Features of the Domestic Violence Law

- It aims at quick response of the law, through immediate orders, to prevent further acts of violence.  

- The law provides a ‘single window clearance system’ / ‘one stop remedies’ for women – multiple needs of the woman can be addressed through a single litigation in one court, thereby drastically reducing the time and money spent by aggrieved women on legal intervention.

- The law recognizes that legal remedies alone would be inadequate to help the victim of domestic violence live her life with dignity. Hence, multiple support structures have been created, to holistically address women’s need for shelter, counseling and medical support.

- The law complements existing matrimonial and criminal laws on domestic violence, so that women have a wider option in legal provisions that can be applied. They would exercise this option by assessing as to which law would most effectively address their specific situation and need.

4. What is domestic violence, according to the PWDVA?

Domestic violence has been defined in a broad way, based on the experiences of ordinary women and the acts that affect their physical and well-being. Under the PWDVA, the following acts amount to domestic violence:  

- Mental / physical harm, injury or endangerment: Causing mental or physical harm, injury or danger to the physical / mental health, safety, life or well-being of the aggrieved person. It includes physical, sexual, verbal, emotional and economic abuse;

- Dowry-related harassment: Harassing, harming, injuring or causing danger to the aggrieved person in order to coerce her or any other person to meet an unlawful demand of dowry / property / valuable security;

- Threat: Act that has the effect of threatening the aggrieved person or person related to her by conduct mentioned; and

- Other injuries or harm: Act that otherwise injures or causes physical / mental harm to the aggrieved person.

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5 S. 18 of the PWDVA

6 The definition of domestic violence is stated in S. 3 of the PWDVA
The extent of domestic violence hence extends from physical hurt and sexual violence to causing emotional trauma and economic blackmail. It is significant that under Indian criminal law, marital rape is not a crime unless the wife is under 15 years of age; however, by including sexual abuse as a form of domestic violence, protection is provided to a wife against sexual abuse under this law. Moreover, the law does not consider only habitual assault to be domestic violence. Even a single act may amount to domestic violence if it falls within any of the categories listed in the law.

“A reading of the above said definition shows that the allegations made by the respondent against the petitioner attracts the above said explanation and squarely fall within the definition of domestic violence namely, economic abuse, since the respondent has been driven out of the said household,” (Para 8) – Sarvadev Kumar v. Thenmozhi MANU/TN/9928/2007, judgment of the High Court of Chennai

The law also elaborates on physical, sexual, verbal, emotional and economic abuse, and provides examples of each type of violence, as summarized below. The examples are illustrative and not exhaustive in nature.

### PHYSICAL ABUSE
- Any conduct of such a nature as to cause:
  - Bodily pain
  - Harm
  - Danger to life, limb or health
  - Impair the health / development of the aggrieved person

### SEXUAL ABUSE
- Includes any conduct of a sexual nature that:
  - Abuses
  - Humiliates
  - Degrades
  - Otherwise violates the dignity of woman

### VERBAL AND EMOTIONAL ABUSE
- Includes:
  - Insults, ridicule, humiliation, name-calling & insults / ridicule about not having a child / a male child;
  - Repeated threats to cause physical pain to any person in whom the aggrieved is interested

### ECONOMIC ABUSE
- Includes:
  - Depriving the woman of all / any economic / financial resources;
  - Disposal of household articles including the woman’s stridhan;
  - Prohibiting / restricting continued access to resources or facilities

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7 See exception stated in S. 375 of the Indian Penal Code, 1860
5. Does this law introduce / define any concepts that have not been defined by existing laws?

This law elaborates on some concepts that have not been previously defined by existing laws. These include:

- **Domestic relationship** - means a relationship between two persons who live or have lived together in a shared household. Such persons may be related by a) consanguinity / blood; b) marriage; c) through a relationship in the nature of marriage, d) adoption or e) members of a joint family. Consanguinity means being related to another person through a common ancestor. Under the PWDVA, the domestic relationship is the basis for a woman to take action. The concept of domestic relationship has broadened the scope of who may seek remedies under this law. Previously only a woman who was able to prove her relationship with the other party by blood or marriage (such as wives and mothers) were entitled to remedies related to domestic violence, such as right to residence and maintenance.

"As per the expression ‘have at any point lived together’, immediate residence of the two parties is not required. Prior acts of violence will be taken into account for filing an application under the Act."

– Azimuddin & Others vs. State of Uttar Pradesh & Another, judgment of Allahabad High Court on 12 February 2008

- **Shared household** includes those places where the aggrieved person and the other party to the case (respondent) live / have lived together in a domestic relationship. It is not essential for either of the parties to own the house. It could be
even be premises on tenancy. It will be considered a shared household even if the premises does not belong to either party to the case, but belongs to the joint family of which the respondent is a member. The concept of shared household is directly linked to a woman’s right to reside in the same, and a protection of her right against being dispossessed from the household.

- **Relationship in the nature of marriage** – this is a concept which, on one hand, allows women whose marriages may be void or invalid in the eyes of law for various reasons to claim remedies under this law. This includes second wives of those marriages that are considered illegal because of the subsistence of the first marriage. On the other hand, it extends protection from domestic violence to women who are in ‘common law marriages’ or in ‘live-in relationships’. This is in keeping with existing social realities, where all persons do not necessarily conform to the traditional institution of marriage, as well as earlier judgments of courts, which state that long periods of cohabitation between a man and a woman raise a presumption of marriage.

> “There is no reason why equal treatment should not be accorded to a wife as well as a woman who has been living with a man as his common-law wife or even as his mistress. Like treatment to both, does not, in any manner, derogate from the sanctity of marriage.”


> “The Act applies even when there is consensual sex between a man and a woman, without promise of marriage…They can be said to be in a ‘Domestic Relationship’ as the Act does not contemplate that the Man and the Woman should live or have lived together for a particular period or for a few days.”


> “A man must not be allowed to take the advantage of his own wrongs and defeat the rights of a woman in good faith, not knowing the existence of the first marriage…The second wife must be afforded protection from violence within the home.”

> – *Narinder Pal Kaur Chawla vs. Shri Najeet Singh Chawla* AIR 2008 Delhi 7, while referring to the PWDVA’s protection to women “in relationships in the nature of marriage”, and concluding that the legislature had never intended for a woman to not be treated as a wife for the purposes of the Hindu Adoption and Maintenance Act.

6. Who can make use of this law?

The law uses the term ‘aggrieved person’ to indicate the complainant who can initiate proceedings under it. It defines an aggrieved person as “any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.”

The term ‘aggrieved person’ is being used in this and the following chapters and has the same meaning as that defined by the PWDVA. The definition indicates that the law is not gender-neutral and

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11 This applies to marriages covered by the Hindu Marriage Act 1956, Special Marriage Act 1954, Parsi Marriage and Divorce Act 1939 and The Indian Christian Marriage Act 1872.

12 See for example *Mohammed Amin vs. Vakil Ahmed* AIR 1952 SC 358; *Gokal Chand vs. Parveen Kumari* AIR 1952 SC 231 and *S.P.S. Balasubramaniam vs. V. Sarutayyan* (1994) 1 SCC 460;

13 S. 2(a) of the PWDVA
perceives women to be the victims of domestic violence. This is in accordance with a majority of studies in India and abroad, which show that women are disproportionately affected by domestic violence due to their unequal status in society.

The PWDVA does not differentiate between married and unmarried women in the protection against domestic violence. Since a domestic relationship is defined broadly as explained above, the law protects and provides remedies to the wife, ex-wife, widow, and woman in a relationship in the nature of marriage. In addition, several categories of women facing violence in domestic relationships that were not marital in nature are also covered by this law, such as the mother, daughter, sister, joint family members and children (male and female).

In addition to women, an application under this law may also be made on behalf of a male or female child below 18 years of age, including an adopted, step or foster child.

The Constitutional validity of this law has been challenged in courts of law on the ground that the law is biased, as a wife can file an application alleging domestic violence whereas the husband cannot do so. It was argued in court that the law discriminates in favour of the wife, affecting the right to life and liberty of the husband and his family members. The court dismissed this argument, giving the following explanation:

“…giving certain preferential treatment to the wife and treating them as a special category cannot be termed as violative of either Article 14 or Article 16 of the Constitution of India. Though Article 15 of the Constitution of India prohibits discrimination on grounds of religion, race, caste, sex or place of birth, however, Article 15 (3) states “nothing in this Article shall prevent the State from making any special provision for women and children”. Thus, the Constitution itself provides special provision for women and children. It has been widely resorted to and the Courts have upheld the validity of the special measures in legislation and executive orders favouring women. Thus, when the Constitution itself provides for making special provision for women and children, the contention on the side of the petitioners that there could be no special treatment for women is totally untenable.” (Para 8)


“Domestic violence is a world wide phenomenon and has been discussed in International fora, including the Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995). The United Nations Committee Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) has recommended that States should act to protect women against violence of any kind, especially that occurring within the family. There is a perception, not unfounded or unjustified, that the lot and fate of women in India is an abjectly dismal one, which requires bringing into place, on an urgent basis, protective and ameliorative measures against exploitation of women. The argument that the Act is ultra vires the Constitution of India because it accords protection only to women and not to men is therefore, wholly devoid of any merit. We do not rule out the possibility of a man becoming the victim of domestic violence, but such cases would be few and far between, thus not requiring or justifying the protection of parliament.” (Para 4)

– Aruna Pramod Shah vs. Union of India (Crl.) 425/2008, judgment of High Court of Delhi, on 7 April 2008
7. Who can file a complaint under PWDVA?
While the law is intended to assist the woman victim / survivor of domestic violence, it is not necessary that she alone can file a complaint under it.14 Apart from her, any person who has reason to believe that an act of domestic violence has been, is being, or is likely to be committed, can file a complaint. This includes neighbours, relatives, social workers and other concerned citizens.

8. Can a woman employed to work in the household, who is subjected to violence, make use of this law?
No. A domestic worker would not be considered an “aggrieved person” as she is not considered to share a “domestic relationship” with the respondent. Hence she cannot file a complaint under this law, but has remedies available under the Indian Penal Code, including provisions on hurt, grievous hurt, assault, criminal intimidation, sexual harassment etc.

9. Against whom can a complaint of domestic violence be made?
The PWDVA defines the “respondent” to include “any male adult person who has been or is in a domestic relationship with the aggrieved person”15 A complaint can be filed against all such persons. Thus a wife / woman in a relationship in the nature of marriage can file a complaint against her husband / partner. Additionally, complaints may also be filed against the relative of the husband or the male partner, as explicitly stated in the definition of “respondent” in the law.

One issue on which the courts have issued conflicting judgments is whether or not the female relatives can be made respondents. The High Courts of Madhya Pradesh and Andhra Pradesh are of the opinion that women cannot be made respondents under the PWDVA.16 Other courts including Rajasthan and Kerala High Courts have stated to the contrary.17 Based on an interpretation of the term ‘an aggrieved wife or female living in a relationship in the nature of marriage’, commentaries on the law clarify that an aggrieved daughter-in-law can bring a claim against her victimizing mother-in-law under this law, but not vice versa.18

“From a plain reading of the proviso to S. 2(q) of the Act of 2005, it is apparent that a complaint by a wife or a female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband. The term relative is quite broad and it includes all relations of the husband irrespective of gender or sex.” (Para 5)

The provisions of the PWDVA make it clear that no order can be passed directing a respondent, who is a woman, to be removed from a shared household.19

10. What are the rights of a woman making use of this law?

14 For more details, see S. 12(1) of the PWDVA
15 S. 2(q) of the PWDVA
16 Ajay Kant vs. Alka Sharma 2008 Crl. L. J. 264 of M.P. High Court and Smt. Menakuru Renuka & Others vs. Smt. Menakuru Mona Reddy & Others Crl. P. No. 4106/2008 of the A.P. High Court
19 Proviso to S. 19(1) of the PWDVA states as follows: “Provided that no order under clause (b) shall be passed against any person who is a woman.” S. 19(1) clause (b) empowers the Magistrate to pass a residence order directing the respondent to remove himself from the shared household.
The law states three important rights:

- *The right to be free from violence* – this can be inferred from the Statement of Objects and Reasons of the PWDVA as well as from the definition of domestic violence;

- *The right to reside in the shared household;* 20 and

- *The right to seek remedies.* 21

11. What remedies does this law provide?

PWDV A provides for a range of remedies. Each of these remedies is explained below:

- **Protection orders:** 22 The magistrate can pass orders to stop the offender from
  - aiding or committing violence within and outside the home;
  - communicating with the woman;
  - taking away her assets; and
  - intimidating her family and those assisting her against the violence.

- **Residence orders:** 23 These are orders passed to stop the woman from being dispossessed from the shared household, and to stop / prevent any act that denies her the right of peaceful occupation in the household. These orders detail the living arrangements of the aggrieved person and the respondent, in such a way that the woman is not subjected to further domestic violence.

- **Monetary reliefs and compensation orders:** 24 She is entitled to maintenance, payment for actual financial loss caused by domestic violence – such as loss of earning, medical expenses and damage to property. The maintenance that is awarded has to be adequate, fair and reasonable and consistent with her standard of living. The aggrieved person can also claim damages for injuries, including mental torture and distress.

- **Custody orders:** 25 The court can grant her temporary custody of children.

- **Interim orders:** 26 Since the final order in a case may take a long time, the court can pass an interim order (when the proceedings are pending) to prevent further violence and provide immediate reliefs to the affected woman, including the right of residence.

- **Ex Parte orders:** 27 An *ex parte* order is one that is passed in the absence of the other party to the dispute, and without prior notice to the opposite party. Once a petition is lodged with the court, in the normal course, the court would serve a notice to the other party, so that both sides can be heard before an order is passed. This is in accordance with principles of natural justice. However, the PWDVA makes an exception to this rule under limited circumstances, as it is intended to act swiftly in situations where the aggrieved person reasonably fears danger to her physical or mental well-being. Hence, if the court determines, on the face of the aggrieved person’s application, that the respondent is committing / has committed / likely to commit domestic violence, an *ex parte* order may be passed.

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20 This right is recognized under S. 17 of the PWDVA
21 The remedies are provided for under S. 12 of the PWDVA
22 See S. 18 of the PWDVA
23 See S. 19 of the PWDVA
24 See S. 20 & S. 22 of the PWDVA
25 S. 21 of the PWDVA
26 S. 23 of the PWDVA
27 S. 23(2) & Rule 7 of the PWDVA
12. How does the law protect women’s right to residence in the matrimonial home?

In law, those who either own the premises or in whose names the premises are leased are entitled to reside in the same. In the Indian patriarchal society, most ownership and lease agreements are made in the names of male members of the family. Hence, women who reside in such premises, including wives, mothers, daughters and sisters, face the danger of being dispossessed from the same and forced to destitution. Many women are forced to tolerate domestic violence for fear of being on the streets, especially when they do not have support from their parents or government support for shelter. In situations where such women seek the court’s intervention in a situation of domestic violence, women also fear that the respondent would dispossess them from the premises by way of a reprisal / revenge.

Taking this reality into account, the PWDVA provides for residence orders in order to prevent destitution of women, and to empower women by protecting their right to shelter, so that they can initiate legal proceedings with regard to the domestic violence from a status of equality. The law states that aggrieved persons have a right of residence in the shared household, and protects them against illegal dispossess from the same. Such a right exists, irrespective of whether the ownership / lease / rent agreement is in the name of the respondent or another person who is part of the respondent’s joint family. The law empowers the courts to issue residence orders to stop a woman from being dispossessed from the shared household, and to prevent any act that denies her the right of peaceful occupation in the household. Thus, if she has been dispossessed before she lodges a complaint under this law, the court could restore her right to residence in the household. Her right to residence is in the space where she and the respondent have lived together in a domestic relationship.

S. 17 of PWDVA states as follows:

1. Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

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

“…to be entitled to protection under Section 17, a woman will have to establish two facts, namely (i) that her relationship with the opposite party is a “domestic relationship” and (ii) that the house in respect of which she seeks to enforce the right is a “shared household””. (Para 15)

– Vandana vs. Mrs. Jayanti Krishnamachari & Others (2007) 6 MLJ 205 (Mad)

It needs to be remembered though, that the right to residence is different from property rights that include right to own and dispose of a property. This law provides a right to the woman against being illegally dispossessed. She may be dispossessed through the procedure set out in law. *The right to residence does not entitle the woman with the right of ownership over the premises.*

Most judgments of courts have broadly interpreted the term ‘shared household’ and elaborated on the right of the aggrieved woman to residence in the same. An exception to this trend is a Supreme

28  S. 19(1)(a) of the PWDVA

29  For more details, see address of Chandru J. of the High Court of Chennai, at ‘Staying Alive: National Conference Commemorating 1 Year of the Protection of Women from Domestic Violence Act, 2005’, New Delhi, 26-27 October 2007
Court judgment in *S. R. Batra & Another vs. Taruna Batra*\(^{30}\), where the court severely limited the right to residence by saying that the right exists only in property held by the husband, and not the mother-in-law of the aggrieved woman. This ruling was contrary to the plain meaning of the definition of 'shared household' under S. 2(s).\(^{31}\) In the same year, the High Court of Chennai gave a broad interpretation of the term, and said a wife was entitled, in law, to reside in the shared household even if the parties had not lived together in the shared household for a day after their marriage.\(^{32}\) In another case, though the premises was transferred by the husband to the mother-in-law's name and was owned by her, the court stated that it was the shared household, and protected the right of the aggrieved wife to reside in the same.\(^{33}\) The court was sensitive to the practice of the husband who colluded with his parents and moved out of the premises as a ploy to deprive the aggrieved woman of her right to reside in the same. The courts have also consistently held that the right to residence was a part and parcel of a woman's right to maintenance.\(^{34}\)

“...it is not necessary for a woman to establish her physical act of living in the shared household, either at the time of institution of the proceedings or as a thing of the past. If there is a relationship which has legal sanction, a woman in that relationship gets a right to live in the shared household. Therefore, she would be entitled to protection under Section 17 of the Act, even if she did not live in the shared household at the time of institution of the proceedings or had never lived in the shared household at any point of time in the past. Her right to protection under Section 17 of the Act, co-exists with her right to live in the shared household and it does not depend upon whether she had marked her physical presence in the shared household or not. A marriage, which is valid and subsisting on the relevant date, automatically confers a right upon the wife to live in the shared household as an equal partner in the joint venture of running a family. If she has a right to live in the shared household, on account of a valid and subsisting marriage and she is definitely in a “domestic relationship” within the meaning of Section 2(f) of the Act, her bodily presence or absence from the shared household cannot belittle her relationship as anything other than a domestic relationship.” (Para 20)

– Vandana vs. T. Srikanth & Others, (2007) 6 MLJ 205 (Mad)

“...A Hindu wife is entitled to be maintained by her husband. She is entitled to remain under his roof and protection. She is also entitled to separate residence if by reason of the husband’s conduct or by his refusal to maintain her in his own place of residence or for other just cause she is compelled to live apart from him. Right to residence is a part and parcel of wife's right to maintenance. The right to maintenance cannot be defeated by the husband executing a Will to defeat such a right.” (Para 12)


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\(^{30}\) (2007) 1 DMC 1 (SC)

\(^{31}\) For a detailed critique of the judgment, and the specific facts and circumstances where the judgment becomes applicable, see Indira Jaising (ed.) (2009), *Handbook on Law of Domestic Violence*, LexisNexis: New Delhi, at pp. 32–35

\(^{32}\) Vandana vs. T Srikanth & Others. (2007) 6 MLJ 205 (Mad.)

\(^{33}\) *P Babu Venkatesh Kandayammal and Padmavathi vs. Rani*, decided by the High Court of Chennai in Cr No. 48 and 148 of 2008 decided on 25th March 2008.

13. Does an aggrieved woman occupying of tenanted premises have a right to reside in the same, if the tenancy is in the name of her husband?

A plain reading of S. 17(1), reproduced above, makes it clear that the aggrieved woman has a right to residence even if the tenanted premises is not in her name, provided she shares a domestic relationship with the person in whose name the tenancy agreement is. The Supreme Court has further clarified the issue and stated as follows:

We are also of the opinion that a deserted wife in occupation of the tenanted premises cannot be placed in a position worse than that of a sub-tenant contesting a claim for eviction on the ground of sub-letting. Having been deserted by the tenant-husband, she cannot be deprived of the roof over her head where the tenant has conveniently left her to face the peril of eviction attributable to default or neglect of himself. We are inclined to hold and we do so that a deserted wife continuing in occupation of the premises obtained on lease by her husband, and which was their matrimonial home, occupies a position akin to that of an heir of the tenant-husband if the right to residence of such wife has not come to an end. The tenant having lost interest in protecting his tenancy rights as available to him under the law, the same right would devolve upon and inhere in the wife so long as she continues in occupation of the premises. Her rights and obligations shall not be higher or larger than those of the tenant himself. A suitable amendment in the legislation is called for to that effect. And, so long as that is not done, we, responding to the demands of social and gender justice, need to mould the relief and do complete justice by exercising our jurisdiction under Article 142 of the Constitution. We hasten to add that the purpose of our holding as above is to give the wife's right to residence a meaningful efficacy as dictated by the needs of the times; we do not intend nor do we propose the landlord's right to eviction against his tenant be subordinated to the wife's right to residence enforceable against her husband. Let both the rights coexist so long as they can. (Para 33)


14. Can the court dispossess the respondent from the shared household?

Yes. The PWDVA explicitly states that if the court is satisfied that domestic violence has taken place, it can direct the respondent to “remove himself from the shared household”, and also restrain the respondent or his relatives from entering any portion of the shared household in which the aggrieved person resides. In reality, it is likely that the court would dispossess the respondent from the shared household only in extreme situations of violence.

The provisions of the PWDVA make it clear that no order can be passed directing a respondent, who is a woman, to be removed from a shared household.

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35 S. 19(1)(b) of the PWDVA
36 S. 19(1)(c) of the PWDVA
37 Proviso to S. 19(1) of the PWDVA states as follows: “Provided that no order under clause (b) shall be passed against any person who is a woman.” S. 19(1) clause (b) empowers the Magistrate to pass a residence order directing the respondent to remove himself from the shared household.
15. What happens if the woman does not wish to return to the shared household as she fears for her life, or if she has been evicted from rented shared household because the respondent refused to pay the rent?

In both these situations, it would be impractical / impossible for the aggrieved person to return to the shared household. The law provides for the court to direct the respondent to provide an alternate accommodation to such a person.38 Such alternate accommodation should be of the 'same level' as what she enjoyed in the shared household. Depending on the respondent’s financial capacity, the court may direct payment of rent or purchase of premises for her residence. If the premises are purchased, she would have a right to residence (and not ownership rights) over the premises.

16. Can a divorced woman claim a right to residence in the shared household of her ex-husband?

The Madhya Pradesh High Court has stated that the aggrieved person has a right to reside in the shared household of her ex-husband, or, alternatively, could claim alternative accommodation from him.39 The Supreme Court has clarified that a divorced woman’s right to residence in the shared household of her ex-husband depends on the terms and conditions within the order of divorce. It stated that if she did not expressly give up the right to residence in the divorce proceedings, she would be entitled to return to and reside in the former shared household.40 She could also claim the right to residence in proceedings for post-divorce alimony if she did not give up her right to the same in the terms and conditions within the order of divorce.

“Thus, it is clear that every women in a domestic relationship shall have the right to reside in the shared house except in accordance with the procedure established by law therefore, this argument of applicant has no force that divorcee wife Shahnaz Khan has no right to reside in an ancestral house of husband or such living will amount to ‘Haram’” (Para 13)

“…in the alternative husband Ramzan Khan is directed to secure same level of alternate accommodation for Shahnaz Khan as enjoyed by her in the shared house with the help of Protection Officer…” (Para 15)


17. Can this law help prevent domestic violence?

Yes, it can help prevent domestic violence through the issuance of protection orders.41 Protection order is a method by which the court prohibits the perpetrator from committing any further acts of domestic violence. Such orders can be passed to stop the offender from

- committing any act of domestic violence;
- aiding or abetting the same;
- entering the premises of the woman’s place of employment or, if the aggrieved person is a child, the child’s school or any other place frequented by the person;
- attempting to communicate with the aggrieved person through any means whatsoever;
- taking away her assets including bank lockers, bank accounts and other property;

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38 S. 19(1)(f) of the PWDVA
39 Razzak Khan & Others vs. Shahnaz Khan & Others 2008 (4) MPHT 413: MANU/MP/0292/2008
41 The court’s powers in issuing protection orders are stated in S. 18 of the PWDVA
• causing violence to the dependents, relatives or other persons who assist the aggrieved person in domestic violence; and
• any other act that the magistrate may choose to prohibit.

Protection orders are also often referred to as ‘stop violence’ orders which aim to put an end to acts of violence and prevent further acts of violence. The law states that disobedience of the protection order amounts to a criminal offence, thereby persuading the offender to stop inflicting domestic violence.

18. How long would the protection orders last?

The protection orders would be in operation till the aggrieved person applies for a discharge (removal of the order). The court is duty-bound to study the application and ensure that there is a change in circumstances that warrants the discharge of the protection order, and the aggrieved person has not been subjected to any sort of coercion, before issuing the necessary orders.

19. Can a victim of domestic violence claim any monetary relief under this law?

A victim of domestic violence is entitled to make financial claims under this law. This is to ensure that the women have adequate financial resources and are not rendered vulnerable due to their dependence on the respondent / male partner. At the same time, by way of providing maintenance in addition to that already provided under other laws, the PWDVA tries to ensure that the aggrieved person does not face financial hardships due to meager maintenance orders. Financial claims that can be made under this law include:

• Monetary relief for expenses resulting from domestic violence – such as cost of treatment for injuries, loss of earnings, loss due to destruction / damage / removal of any property;

• Maintenance for the woman and her children – This would be included in or be in addition to maintenance already provided under other laws such as S. 125 Cr.PC and matrimonial laws. The court can order payment of maintenance as a lump sum amount or monthly instalments. As elaborated by the courts in interpreting the pre-PWDVA law of maintenance, the maintenance amount has to take into consideration expenses for food, clothing, a place of residence, education of children and medical expenses. Further, no set formula can be laid for fixing the amount of maintenance as it would be determined by the facts and circumstances in each case.

• Damages and compensation for injuries caused – This is an additional claim that the aggrieved person can make for all injuries suffered, including mental torture and emotional distress caused by the domestic violence. The psychological impact of domestic violence is often prolonged but is rarely visible. The concept of damages and compensation for such injuries, derived from principles of tort law, are intended to help the woman heal her psychological wounds and to restore in her a sense of dignity. Monetary relief and damages / compensation are distinct and separate remedies under this law. Monetary relief referred to in the first bullet point above is to reimburse the actual financial loss (such as loss of earnings and medical expenses) incurred due to domestic violence, while a compensation order would be to...
Main Features of the Domestic Violence Law

compensate for injuries caused over and above the actual monetary loss.

“The words of provisions under Section 20 of the Act are clear, plain and unambiguous. The provisions are independent and are in addition to any other remedy available to the aggrieved under any legal proceeding before the Civil Court, Criminal Court or Family Court. The provisions are not dependent upon Section 125 of the CrPC or any other provisions of the Family Courts Act, 1984 or any other Act related to award of maintenance.”

“The Court is competent to award maintenance to the aggrieved person and child of the aggrieved person in accordance with the provisions of Section 20 of the Act, and the aggrieved person is not required to establish his case in terms of Section 125 of the Code.”


20. What about the custody of a child?

Under the PWDVA, an aggrieved woman may claim temporary custody of her children at the time of applying for protection orders.\(^{50}\) This is to prevent children from being used as pawns to coerce / emotionally blackmail the aggrieved person to continue living in the violent relationship. Visitation rights may be given to the other party upon the discretion of the court, if it is in the best interests of the child. This relief is temporary in nature. Permanent custody of children would have to be determined and settled in separate proceedings in the Family Court or other appropriate court. Custody is distinct and separate from guardianship as custody refers to the child’s physical placement, while guardianship refers to all aspects of access, custody and care of the child and his / her property.

As emphasized by the courts in many cases, best interests of the child would be the major factor determining custody.\(^{51}\) In assessing the best interests of the child, the court would examine issues of stability, security, compassion, guidance and other factors necessary for the proper physical, emotional and psychological development of the child. Material considerations are only secondary in nature; custody would not to be determined solely by examining the financial position of the parties.\(^{52}\) In addition, it is important to remember that remarriage of a woman is not a legitimate reason for denying custody to the mother, if the best interests of the child are otherwise served by granting the mother custody.\(^{53}\)

Under this law, the aggrieved person cannot file an application for temporary custody alone; such an application has to be coupled with a protection order since the main aim of this law is to prevent domestic violence.\(^{54}\)

“Material considerations, though important, are secondary to issues of stability, security and compassion, guidance and any other factors, essential for the full development of the child’s own character, personality and talents.”

– Dhanwanti Joshi v. Madhav Unde 1998 (1) SCC 112

\(^{50}\) S. 21 of PWDVA

\(^{51}\) Chandrakala Menon vs. Vipin Menon (1993) 2 SCC 6; Rony Jacob vs. Jacob A. Chandranakku AIR 973 SC 2090; Syed Saleemuddin vs. Dr. Rubhana & Others AIR 2001 SC 2172.

\(^{52}\) Sau Anasayubai vs. Trymbak Balwant Rakshe (1985) II DMC 60; Dhanwanti Joshi vs. Madhav Unde 1998 (1) SCC 112.

\(^{53}\) Lokhu vs. P. Anil Kumar (2007) 1 ALT 35 (SC).

\(^{54}\) S. 21 of the PWDVA deals with orders for temporary custody “at the time of granting protection orders”.
The Sessions Court thought that it is in the interests of the minors that they remain in custody of their parents every alternate month. Such approach, to say the least, is shocking...The Act of disturbing custody of the minors after every one month will cause mental trauma to the minor children...In a case where there is a dispute between the parents over the custody of minor children, the custody has to be retained with one of the parents with visitation rights and/or right to have temporary custody for few days reserved in favour of the other parent. The arrangement which is made by the impugned order is certainly not in the interests of the minors and by such arrangement, the minors are bound to suffer. Therefore, the order impugned, which is certainly not consistent with the welfare of the minors, will have to be quashed and set aside.

– Mrs. Mary Cedric Pinto vs. Mr. Cedric Francis Pinto & Another, in Criminal Writ Petition No. 343 of 2008, decided by Bombay High Court on 10 September 2009

21. Is PWDVA a civil law or criminal law?

PWDVA is a mixture of civil and criminal law. While it provides for civil remedies such as protection, maintenance, compensation, custody, and residence orders, it uses the criminal procedure. The proceedings would be initiated in the magistrate's court, as an aggrieved person has an easier access to this court. It provides for no punishment for domestic violence. However, disobedience of the court's orders would amount to an offence, and attract a punishment of one year's imprisonment or a fine of up to Rs. 20,000 or both. While a range of civil remedies are provided for under the law, which an aggrieved person may choose according to her best interests, criminal sanctions are intended at providing a greater deterrent effect among the perpetrators. This law is only one of the options that the victim of domestic violence may use; she could use the existing criminal and/or matrimonial laws as well. However, by providing for civil and criminal remedies under one law, the PWDVA reduces the need to approach different courts for different remedies.

22. Does this law replace the existing criminal or matrimonial laws?

This law does not replace existing criminal, family and tort laws. Instead, it works in addition to and complements other laws. PWDVA recognizes the need for urgent reliefs to be granted to provide women with a violence-free residence. Hence, the nature of remedies provided under this law is temporary in nature; the permanent solution still remains within the framework of matrimonial laws under which a woman would have to decide on whether or not to continue in the relationship.

55 S. 31 (1) of the PWDVA
# Domestic Violence Act

## 1. What is Domestic Violence?
- Mental, physical harm, injury, endangerment;
- Includes physical, sexual, verbal and emotional & economic abuse;
- Dowry-related harassment;
- Threat to such conduct;
- Other injuries / harm;

## 2. Who Benefits from This Law?
- Women in Domestic Relationships
- Wife | Ex-wife | Widow
- Woman in relationship in the nature of marriage
- Mother | Sister | Daughter | Joint family members | Children (male & female);

## 3. Who Can the Complaint Be Filed Against?
- Aggrieved party (woman / on behalf of a child);
- Any person who has reason to believe that an act of DV is being / likely to be committed – neighbours, social workers, relatives etc;

## 4. Who Can File Complaint?
- Aggrieved party (woman / on behalf of a child);
- Any person who has reason to believe that an act of DV is being / likely to be committed – neighbours, social workers, relatives etc;

## 5. With Whom Can the Complaint Be Filed?
- Police
- Protection Officer
- Service Provider
- Magistrate

## 6. What Remedies Are Available?
- Residence orders;
- Monetary orders – maintenance, monetary relief, compensation;
- Protection orders;
- Custody (temporary);
- Ex parte orders;
- Interim & final orders;
- Penal – 1 year imprisonment + fine upto Rs. 20,000/- for disobedience of court orders;

## 7. Implementing Mechanisms
- Protection Officers
- Service Providers
- Medical facilities
- Shelter homes
- Police
- Courts;

## 8. Other Salient Features
- Speedy trial;
- Magistrate may direct aggrieved person & respondent to undergo counseling;
- Provision of shelter, medical facilities etc. to be made available to aggrieved woman;

## 9. How Is This Law Different from Previous Laws?
- Includes women in relationships in the nature of marriage;
- Includes women in domestic relationships other than as wives;
- Provides remedy for women’s shelter in the household while accessing the law;
- Law works at preventive and remedial levels;
- All remedies in 1 court;
- Is a combination of civil + criminal remedy;
3. What is a Domestic Incident Report? What should it contain and who prepares it?

A Domestic Incident Report (DIR) is similar to the report for a non-cognizable offence recorded with the police and used in criminal law in terms of its contents. It is a report prepared on the basis of information received about a particular occurrence of domestic violence either from an aggrieved person or anyone else, and is a record of the same. DIR is a public document. It should contain:

- Details of name and address of aggrieved person, perpetrator
- Details about the domestic violence
- List of documents enclosed with the report
- Remedies requested (such as financial relief, protection, residence and custody orders)
- Assistance required (such as shelter, counseling and medical assistance)

Refer to Annexure I of this book for a format of the DIR.

The significance of the DIR lies in the fact that the court is duty-bound to take its content into consideration (as per proviso to Section 12(1) of the PWDVA). Since it is usually prepared and signed by a person who is empowered by the law to do so, when attached with the application seeking remedies from court, it strengthens and complements the allegations made by the AP, and facilitates the court in passing appropriate orders promptly. Hence great care should be taken when preparing the DIR, to ensure that it is accurate and gives the necessary details of domestic violence. It should be accompanied by relevant documents in support of the case (for details of supporting documents, see answer to Question 15 below).
On perusal of the aforementioned proviso appended to the provision, it appears that before passing any order on the application, it is obligatory on a magistrate to take into consideration any report received by him from the Protection Officer or the service provider. Neither is it obligatory for a magistrate to call such report nor is it necessary that before issuance of notice to the petitioners it was obligatory for a magistrate to consider the report. The words 'before passing any order' provide that any final order on the application and not merely issuance of notice to the respondent/the petitioners herein. The words 'any report' also mention that a report, if any, received by a magistrate shall be considered. Thus, at this stage if the report has not been called or has not been considered, it cannot be a ground for quashing the proceeding. (para 3E)


4. When and how does an action in court begin?

An action in court begins when an application is presented to court by or on behalf of the aggrieved person, seeking one or more remedies under the PWDVA. Such an application has to be accompanied by the DIR. Information provided to the PO or other authorities about domestic violence does not, in itself, trigger action in court, unless the aggrieved woman wishes to commence legal proceedings.

S. 12(1) of the PWDVA states that the application can be presented before the court by the AP, PO or any other person on behalf of the AP. The Allahabad High Court has clarified the meaning of the relevant section as follows:

On perusal of the aforementioned proviso appended to the provision, it appears that before passing any order on the application, it is obligatory on a magistrate to take into consideration any report received by him from the Protection Officer or the service provider. Neither is it obligatory for a magistrate to call such report nor is it necessary that before issuance of notice to the petitioners it was obligatory for a magistrate to consider the report. The words 'before passing any order' provide that any final order on the application and not merely issuance of notice to the respondent/the petitioners herein. The words 'any report' also mention that a report, if any, received by a magistrate shall be considered. Thus, at this stage if the report has not been called or has not been considered, it cannot be a ground for quashing the proceeding. (para 3E)

The application submitted to court should include:

- Name and address of the aggrieved person(s);
- Name and address of the respondent(s);
- Details of the domestic violence;
- Details of other related court proceedings and orders passed in those proceedings;
- Remedies sought from court;
- List of witnesses, if any;
- A copy of the DIR if it has been recorded;
- Copies of other documents relied upon by the aggrieved person in support of her case; and
- Other relevant information necessary for the court to assess the merits of the application and to pass appropriate orders.

Form II of the PWDVA contains the prescribed format. This format should be used for the application to the extent possible.

Refer to Annexure 1 of this book for a format of application under S. 12.

The Court has clarified that there is no hard-and-fast rule that the prescribed format for the application given in Form II of the PWDVA should be adhered to when filing an application in court. Even if the application is not filed in Form II, it is good in law and will be valid if all the information required by the prescribed form is contained therein.


5. What happens if the court receives the Domestic Incident Report but not the application seeking remedies?

It is possible that the court receives the DIR but not an application seeking remedies from the court. There is no explicit provision in the PWDVA as to what the court should do in such situations. It is possible that the AP maybe under pressure to not initiate legal proceedings or that she may not be aware of how to initiate the same. Since an incident of domestic violence has grave consequences for the aggrieved person, it is desirable that the court make some inquiry into the same. The court has the following options before it:4

- If the DIR discloses that a grave act of domestic violence has been committed, the court could take note of the case and direct the PO to investigate and file an application on behalf of the AP;

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If the DIR discloses an offence under S. 498A or other offences of the Indian Penal Code, and no FIR has been registered in this regard, the court can take action on its own, frame charges and direct an investigation;

If the DIR indicates relatively minor acts of domestic violence, the court could instruct the PO to enquire from the aggrieved person if she wishes to file an application.

6. Which court should a person approach to begin legal proceedings using this law?

An aggrieved person should approach the Judicial Magistrate of the first class or the Metropolitan Magistrate’s court. The appropriate Magistrate’s court to approach is the one in the area where the aggrieved person resides temporarily or otherwise, or where the respondent resides, or where the domestic violence is alleged to have taken place.

It is not necessary for the aggrieved person to file a fresh application in the Magistrate’s court. If there are pre-existing litigations between the parties under other relevant laws, an aggrieved person has the option of making use of the provisions of PWDV A and seeking remedies in those proceedings pending in other courts (civil / criminal / family court), in accordance with S. 26(1) of the PWDV A. This is irrespective of whether or not those proceedings were initiated before or after the commencement of the PWDV A.

For example, if a divorce petition has been filed by the aggrieved person in the Family Court, she may ask for a protection or a residence order from that court using provisions of the PWDV A. This provision aims at preventing multiple litigations which often cause hardship to APs.

The Bombay High Court has clarified that S. 26 of the PWDV A provides that any relief available under Sections 18-22 can also be sought in any legal proceeding, before any other Court that affects the aggrieved person and the respondent, whether such proceeding was initiated before or after the commencement of this Act. Hence, it concluded that a relief available under S. 19 of the PWDV A for a residence order could also be claimed in other proceedings.


“The Scheme of the Act requires the aggrieved person to file an application under section 26 read with the appropriate provision of relief in a pending proceeding before any other court, rather than filing a separate application under section 12 before the same court….An application under section 12 is to be filed only before the magistrate as prescribed by the Act.”


“However nothing debars the aggrieved person from filing a separate application under section 12 of the Act before a magistrate even if there are pending proceedings involving the parties, instead of availing the power under Section 26.”

7. How would an AP have access to remedies under this law?

Approaching the court for legal remedies is a difficult and traumatic experience for women. In the context of domestic violence, there are additional obstacles to the woman approaching the court, as she would often be pressurized by her family and community against doing so, due to the stigma attached. In order to facilitate women's access to this law, the law itself provides for an implementation mechanism and support structure so that the provisions of the law can be effectively implemented. Under the PWDV A, the authorities responsible for implementation are:

- **Courts**: In accordance with the objectives of ensuring easy access to emergency relief, the PWDV A allows an aggrieved person to directly approach the court with complaints of domestic violence. The appropriate court to approach is the Magistrate's Court. In addition, applications under this law may also be filed in pending proceedings that involve both parties.

- **Protection Officers**: They are a category of persons whose duty is to assist the aggrieved person with the processing and completion of the domestic violence proceedings, and provide the necessary legal and moral support. They also have the responsibility of working in coordination with SPs such as shelter homes and medical professionals. Apart from acting as a link between the aggrieved women and the justice system, POs are vested with the responsibility of assisting the court in the discharge of its functions and in the enforcement of orders. As per S. 30 of the PWDV A, they are deemed to be public servants under this law. S. 8(2) of the PWDV A states that as far as practicable, POs should be women. For further details, see answer to Question 9 below.

- **Service Providers**: This term is used to describe those voluntary / non-profit organizations already registered under Societies Registration Act 1860, Companies Act 1956 or other law, whose objective is to protect the rights and interests of women including by providing legal aid, medical and financial assistance, shelter, counseling, vocational training etc. By making provisions for such organizations to register themselves with the state government, the PWDV A gives recognition and legal protection to such bodies. POs are expected to work closely with SPs and draw from their experience of providing support to women facing domestic violence. SPs are also authorized to receive and record complaints of domestic violence. They are deemed to be public servants under this law. For further details, see answer to Question 10 below.

- **Medical Facilities**: Those facilities notified under the PWDV A by State Governments under S. 2(j) of the PWDV A. Notified medical facilities have a duty to provide medical aid to aggrieved persons, as per S. 6 of the PWDV A. It cannot refuse to provide medical assistance to a woman if she has not lodged a DIR prior to approaching the medical facility. The aggrieved person is entitled to a copy of the medical examination report.

- **Shelter Homes**: Shelter homes have to be registered and notified by the state governments under the PWDV A, under S. 2(t) and Rule 11(3). As in the case of medical facilities, as per S. 6 of the PWDV A, notified shelter homes cannot refuse to provide shelter to an aggrieved person.

- **Counsellors**: The PWDVA recognizes the need for the AP and

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7 S. 2(r) of the PWDVA  
8 S. 10 of the PWDVA  
9 Section 2(j) of the PWDVA. Rule 11(3) establishes the procedure for shelter homes to be registered, and requires the state government to first inspect the shelter home and prepare a report of its facilities.  
10 Section 6 of the PWDVA
the respondent to have counseling, singly or in joint sittings, in order to address the psychological and emotional harm caused by the domestic violence. Joint counseling ought not to be confused with reconciliation, as counseling is intended at coming to terms with the psychological harm caused by the domestic violence, and not to force the aggrieved woman back to the violent home. Rule 13(3) of the PWDVA states that as far as practicable, counselors should be women.\textsuperscript{11}

- **Police:** The police have a role to play in the implementation of the PWDVA. They are duty bound to provide information to the AP about the rights and remedies provided under the PWDVA and facilitate her access to the PO,\textsuperscript{12} initiate criminal proceedings when needed and act on the directions of the court to assist in the enforcement of orders.\textsuperscript{13} For further details, see answer to Question 11 below.

Courts have shown concern for an effective implementation of the PWDVA. For example, the Chief Justice of the Andhra Pradesh High Court issued a circular to all District and Sessions judges directing a speedy disposal of cases under the PWDVA.\textsuperscript{14}

8. Have the Protection Officers been appointed?

POs have been appointed by most states. However, in some instances, this has been with the intervention of courts. For example, the Bombay High Court provided directions to the Maharashtra government for an effective implementation, and notified 11 social workers in each of the 20 branches of Special Cell for Women and Children as POs, and other social workers as SPs under this law.\textsuperscript{15}

Some states have appointed existing government officials who are working in another part-time / full time capacity as POs, as a temporary measure. However, this is not an ideal situation as the responsibilities of POs under the PWDVA are enormous and demanding, and cannot be discharged by persons working in other capacities. Courts have shown their displeasure with such a practice, as in the case of the public interest litigation lodged with the Patna High Court, the details of which are given below.

> “The appointment of Child Development Project Officer having been given the additional charge of Protection Officer as a temporary measure is an eye wash and can hardly be countenanced. By such casual approach to an important legislative measure like this, the State Government cannot be said to have done justice to women population exceeding thirty eight million in the State…”

– Shruti Singh, Advocate vs. Press Council of India & Others, order dated 30 July 2008 by the Patna High Court in CWJC No. 14051 of 2006

In Bihar, Mahila Vikas Nigam is responsible for the appointment of protection officers in various districts of the state. A helpline on ‘Violence Against Women’ has been setup at the initiative of the Samaj Kalyan Department. 16 officers coordinating this helpline in various districts of Bihar have been given the additional responsibility as Protection Officers in the respective districts. This system of appointment does not comply with the provision of PWDVA which provide for the appointment of independent full

\textsuperscript{11} Rule 13(3) of the PWDVA

\textsuperscript{12} Section 5 of the PWDVA

\textsuperscript{13} Section 19(5) and (7) of the PWDVA

\textsuperscript{14} ROC. No. 1246/EL/2009; dtd. 27.08.2009

Domestic Violence Law in Action: Procedural & Evidentiary Standards

9. What are the roles and responsibilities of the Protection Officer?

The post of POs has been created to help the aggrieved woman in immediately ending the domestic violence, and to oversee a coordinated response to her needs. The POs are required to assist the woman in the following ways:

- by preparing a DIR
- in filing the application under the PWDVA
- in accessing SPs
- in implementing court orders.

The PWDVA and its rules assign two sets of responsibilities to the POs: before and after the AP approaches the court. The PO is intended to be the first public official to be contacted in a situation of domestic violence. When approached, the PO's primary objective is to prevent the woman from being subjected to further violence, facilitate her access to SPs and assist with the preparation of the DIR. After the aggrieved woman approaches the court, the PO functions as an officer of the court, and provides services to the court. Section 9 of the PWDVA sets out elaborate provisions on the role and responsibilities of the PO. These include:

- Assisting the Magistrate in his discharge of functions;
- Making a DIR to the Magistrate upon receipt of a complaint of domestic violence;
- Making an application if the aggrieved woman desires, asking for remedies from the court including protection orders;

As opposed to this some commendable practices have emerged in the appointment of POs. In Andhra Pradesh, on the initiative taken by the police, POs, police, legal aid authorities and SPs work in close collaboration to facilitate women’s access to remedies under this law. In Delhi, the Department of Social Welfare has appointed 18 full-time POs with Masters in Social Work and at least three years of relevant experience. In Haryana, lawyers and trained social workers have been appointed as full-time POs, but they also have the additional responsibility of being Child Marriage Restraint Officers, as the state government sees the two issues to be linked. Almost all of them are stationed in the police stations. Since aggrieved women are more likely to approach the local police station for assistance, this approach aims at giving such women a faster access to the POs and a better coordination between the POs and the police.

In states where POs have not been appointed, the aggrieved women have approached the court directly with the help of their lawyers. The absence of POs or inadequacy in the number of POs raises concerns including procedures for serving notice on the respondent, enquiries to be conducted under the Act and enforcement of orders. In the absence of POs, the local police may have to discharge these responsibilities.

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16 Information received from a reply given to an RTI filed by Mahila Jagran.

18 Rule 10 of the PWDVA lists out in detail the services that the PO can render to the court, including conducting home visits.
Enabling the AP to access legal aid;
Maintaining a list of all SPs within the local jurisdiction of the Magistrate’s court;
Preparing a ‘safety plan’ for the aggrieved person which includes measures to prevent further violence to her;19
Making available a shelter home if the AP requires;
Getting the AP to be medically examined, if she has physical injuries, and forward a copy of the report to the concerned police station and Magistrate; and
Making sure that the respondent follows the court order for monetary relief.

In addition, Rule 10 of the PWDVA also lists the type of directions that the court may, in writing, issue to the PO. These include:

- Conduct a home visit of the shared household and make a preliminary enquiry;
- File a report of assets, bank accounts and other documents of the respondent after making an enquiry;
- Restore possession of personal belongings and the shared household to the aggrieved person;
- Assist the aggrieved person in regaining custody of children and securing visitation rights;
- Assist the court in enforcing its orders;
- Confiscate any weapon involved in domestic violence, with the help of the police, if required.

In an emergency situation, when the PO or an SP receives reliable information from the aggrieved person or other person that an act of domestic violence is being committed or is likely to be committed, the PO can seek the help of the local police, and accompanied by the police, visit the place of occurrence and prepare a DIR. Rule 9 of the PWDVA requires the PO to produce the same before the appropriate Magistrate without any delay to facilitate the Magistrate in issuing orders promptly. This provision is applicable for the POs as well as the SPs.

The duty to prepare a safety plan is an important responsibility vested with the PO, under Rule 8(1)(iv). The safety plan is a document prepared for the aggrieved woman that identifies ways in which the AP can protect herself during a violent incident and reduce the risk of serious harm.20 It must be based on the types of abuses faced by her and the remedies she has asked for in court. It is not an alternative, but in addition to the remedies she seeks through the court. The PWDVA provides a format for a safety plan in Form V. The provision on safety plans is an example of how the PWDVA works at the preventive level.

10. How is the court assisted by Service Providers? What directions can the court give Service Providers?

SPs have been given the power to record the DIR and forward the same to the concerned Magistrate. SPs can be counselors and welfare experts. If the AP has approached the court directly, and the court is of the opinion that the woman requires support services, the court can refer her to any of the SPs from the list maintained for this purpose by the POs. In situations where the concerned SP is unable to provide the service required by the woman, SPs can refer the woman to other SPs who can adequately respond to her needs, even if such SPs are not registered under this law. The court can direct the SP to ensure safety of the woman and her children.

11. What is the role of the police?

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19 Rule 8(1)(iv) elaborates on the preparation of a safety plan by the PO.
The role of the police continues to remain vital to the implementation of this law, more so in places where there are no POs or the number of existing POs is inadequate. Ideally, POs and the police ought to be working in coordination, particularly in emergency situations (as intended by Rule 10 of the PWDVA) and in the enforcement of court orders. The police is not directly vested with the responsibility of recording a DIR. However, since the court can adopt its own procedures, it is open to the court to call upon the police to record the same. The police have a duty to inform the aggrieved woman of her rights under the PWDVA when approached with a complaint of domestic violence. In situations where the court order is not followed by the respondent, the police have a duty to register the same as an offence, arresting the respondent and producing him before the Magistrate.

In an order dated 19 November 2008, the Registrar of the Delhi High Court issued detailed directions to the District Judge cum Sessions Judge, Delhi with regard to service of notices under the PWDVA, with an instruction to pass on the same to Metropolitan Magistrates. The relevant directions are reproduced below:

2. Every such notice shall contain a clear direction that in the event of the Protection Officer seeking help of the Process Serving Agency of the Police or the Nazarat of District Court, the concerned Officer in-charge shall depute a process server for effecting of service of notice/notices on the respondent or any other person on behalf of the Protection Officer;

3. Every notice shall be prepared in triplicate one copy of which shall be retained by the Protection Officer and remaining two copies shall be forwarded to the Process Serving Agency of the Police or District Nazarat for service, if the Protection Officer opts for service through them;

Every notice shall contain a clear direction that in case the Protection Officer opts to personally serve the notice on the respondent but seeks protection of the Police, the officer in-charge of the Police Station in whose jurisdiction the service is to be effected shall provide the Protection Officer with adequate security. (emphasis added)

These directions are an illustration of the role of the police in providing assistance to the PO at the time of serving notice.

Since the PWDVA complements other existing laws on domestic violence, including criminal law, the police would continue to discharge their responsibilities under those laws, including in registering First Information Reports and conducting investigation into complaints of domestic violence. The police also continues to play an important role in registering FIRs for cognizable offences such as hurt, grievous hurt, wrongful confinement, assault, rape, dowry death and other offences that may be committed during incidents of domestic violence.

12. What are the stages in proceedings under this law?

For details of stages in proceedings refer to Table 5.1 below.

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21 S. 28(2) of the PWDVA empowers the court to formulate its own procedures in the interests of justice, and explicitly states that it is not bound by the procedure under S. 125 Cr.PC or any other provision.

22 No. 33643/DHC/Gaz/G-X/2008

23 S. 36 of the PWDVA

24 S. 5 of the PWDVA states that the aggrieved person has the right to file a complaint under S. 498A of the Indian Penal Code (which deals with cruelty by husband or relatives of the husband) simultaneously with a complaint under the PWDVA.
2. Application to court
If the AP wishes to initiate legal proceedings, an application is prepared and filed in court.

The DIR is attached to the application. If the AP approaches the Court directly, the Court may direct the PO to record and file a DIR after the application is received. An affidavit seeking immediate interim or ex parte relief may be filed along with the application. For more details, see answer to Question 4 of this chapter. Section 28(1) of the PWDVA states that the procedure prescribed under Section 125 of the Cr.PC is to be applied in dealing with the applications. As per Section 28(2) of PWDVA, the court may also lay down its own procedure in dealing with such applications.

The DIR was not a condition precedent for the court to take cognizance of an application under Section 12 of the PWDVA. 

3. Service of notice
Serving the notice on the respondent through the PO; possible issuance of ex parte interim orders by the concerned court, without the presence of the respondent in court.

Once the application is filed, the court shall issue notice to the respondent to appear in court. The PO is vested with the responsibility of ensuring that notice is served. The notice is to be served within two days from the date of filing. The first date of hearing is to be fixed after two days of the application being filed. The Court may grant an ex parte interim order at this stage provided that the application shows, on the face of it, that domestic violence has either been committed or that there is a likelihood of its commission. Rule 12 of the PWDVR provides a comprehensive procedural code that incorporated principles from the Cr.PC and the CPC.

In a case where the lower court had made every effort at serving the notice to the petitioner and thereafter directed the private service of notice, the private service of notice did not violate provisions of the PWDVA. 

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**TABLE 5.1: STAGES IN PROCEEDINGS UNDER THE PWDVA**

The table below summarizes the various stages in proceedings under the PWDVA. While this is intended to give an overall picture, it is not mandatory that every stage will be passed in a particular case and in the same sequence as given below. Variations are likely, based on facts and circumstances of each case and the exercise of discretion by courts.

<table>
<thead>
<tr>
<th>STAGE</th>
<th>MAIN ASPECT</th>
<th>OTHER DETAILS</th>
<th>EXPLANATIONS THROUGH CASE LAW</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Recording the DIR</td>
<td>An AP approaches the PO / SP and gives information about an incident of domestic violence. This information is recorded as a DIR.</td>
<td>Once the DIR is recorded, the PO must forward copies of the DIR to the magistrate, the local police station and SPs.</td>
<td></td>
</tr>
<tr>
<td>2. Application to court</td>
<td>If the AP wishes to initiate legal proceedings, an application is prepared and filed in court.</td>
<td>The DIR is attached to the application. If the AP approaches the Court directly, the Court may direct the PO to record and file a DIR after the application is received. An affidavit seeking immediate interim or ex parte relief may be filed along with the application. For more details, see answer to Question 4 of this chapter. Section 28(1) of the PWDVA states that the procedure prescribed under Section 125 of the Cr.PC is to be applied in dealing with the applications. As per Section 28(2) of PWDVA, the court may also lay down its own procedure in dealing with such applications.</td>
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<td>Serving the notice on the respondent through the PO; possible issuance of ex parte interim orders by the concerned court, without the presence of the respondent in court.</td>
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<td>In a case where the lower court had made every effort at serving the notice to the petitioner and thereafter directed the private service of notice, the private service of notice did not violate provisions of the PWDVA.</td>
</tr>
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</table>
5. Appeal against Interim orders

Protection, residence, maintenance, custody and other orders passed during the pendency of the proceedings may be appealed against in accordance with S. 29 of the PWDVA.

Either party can appeal from interim orders, but this right is restricted. The appellate court can interfere with the magistrate’s order only if it finds that such discretion has been exercised “arbitrarily, capriciously, perversely or if it is found that the Court has ignored settled principles of law regulating grant or refusal of interim relief.”

6. Recording of Evidence

Recording and examination of oral and documentary evidence by the court

Thereafter, evidence may be taken by the Courts through affidavits filed by the parties. Documentary evidence is also examined. In addition, the court may summon the parties or witnesses for the purpose of examination and cross examination. Burden of proof under the PWDVA is that of ‘balance of probabilities’ except where Protection Orders are violated; violations under S. 31 of the Act, which amount to criminal offences, must be proved beyond reasonable doubt.

Either party can appeal from interim orders, but this right is restricted. The appellate court can interfere with the magistrate’s order only if it finds that such discretion has been exercised “arbitrarily, capriciously, perversely or if it is found that the Court has ignored settled principles of law regulating grant or refusal of interim relief.”

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

$ii$ Amar Kumar Mahadevan vs. Karthikeyan MANU/TN/9632/2007

$iii$ Amar Kumar Mahadevan vs. Karthikeyan MANU/TN/9632/2007

$iv$ Wander Ltd and Another vs. Anton India P Ltd. (1990) Supp 1 SCC 727

$v$ Abhijit Bhikaseth Auti vs. State of Maharashtra & Another 2009 Cri LJ 889

$vi$ The CrPC provides for a "summary procedure" under Chapter XXI, Section 262, 263 and 264 which allows the court to take evidence through affidavits. This procedure is commonly used in claims for maintenance made under Section 126 of the CrPC.
<table>
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</thead>
<tbody>
<tr>
<td>7. Final order</td>
<td>Passing of final order by court, issuance of copies to parties, SP and police</td>
<td>After all the evidence has been recorded, the court grants the final order. As per Rule 10(1)(c) and (d), in addition to the remedies mentioned in the Act, the Court may also grant additional orders. S. 24 of PWDVA entitles the parties to a free copy of all orders passed by the magistrate under this law. It also directs the magistrate to send a copy of the order to the SP and the police officer in charge of the police station in the jurisdiction of which the magistrate has been approached.</td>
<td>S. 24 intends to “usher in a new and different procedure and culture of furnishing copies of the orders passed by the Court.” Burden was on the magistrate to ensure that the copy is furnished to the parties as well as others specified in S. 24. vi</td>
</tr>
<tr>
<td>8. Enforcement of final order</td>
<td>Enforcement</td>
<td>An order granted by the Court under the PWDVA can be enforced in any part of India. viii The procedure laid down in the Cr PC, particularly under Section 125 Cr PC, is to be applied in the enforcement of Court orders. In addition, each of the provisions on remedies also provides powers to the Courts to issue additional orders to effect enforcement. “The Courts may also direct the POx and the police to assist in ensuring the enforcement of orders.”</td>
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</tr>
<tr>
<td>9. Post-order: Appeal</td>
<td>The aggrieved person/ respondent, if not satisfied with the final order, would appeal against the same.</td>
<td>As per S. 29 of the PWDVA, an appeal can be made against the final order of the court by either party. Appeal from the magistrate's court's order should be made to the Sessions Court within 30 days of date on which the order is served on the aggrieved person or the respondent, as the case may be. To be entitled to appeal, such orders could be interim (when the proceedings are pending in court) or final, but they must decide/determine rights and liabilities of parties, and not be purely procedural orders. For further details about right of parties to appeal, and the appropriate forum, see answer to Question 19 below.</td>
<td>When specific remedy by way of appeal has been provided under the Act, prima-facie, a writ petition under Article 227 of the Constitution of India is not maintainable before this court.” vi</td>
</tr>
<tr>
<td>10. Post-order: Breach of order</td>
<td>Non-compliance with protection / residence / other orders passed by the court, by the respondent</td>
<td>The breach of a protection order is a cognizable and non-bailable offence under section 31 of the PWDVA. The warrants procedure prescribed under the Cr PC is to be applied in cases of breach. For further details, see answer to Question 23 below. Rules to the PWDVA state that a report of a breach can be made to the Protection Officer for further action [Rule 15(1)] or by the aggrieved woman directly to the police or magistrate [Rule 15(4)].</td>
<td></td>
</tr>
</tbody>
</table>

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vii K.E. Jose vs. State & Another 2007 (2) ILR 132 – judgment of the Kerala High Court
viii Section 27(2)
ix For instance, Section 19(3) provides that in order to prevent the commission of future acts of violence, the Court may direct the respondent to furnish a bond to maintain peace.
The PWDVA being a beneficial piece of legislation enacted for providing at least minimum relief to an aggrieved person affected by domestic violence, even if there is any minor procedural deviation, such minor procedural deviation being technical in nature, need not be taken serious note off and on that ground, proceedings pending under the Act cannot be quashed.


13. What is the objective of counseling? At what stages can counseling be done?

Section 14 of the PWDVA allows the Magistrate to give an order for counseling, to be undergone either singly or jointly by the parties, at any stage of the proceedings. At the commencement of legal action, the aggrieved woman and the perpetrator are in an unequal situation. Hence no joint counseling maybe possible in that situation, without the risk of further disempowering the AP. Counselling can take place at the pre-litigative and litigative stages of proceedings. At the pre-litigative stage, counseling would aim at restoring the aggrieved woman's self esteem, dignity, provide psychological support to her and facilitate her to decide whether or not to pursue a legal recourse. At the litigative stage, counseling would be aimed at getting the perpetrator to give an undertaking not to inflict further domestic violence. This form of counseling is important in re-establishing “basic trust and a sense of safety” for the woman facing domestic violence.25 The overall objective of counseling as envisaged under this law is to prevent any further acts of violence from being perpetrated. In cases where joint counseling is ordered, the proceedings take on the complexion of a mediation process. However, Rule 14 specifies that settlements are to be attempted only at the behest of the aggrieved person.26

14. Is counseling compulsory under the PWDVA? Would an AP be forced to return to a violent home through the procedure of counseling?

As per Rule 14 of the PWDVA, parties can be referred by the court for counseling to arrive at a court-mediated settlement only if the aggrieved woman desires. The procedure for and during counseling has been stated in Rule 14. It states that counseling should be carried out by qualified members of registered Service Providers. The detailed rules are intended at ensuring that no aggrieved woman is coerced into counseling and subsequently a settlement. The AP cannot be forced to go for mediation before seeking the legal remedies such as protection and residence orders. In situations of grave violence which cause danger to the aggrieved woman's physical and mental health, if the court insists on counseling first, such an approach would undermine the purpose for which the PWDVA has been enacted – to provide prompt relief to women facing domestic violence. It is the responsibility of the concerned advocate(s) to advance arguments on behalf of the woman if the court directs counseling in such circumstances.

In a case before the Kerala High Court, where the parties were involved in eleven litigations against each other before different fora, in view of the worsening relations between the parties, the court appointed a conciliator to enable the parties to settle the disputes between them. Upon arriving at a settlement, the court said:

15. What kind of evidence should an aggrieved person gather to prepare her case in court?

The kind of evidence collected by the AP or by others on her behalf depends on the facts of the case and the remedies sought from court. Please see Table 5.2 at the end of this chapter for a suggested list of oral / documentary evidence that can be compiled and presented in court.

16. How would the court determine ‘relationships in the nature of marriage’?

Relationships in the nature of marriage are those where there is no formal marriage, and yet the parties live together as husband and wife. The Indian Evidence Act, 1872 has given legal recognition to the concept of presumption of marriage under certain circumstances. Courts have consistently reiterated the principle of presumption in favour of marriage. Some determining factors that the court would examine are as follows:

- the existence of a substantial period of cohabitation;
- existence of financial dependency between the parties;
- holding of joint bank accounts, bank lockers and joint investments;
- stating them as husband and wife in public records such as voters’ lists;
- existence of children;

“In the light of the discussions the court and the conciliator had between the parties and thanks to the cooperation extended by the learned counsel appearing on both sides, it is heartening to note that peace could be purchased not only between the parties to the marriage, but also between the families of both parties. True, they have agreed to disagree. But we could convince them that on disagreement also, the parties to the marriage can still be friends. For the only reason that the matrimonial bond is terminated and the marriage is dissolved, the parties to the marriage need not be strangers and enemies; they can still continue to be friends, and they have to continue as good friends in this case for the additional reason that they have a child.

(Para 3)

– T. Vineed vs. Manju S. Nair 2008 (1) KLJ 525

In the Kerala High Court judgment highlighted above, the court was of the opinion that an attempt should first be made at court-mediated settlement before commencing the legal proceedings. As discussed by Lawyers Collective, the intention of the court in this judgment was to prevent further hostilities between the parties, avoiding multiplicity of litigations and arriving at an amicable settlement of all pending issues between the parties. While this is desirable, conciliation may not be the viable and standard practice in all cases under the PWDVA. In cases of domestic violence in grave forms, prioritizing conciliation could have the effect of compromising the safety, security and dignity of the aggrieved woman and forcing her back into the violent home.”


28 By reading Section 50 with Section 114 of the Indian Evidence Act, 1872, the act of marriage can be presumed from the common course of natural events and the conduct of parties, as they are borne out by the facts of particular case.

• existence of the names of the parties as parents in the birth certificates of the children; and
• recognition of the couple as husband and wife by neighbours / society.

“A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy. In this view, the contention of Shri Garg, for the petitioner, that long after the alleged marriage, evidence has not been produced to sustain its ceremonial process by examining the priest or other witnesses, deserves no consideration. If man and woman who live as husband and wife in society are compelled to prove, half a century later, by eye-witness evidence that they were validly married few will succeed.”

– Badri Prasad vs. Deputy Director of Consolidation & Others AIR 1978 SC 1557

In addition to persons in “common law marriages” / “live in” relationships, the term ‘relationships in the nature of marriage’ would also apply to women in other domestic relationships and women whose marriages are void, by an examination of facts and circumstances in the particular case.

17. How would the court determine the existence of domestic violence?

The DIR is a crucial document before the court that would help it determine the existence of domestic violence. Since the DIR is a record of complaint of domestic violence with the court, recorded by the PO or other competent authorities, it provides an independent and objective record of the facts of the case, and facilitates the court to conclude the existence of domestic violence. The PWDVA states that before passing any order on an application for legal remedies, it has to take into consideration any DIR received from the PO or the SP.30

The documents attached to the DIR and / or the application as supporting documents are an important source, based on which the court can determine the existence of domestic violence. For details of such documents, please see Table 5.2 at the end of this chapter. Expert testimony from psychiatrists, psychologists and counselors would be particularly useful in determining emotional abuse.

Further, the court is duty-bound to examine the overall facts and circumstances before passing any order.31 This provision implies that courts should look beyond the obvious, and take into consideration the difficulty of the aggrieved persons in producing evidence of what essentially takes place within the four walls of the home, as well as indications of history of violence. Courts have consistently held that in contrast to physical violence, mental cruelty / violence is often established only by inferences drawn from surrounding facts and circumstances.32

As in all other civil laws, the degree of proof required for the court to issue remedies under the PWDVA is that of ‘balance of probabilities’. However, in situations where the court’s orders have been violated, since such violations amount to criminal offences involving a possible imprisonment, the offences have to be proved beyond reasonable doubt. Balance of probabilities is a considerably lower standard of evidence than ‘beyond

30 Proviso to S. 12(1) of the PWDVA. However, the court is not obliged to do so before issuing notice to the respondent, as per the judgment of the Madhya Pradesh High Court – Gwalior Bench in Ajay Kant & Others vs. Smt Alka Sharma, on 19 June 2007.
31 S. 3 of the PWDVA
reasonable doubt’ and requires the aggrieved person to show that the allegations made by her are ‘more likely than not’ to have happened.

“Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse, caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be the correct approach to take an instance of misbehavior in isolation and then pose the question of whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to the conduct of the other.”


“The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case

has to be decided on its own facts, to decide whether mental cruelty was established or not.”


18. Can an aggrieved woman use this law even if the domestic violence took place before this law came into force?

An aggrieved person can make use of the law even if domestic violence took place earlier, provided the violence continues subsequent to the coming into force of the law. This position was clarified by the High Court of Chennai, which said that although the alleged acts took place before the PWDVA (2005) came into force, since the wife and child continue to remain dispossessed from the shared household, the act of domestic and economic abuse is still continuing and shall, therefore attract liability under the Act.33 If a woman has been dispossessed from the ‘shared household’ prior to the Act’s passage, she can claim relief including a residence order subsequently as at the time of the law coming into force, she continues to be subjected to domestic violence. Similarly, a woman denied maintenance for several years may make a claim for monetary relief under this law, as the economic abuse continues even after the law comes into force.

“Admittedly, the respondent and the child are not living in the house along with the petitioner and thus the respondent’s access to the shared household is restricted and as per the allegations made by the respondent she has been prohibited from accessing the shared household and therefore the domestic violence is continuing even after the coming into force of the Act. Therefore, even though the Act has come

19. If the Magistrate’s Court fails to give the aggrieved person the remedies she asks for, can she approach the High Court or Supreme Court for the same?

Yes. She can approach the High Court or the Supreme Court. However, it has been clarified by the Delhi High Court that the procedure for appeal under the PWDVA must first be exhausted and only then can a person approach the High Court or the Supreme Court under writ and appellate jurisdictions. The court explained that where a right or liability is created by a statute which gives a specific remedy for enforcing it, the remedy provided by that statute only must be used. A person may approach the higher court only after the specific statutory remedy has been exhausted.34

Further, the Constitution, under Articles 32 and 226, provide for filing a writ petition to the Supreme Court and the High Court respectively. A writ petition to the Supreme Court can be filed if a fundamental right has been violated, while that to the High Court can be filed on the same ground “or any other issue.” In writ petitions that deal with issues of fact rather than issues of law, courts have dismissed the petitions as they are of the opinion that the Magistrate’s court is in a better position to deal with the petition.35

“When specific remedy by way of appeal or by way of alteration, modification or revocation of any order, has been provided under the Act, prima-facie, a petition under Article 227 of the Constitution of India, under these circumstances is not maintainable before this court.”


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35 See for example Meena Choudhary vs. Commissioner of Police and Others MANU/DE/1159/2009 of the Delhi High Court.
20. Can either party appeal against an interim order passed under this law while the proceedings are pending in court?

S. 29 of the PWDVA allows appeals to Sessions Courts against any orders passed by the Magistrate. However, courts have said that no appeal should lie from an interim order that is procedural or which has not affected the rights of parties.

The Bombay High Court has clarified that either party can appeal against interim orders. However it set out to limit the powers of the appellate court by preventing the appellate court from interfering with the Magistrate court's exercise of discretion. It said that the Magistrate’s order can be interfered with, only if it found such discretion has been exercised "arbitrarily, capriciously, perversely or if it is found that the Court has ignored settled principles of law regulating grant or refusal of interim relief."36 Similarly the Kerala High Court has stated that purely interlocutory orders which deal only with procedure and which do not affect the rights of parties cannot fall within the ambit of S. 29. The order has to affect or have a material reflection on the rights of parties for the order to be appealable.37

21. Is there any deadline before which the aggrieved person should approach the court for remedies under the PWDVA?

No, there is no period of limitation stated in the PWDVA within which the AP should approach the court. This is because domestic violence is to be viewed like a continuing offence rather than a “one time offence”.38

The Supreme Court has repeatedly held that in the absence of an express provision on period of limitation in the statute concerned, a beneficial legislation has no period of limitation.39 However the general practice is that a claim / complaint made as promptly as possible would inspire the confidence of the court.

22. What if an aggrieved person has no means to initiate litigation under this law?

Aggrieved persons who cannot afford litigation costs and do not have sufficient means to engage a lawyer for a case under the PWDVA have the right to free legal services under the Legal Services Authorities Act, 1987. Free legal services include:

- Payment of court and other process fee;
- Charges for preparing, drafting and filing of any legal proceedings;
- Charges of a legal practitioner or legal advisor;
- Costs of obtaining decrees, judgments, orders or any other documents in a legal proceeding; and
- Costs of paper work, including printing, translation etc.

23. What happens if the respondent does not comply with the court order?

S. 32(i) of the PWDVA states that failure to comply with a court order amounts to a cognizable, non-bailable offence. Hence the police can register the offence, arrest the respondent and produce him before the Magistrate for further directions, including a penalty of up to 1 year imprisonment, Rs. 20,000/- fine or both.40

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36 Abhijit Bhikaseth Auti vs. State of Maharashtra & Another 2009 Cri LJ 889
37 Sulochana vs. Kuttappan 2007 (2) KLT 1
39 Some examples of Supreme Court judgments which have stated this principle are as follows: Bhagirath Kanoria vs. State of Madhya Pradesh (1984) 2 SCC 222; Mithu Devi vs. Siya Chaudhury MANU/BH/1083/1974 (Patna High Court) and Gollu Seetharamalu vs. Golla Rathanamma MANU/AP/0096/1990(AP HC).
40 S. 31 of the PWDVA
## TABLE 5.2: SUGGESTED LIST OF ORAL / DOCUMENTARY EVIDENCE TO BE PRESENTED IN COURT

(this list is not exhaustive)

<table>
<thead>
<tr>
<th>REMEDY SOUGHT</th>
<th>SUGGESTED EVIDENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protection order</td>
<td>1. Medico-legal certificates of injuries</td>
</tr>
<tr>
<td></td>
<td>2. Documents issued by a medical health care profession with regard to mental harm caused to / psychological status of the aggrieved person</td>
</tr>
<tr>
<td></td>
<td>3. Oral testimony of victim &amp; witnesses</td>
</tr>
<tr>
<td></td>
<td>4. Photographs of physical injury of aggrieved person</td>
</tr>
<tr>
<td></td>
<td>5. In situations of economic abuse, documents related to bank accounts, bank lockers where jewellery is kept, list of stridhan, salary statements, property documents, loan documents, income tax returns, credit card statements and other relevant documents</td>
</tr>
<tr>
<td></td>
<td>6. Copy of past complaints made to local police station</td>
</tr>
<tr>
<td></td>
<td>7. Medical documents showing alcoholism / detoxification treatment of the respondent</td>
</tr>
<tr>
<td></td>
<td>8. Medical documents showing drug addiction of the respondent</td>
</tr>
<tr>
<td></td>
<td>9. Letters from the respondent indicating domestic violence, including allegations of adultery, dowry demands etc.</td>
</tr>
<tr>
<td></td>
<td>10. Affidavits of neighbours and other eye witnesses who had witnessed the domestic violence</td>
</tr>
</tbody>
</table>

Rules to the PWDVA state that a report of a breach can be made to the Protection Officer for further action [Rule 15(1)] or by the aggrieved woman directly to the police or Magistrate [Rule 15(2)].

As an encouraging practice, in Andhra Pradesh, complaints of breach are made to the police, and on the basis of the complaint, a charge sheet is prepared. Ensuring compliance with a court order would require the coordinated effort of the PO, police, court and other officials/institutions.

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### Remedy Sought

<table>
<thead>
<tr>
<th>REMEDY SOUGHT</th>
<th>SUGGESTED EVIDENCE</th>
</tr>
</thead>
</table>
| **Monetary reliefs** | 3. Aggrieved person's and children's financial needs – through relevant bills of expenses such as school fees, tuition fees and doctors’ fees  
4. Proof related to the aggrieved person's previous standard of living  
5. Evidence of loss incurred as a result of domestic violence – including medical bills, bills for repairing furniture and household articles |
| **Custody** | 1. Child's emotional attachment to & physical dependence on the mother: drawings / cards / artwork / letters of child to mother etc.  
2. Mother's care for the child – report card, facilities done, leave taken during major illness of child, celebration of child's birthdays, facilitating the child's participation in extra-curricular activities  
4. Respondent's non-suitability for custody – remarriage, alcoholism, association with several women, immoral / illegal activities, violent / abusive nature, joblessness etc.  
5. The child is well-settled with the mother – school records, tuition details, details of other classes / activities that the child attends etc. |
| **General (applicable to all)** | 1. Copy of case papers of cases lodged in the past or are pending in other courts related to domestic violence;  
2. Copy of past DIRs and present DIRs;  
3. Copy of case papers of cases lodged in the past or are pending in other courts related to domestic violence;  
4. Copy of past DIRs and present DIRs;  
5. Copy of case papers of cases lodged in the past or are pending in other courts related to domestic violence;  
6. Copy of past DIRs and present DIRs; |
common ground of divorce under all matrimonial laws, though it is worded differently and its legal requirements differ from law to law. Refer to Table 6.1 below for an overview of cruelty as a ground for divorce under various matrimonial laws.

Physical cruelty is usually directed at the petitioner (aggrieved person) while mental cruelty can be directed at the petitioner or at someone close to the petitioner such as a family member. Contrary to popular belief that multiple acts of cruelty need to be proved in order to obtain a divorce, courts have stated that a single act of cruelty is sufficient reason for a divorce, provided the act is severe.1

The meaning of cruelty is explained through judgments of courts of law. The Supreme Court has said that cruelty as a ground for divorce under matrimonial law requires the “treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party.”2 However, the court distinguished cruelty from the ordinary wear and tear of family life. It said that cruelty “cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other.” Further, to constitute cruelty, it is not necessary that physical violence should be used. The Supreme Court has said that continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and assertions on the part of the husband that the wife is unchaste are all factors which lead to mental or legal cruelty.3

Courts have stated that the following conduct amounts to cruelty under matrimonial law:

1. Apart from the PWDVA, which other laws protect women against domestic violence?

Some of the remedies available under the PWDVA are also available under other laws. A woman can lodge a complaint under criminal law for aspects of domestic violence, including harassment, killing and suicide related to dowry, as these are punishable offences. Using matrimonial law, she can lodge a petition in court for divorce on the ground of cruelty, maintenance and custody of her children. She could use the tort law to claim damages, compensation and injunctions.

2. Can a marriage be ended due to domestic violence?

Yes. Divorce is the legal termination of marriage. Marriage, divorce and other related issues (such as custody and maintenance) are determined by the law applicable on the religious community. The only exception is the Special Marriage Act, which allows any person living in India to marry using the law, irrespective of his / her religious identity.

The concept of ‘cruelty’ in matrimonial law essentially captures the concept and elements of domestic violence. Cruelty is a

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1 A.P.Marry vs. K.G.Raghavan AIR 1979 MP 40
2 Savitri Pandey vs. Prem Chandra Pandey (2002) 2 SCC 73
Courts have stated that the following conduct does not amount to cruelty:

- Ordinary wear & tear of matrimonial life
- Consuming alcohol
- Demand by wife for separate residence from husband's parents
- Wife suffering from epilepsy
- Wife making complaints to police
- Violence / assault used in self-defence
- Mere flirtation
- Mere coldness or lack of affection
- Trivial irritations, quarrels

As is obvious from the above lists, cruelty can be physical or mental. Physical cruelty would include sexual abuse while mental cruelty would include emotional and verbal abuse. A recent Supreme Court judgment has stated a view contrary to the prevailing notion of saving a marriage at all costs, in the context of mental cruelty:

> “Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

– Samar Ghosh vs. Jaya Ghosh 2007 (5) SCALE 1 at Para 79
### TABLE 6.1: CRUELTY AS A GROUND FOR DIVORCE

<table>
<thead>
<tr>
<th></th>
<th>Hindu Marriage Act 1955</th>
<th>Dissolution of Muslim Marriages Act 1939</th>
<th>Parsi Marriage and Divorce Act 1936</th>
<th>Indian Divorce Act 1869</th>
<th>Special Marriage Act 1954</th>
</tr>
</thead>
<tbody>
<tr>
<td>WHO IS ENTITLED TO DIVORCE?</td>
<td>Both parties to marriage</td>
<td>Woman</td>
<td>Both parties to marriage</td>
<td>Both parties to marriage</td>
<td>Both parties to marriage</td>
</tr>
</tbody>
</table>
| SPECIFIC PROVISION ON CRUELTY | If the other party has treated the aggrieved person (husband or wife) with cruelty, the aggrieved person is entitled to a divorce | • Habitual assaults  
• Association with women of evil repute  
• Forcing woman into immoral life  
• Disposing of her property or preventing her from exercising her rights to property  
• Obstructing her in the observance of her religious practice  
• Inequitable treatment of multiple wives by a polygamous husband against Quranic injunctions | If the defendant has “since the solemnization of marriage treated the plaintiff with cruelty or has behaved in such a way as to render it in the judgment of the Court improper to compel the plaintiff to live with the respondent” | If the respondent has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent. | Same as in HMA |
| SECTION NO.             | S. 13(1)(a)               | S. 2(viii)(a)-(f)                        | S. 32(dd)                         | S. 10(x)                | S. 27(1)(d)               |
3. Can a woman claim maintenance through laws other than the PWDVA?

Yes. Criminal law and matrimonial laws have provision for maintenance, both during a pending litigation (interim maintenance) and at the conclusion of legal proceedings (permanent maintenance / alimony). The law of maintenance in India is dealt with by the following laws / legal provisions:

- S. 125 of the Criminal Procedure Code 1973 (available to all religious communities)
- Hindu Marriage Act 1955
- Special Marriage Act 1954
- Hindu Adoption and Maintenance Act 1956
- Indian Divorce Act 1869
- Parsi Marriage and Divorce Act 1936
- Muslim Women (Protection of Rights on Divorce) Act 1986
- Maintenance and Welfare of Parents & Senior Citizens Act 2007

Hindu women may choose to use provisions of Hindu Marriage Act or Hindu Adoption and Maintenance Act. S. 125 of the Criminal Procedure Code is available to all religious communities. Maintenance and Welfare of Parents & Senior Citizens Act is applicable to parents and senior citizens who are neglected / abandoned. In all other cases, parties are governed by the law under which their marriage was performed.

The general principles of maintenance as are follows:

- The purpose of maintenance is to prevent destitution and provide economic security to those who are unable to maintain themselves;
- The court usually has the discretion with regard to the amount of maintenance awarded;
- The quantum will be determined by factors including financial position and status of the respondent, the reasonable wants of the claimant, the standard of life of the claimant, any source of income of the claimant, a person who is unable to financially support himself / herself is entitled to maintenance from the other party – including wife, husband, parents, children; and
- maintenance includes provision of food, clothing, medical treatment, shelter and other essentials for life.

4. What laws are in place to obtain custody of children?

It is important to remember that PWDVA empowers the court to pass orders related to only temporary custody of children. As in the case of maintenance, there are multiple laws that have provisions on permanent (at the conclusion of legal proceedings) and interim custody (pending proceedings) of children. These include:

- The Hindu Minority and Guardianship Act 1956
- Guardians and Wards Act 1890
- Family Courts Act 1984
- Hindu Marriage Act 1955
- Special Marriage Act 1954
- Hindu Adoption and Maintenance Act 1956
- Indian Divorce Act 1869
- Parsi Marriage and Divorce Act 1936
- Uncodified Muslim law
5. Can an aggrieved woman claim a right to residence under matrimonial laws?

The provisions of Hindu Adoption and Maintenance Act (HAMA) state that married Hindu women have an explicit right to claim maintenance and separate residence from the husband if her living separately is justified.4 Circumstances that justify the wife to live separately include cruelty, desertion, adultery, bigamy, conversion and virulent form of leprosy of the husband. As per provisions of HAMA, she would be disentitled from claiming separate residence and maintenance from her husband if she is “unchaste” or ceases to be a Hindu by converting to another religion.5

It is established in law that maintenance must take into account food, clothing and shelter, and therefore maintenance includes a provision for residence.6 Another provision that is beneficial for married Hindu women is the concept of ‘dwelling house’ – whereby a woman is entitled to the right of residence in her parental family’s dwelling house if she is unmarried, deserted, divorced or a widow.7 The Supreme Court, in a 2008 judgment, has clarified that a Hindu woman’s right to residence includes residence in the family dwelling house.8

“A Hindu wife is entitled to be maintained by her husband. She is entitled to remain under his roof and protection. She is also entitled to separate residence if by reason of the husband’s conduct or by his refusal to maintain her in his own place of residence or for other just cause she is compelled to live apart from him. Right to residence is a part and parcel of wife’s right to maintenance. The right to maintenance cannot be defeated by the husband executing a Will to defeat such a right.” (Para 12) – B.P. Achala Anand vs. S. Appi Reddy & Another (2005) 3 SCC 313

In Abdur Rahim Undre vs. Padma Abdur Rahim Undre,9 the marriage between the parties subsisted in law but had broken down beyond repair. The husband filed a suit for an injunction restraining the wife from entering the matrimonial home. Since the flat was big enough to allow the parties to live separately, the Bombay High Court earmarked separate portions of the flat for the spouses to live separately. This judgment was quoted with approval by the Supreme Court in B.P. Achala Anand vs. S. Appi Reddy & Another.10

Apart from a use of these laws, for women belonging to all religious communities, even prior to the PWDVA, it has been possible to obtain protective injunctions to preserve the woman’s right of residence in the matrimonial home and prevent the husband and his relatives from ousting her from the matrimonial home, at least in some courts such as the Family Court in Mumbai and Bombay High Court. This is through a combination of remedies from the Family Courts Act, Civil Procedure Code, Specific Relief Act and S. 498A of the Indian Penal Code.11

As the above judgments indicate, the PWDVA is not the first time that a woman’s right to residence in the matrimonial home is recognized. However, the PWDVA is significant as it explicitly

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4 S. 18(2) of the Hindu Adoption and Maintenance Act, 1956
5 S. 18(3) of the Hindu Adoption and Maintenance Act, 1956
6 Mangat Mal vs. Purni Devi (1995) 6 SCC 88
7 S. 23 of the Hindu Succession Act 1956
8 Komalam Amma vs. Kamara Pillai Raghavan Pillai & Others, judgment of the Supreme Court on 14 November 2008 in SLP(C) No. 3670/2005
9 AIR 1982 Bom 341
10 (2005) 3 SCC 313
11 For more details, see Flavia Agnes, ‘Making Laws Work for Women: The Potential of Existing Laws Against Domestic Violence’, Manushi, No. 156 (September – October 2006), pp. 25-31
states the women’s right to residence under a statutory law, and empowers the court to pass directions regarding the same. This leaves less room for judicial discretion / bias and the professional competence of concerned lawyers which often determined the success of such cases in the pre-PWDVA era.

6. Is domestic violence a crime under Indian law?

Yes. Section 498A of the Indian Penal Code (IPC) deals with aspects of domestic violence, namely physical and mental cruelty.12 Any cruel conduct of the husband or his relatives that would drive the woman to commit suicide, or cause grave physical / mental injury to her is a punishable crime under this section. Such cruel conduct includes, but is not confined to, dowry harassment.

It is important to remember that Section 498A and the provisions of PWDVA are complementary in nature. The former provides punishment for domestic violence once proved, while the latter provides civil remedies to the aggrieved woman. A victim of domestic violence may choose to use both the laws or one or the other, depending on what suits her best interests. Some essential differences between the two laws are given in Table 6.2 below.

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12 498-A. 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. Explanation — For the purposes 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.
In addition to S. 498A, other provisions of criminal law that are attracted in situations of domestic violence include:

- Culpable homicide, murder, culpable homicide not amounting to murder and attempt to murder;¹³
- Hurt and grievous hurt;¹⁴
- Wrongful restraint & wrongful confinement;¹⁵
- Sexual intercourse during separation;¹⁶
- Criminal intimidation;¹⁷ and
- Offences related to causing miscarriage.¹⁸

7. Is dowry-related harassment punishable under criminal law?

Yes, dowry-related harassment, abetment to suicide and killings are components of the larger gamut of domestic violence, and are punishable under criminal law. The Dowry Prohibition Act 1961 applies to all communities and to all persons residing in India. It prohibits the following acts:

- Giving dowry
- Taking dowry
- Helping in giving / taking dowry
- Making demands for dowry (irrespective of whether or not the demand is accepted)
- Advertising property / money etc. as an incentive for a marriage

Another law that has been applied to situations of dowry harassment through judicial intervention is the concept of criminal breach of trust. Criminal breach of trust is an offence under the Indian Penal Code, and is intended to cover situations where a person entrusts a property in another, and that other person betrays the trust and misappropriates it.¹⁹ Though this provision is not specifically intended for dowry-related harassment, in Pratibha Rani vs. Suraj Kumar,²⁰ the Supreme Court applied this general provision of law to a situation of dowry harassment. The court said that such property was meant for the exclusive use of the wife and was only entrusted to the husband or his relatives for safekeeping. They were duty-bound to return the property to her if she asked for their return, failing which they could be prosecuted for the offence of criminal breach of trust.²¹

Differing with the High Court that a criminal suit against the husband by the wife will disturb the peace and harmony of the matrimonial home, the Supreme Court said:

“Criminal law and matrimonial home are not strangers. Crimes committed in the matrimonial home are as much punishable as anywhere else.”

- Pratibha Rani vs. Suraj Kumar AIR 1985 SC 628

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13 S. 299, 300, 304 & 307 of the Indian Penal Code
14 Sections 319-326 of the Indian Penal Code
15 S. 336 & 340 of the Indian Penal Code
16 S. 376A of the Indian Penal Code
17 S. 503 of the Indian Penal Code
18 S. 312-315 of the Indian Penal Code
19 405. Criminal Breach of Trust...Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust.”
20 AIR 1985 SC 628
21 More than a decade after the judgment in Pratibha Rani’s case, a three-judge Bench of the Supreme Court took a fresh look at the judgment in Rashini Kumar vs. Mahesh Kumar Bhada (1997) 2 SCC 397, 1996, and said that the judgment requires no reconsideration.
Another criminal law provision dealing with dowry harassment is **S. 498A of the Indian Penal Code**, which deals with cruelty by husband or relatives of husband. Criminal law provides remedies to women for physical and mental harassment faced in relation to dowry by punishing the perpetrator(s). In the 1980s, the number of dowry murder and dowry harassment cases increased tremendously, dowry harassment was considered synonymous with domestic violence, which was in turn considered by the police to be a “private matter” not requiring police intervention. In this context, S. 498A was enacted in 1983 as a response to the demand of the Indian women’s movement to have a specific criminal law to punish offenders for dowry-related harassment. For the text of S. 498A, see footnote 12 above.

8. What about deaths related to dowry? Are they punishable offences under criminal law?

Yes. S. 304B of the IPC contains an offence termed ‘dowry death’. If a woman dies within seven years of marriage, and her death was under suspicious circumstances, and there were burn injuries or other bodily injuries on her body, and if it was shown that soon before her death, she was subjected to dowry harassment, the killing is considered ‘dowry death’. To qualify as dowry death, the woman’s death should not be of natural causes such as ill-health or as a result of an accident. Dowry death is considered a serious offence, and is punishable with not less than seven years, extending to life imprisonment.

“The offence of ‘dowry death’ makes the demand of dowry itself punishable, irrespective of whether or not there was an agreement to give in to the demand...If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the clutches of law...In cases of dowry deaths and suicides, circumstantial evidence plays an

9. Are remedies stated in the PWDVA available under any other laws?

Tort law, which is based on the concept of injury / harm, is yet another law that provides remedies to aspects of domestic violence. A tort is damage, injury or a wrongful act, done willfully or negligently but not involving breach of contract, for which a civil suit can be brought. A tort is an actionable wrong. Any person to whom such damage is caused is entitled to initiate legal proceedings under tort law. Torts that attract aspects of domestic violence include trespass to person, assault, battery, false imprisonment, negligence and intentional infliction of emotional distress. Remedies under tort law include monetary compensation / damages and injunctions that direct a person to do or not to do something.
TAKING FORWARD THE VISION OF THE LAW AGAINST DOMESTIC VIOLENCE

From the very beginning the working of the PWDVA has been carefully scrutinized. Each year a Monitoring and Evaluation Report, analyzing meticulously compiled data is prepared by the Lawyers Collective Women’s Right Initiative (LCWRI) on the functioning of the PWDVA and presented at a national meet in Delhi. The Reports for 2007, 2008 & 2009 indicate that many women are using this law inasmuch as a sizeable number of cases have been filed, thereby reinforcing the need for a legal remedy against domestic violence.

The implementation of the law has been uneven across the country and much remains to be done in this regard. While some states like Andhra Pradesh, Delhi, West Bengal, Haryana and Tamil Nadu have appointed full time Protection Officers, others like U.P., Jharkhand and Bihar have burdened their pre-existing cadres with the additional charge of Protection Officers. In Jharkhand, for instance, CDPOs (Child Development Project Officers) under the ICDS (Integrated Child Development Services) have been given additional charge of a Protection Officer. The absence of dedicated, well-trained cadre of Protection Officers endowed with funds and facilities is severely impinging on the redress women can secure under PWDVA.

For the aims and objectives of the PWDVA to be fulfilled the active participation of service providers, the legal services authority, police and medical facility is imperative. Presently on each count there is much work to be done including effective coordination between the different agencies.

In July 2008 the Bihar High Court in Shruti Singh, Advocate vs. Press Council of India & ors, a PIL filed for the effective implementation of PWDVA emphatically stated, “We need not remind the State Government that talk of women development and empowerment may remain hollow unless there is sincere implementation of the Act, 2005.” The Court further directed the state government to notify at least one Protection Officer and one shelter home with medical facility in each district by 30th November, 2008; to register NGOs as service providers; to organise sensitization and awareness trainings for police and judicial officers; and to ensure effective coordination the relevant ministries and to periodically review the same. Regrettably the Bihar Government is yet to fully comply with these directives. (Refer to Annexure 2 for full text of this judgment.)

While there is today approval and support for the PWDVA from the highest constitutional office of the country viz. President Pratibha Patil, the same is not matched by adequate budgetary allocations, and this is proving to be a serious impediment in the implementation of the law. Quite clearly there is a need for the Government to put its money where its mouth is.

Perhaps what is required now is for the women’s movement and others engaged with the PWDVA to set well defined milestones to be achieved by states within a stipulated time frame, and then diligently measure the performance of the state. This will enable the normative standard set by PWDVA translate into judicial orders granting protection against domestic violence.

Although the PWDVA is still a nascent legislation, judgments from Courts are interpreting this law. The constitutional validity
of the PWDVA, which was challenged on the ground that it is gender-specific, has been upheld, and is perhaps conclusively decided, through the 2009 judgment of High Court of Chennai in Dennison Paulraj’s case. An analysis of judgments indicates, however, that on the issue of whether or not the term ‘Respondent’ includes female relatives of the husband / male partner, the judicial verdict is divided. The 2007 Supreme Court judgment in Batra vs. Batra, which narrowly interpreted the term ‘shared household’ to deny a woman a right to residence in her in-laws’ house which was her matrimonial home, has unfortunately failed to interpret the PWDVA in accordance with its objective of preventing the dispossession of a woman challenging domestic violence. This has impacted subsequent High Court judgments in varied ways. While some High Courts have followed the judgment to restrict the right to residence, others have distinguished on the basis of facts of the case before them, to grant residence rights in favour of the aggrieved woman. Courts have also been proactive in ensuring implementation of the PWDVA. The Bombay High Court judgment in Ratnabai Patil is a case in point. As per the monitoring and evaluation reports of LCWRI, judgments of various High Courts have acknowledged that violence in intimate relationships is located within the broader situation of systematic and historical subordination of women. These and other judicial trends reiterate the need for a constant engagement and dialogue among the various stakeholders including members of the judiciary, lawyers, POs, service providers, activists and the women’s movement, to ensure that future judgments are in consonance with the gender sensitive vision, objective and spirit of the PWDVA.

Domestic violence against women is widespread and systematic in India and in this context the relevance of the PWDVA cannot be overemphasized. Experience with social legislations has shown that the enactment of a law is only the first significant step in the realization of a right. It will be the responsibility of just-minded citizens, women’s groups, lawyers and the judiciary to ensure that this law plays a role in changing the power structure within homes and fulfilling the basic human right of each woman to a violence-free home.
Suggested Readings

Books

Articles & Other Resource Materials


Reports


11. World Health Organization, Multi-country Study on


Annexures
I & II
THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005
(43 of 2005)
[13th September, 2005]
An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

(1) Short title, extent and commencement.—

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

(ii) It extends to the whole of India except the State of Jammu and Kashmir.

(iii) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

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

(a) “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(b) “child” means any person below the age of eighteen years and includes any adopted, step or foster child;

(c) “compensation order” means an order granted in terms of section 22;

(d) “custody order” means an order granted in terms of section 21;

(e) “domestic incident report” means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;

(f) “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

(g) “domestic violence” has the same meaning as assigned to it in section 3;

(h) “dowry” shall have the same meaning as assigned to it in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961);

(i) “Magistrate” means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place;

(j) “medical facility” means such facility as may be notified by the State Government to be a medical facility for the purposes of this Act;

(k) “monetary relief” means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief.
3. **Definition of domestic violence**—

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

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

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

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

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

**Explanation I.**—For the purposes of this section,—

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
(iv) “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, Stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her Stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

Chapter III
POWERS AND DUTIES OF PROTECTION OFFICERS, SERVICE PROVIDERS, ETC.

4. Information to Protection Officer and exclusion of liability of informant.—

(i) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(ii) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

5. Duties of police officers, service providers and Magistrate.—

A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person—

(a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;

(b) of the availability of services of service providers;

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

(d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);

(e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant:

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

6. Duties of shelter homes.—

If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

7. Duties of medical facilities.—

If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person in the medical facility.
8. **Appointment of Protection Officers.**—

(1) The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.

(2) The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.

(3) The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

9. **Duties and functions of Protection Officers.**—

(1) It shall be the duty of the Protection Officer—

   (a) to assist the Magistrate in the discharge of his functions under this Act;

   (b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

   (c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

   (d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

   (e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

   (f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;

   (g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

   (h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

   (i) to perform such other duties as may be prescribed.

(2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

10. **Service providers.**—

(1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.

(2) A service provider registered under sub-section (1) shall have the power to—

   (a) record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;

   (b) get the aggrieved person medically examined and forward a
copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;
(c) ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.

(3) No suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence.

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

Chapter IV
PROCEDURE FOR OBTAINING ORDERS OF RELIEF
12. Application to Magistrate.—

(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:
Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:
Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

13. Service of notice.—

(1) A notice of the date of hearing fixed under section 12 shall be
given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

14. Counselling.—

(1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.

(2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

15. Assistance of welfare expert.—

In any proceeding under this Act, the Magistrate may secure the services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

16. Proceedings to be held in camera.—

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

17. Right to reside in a shared household.—

(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

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

18. Protection orders.—

The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her Stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

19. Residence orders.—

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the
respondent has a legal or equitable interest in the shared household;
(b) directing the respondent to remove himself from the shared household;
(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;
(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate;
or
(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the Court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her Stridhan or any other property or valuable security to which she is entitled to.

20. Monetary reliefs.—

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to,—

(a) the loss of earnings;
(b) the medical expenses;
(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief
made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the Court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

21. Custody orders.—

Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:

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

22. Compensation orders.—

In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

23. Power to grant interim and ex parte orders.—

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

(2) If the Magistrate is satisfied that an application _prima facie_ discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an _ex parte_ order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

24. Court to give copies of order free of cost.—

The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given free of cost, to the parties to the application, the police officer-in-charge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider located within the local limits of the jurisdiction of the Court and if any service provider has registered a domestic incident report, to that service provider.

25. Duration and alteration of orders.—

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

(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

26. Relief in other suits and legal proceedings.—

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal Court.

(3) In case any relief has been obtained by the aggrieved person
in any proceedings other than a proceeding under this Act, she
shall be bound to inform the Magistrate of the grant of such
relief.

27. Jurisdiction—

(i) The Court of Judicial Magistrate of the first class or the
Metropolitan Magistrate, as the case may be, within the local
limits of which—

(a) the person aggrieved permanently or temporarily resides or
carries on business or is employed; or
(b) the respondent resides or carries on business or is
employed; or
(c) the cause of action has arisen,

Shall be the competent Court to grant a protection order and other
orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout
India.

28. Procedure.—

(i) Save as otherwise provided in this Act, all proceedings under
sections 12, 18, 19, 20, 21, 22 and 23 and offences under section
31 shall be governed by the provisions of the Code of Criminal

(2) Nothing in sub-section (1) shall prevent the Court from laying
down its own procedure for disposal of an application under
section 12 or under sub-section (2) of section 23.

29. Appeal.—

There shall lie an appeal to the Court of Session within thirty days
from the date on which the order made by the Magistrate is served
on the aggrieved person or the respondent, as the case may be,
whichever is later.

30. Protection Officers and members of service providers to be public
servants.—

The Protection Officers and members of service providers, while
acting or purporting to act in pursuance of any of the provisions of
this Act or any rules or orders made thereunder shall be deemed to be
public servants within the meaning of section 21 of the Indian Penal
Code (45 of 1860).

31. Penalty for breach of protection order by respondent.—

(i) A breach of protection order, or of an interim protection order,
by the respondent shall be an offence under this Act and shall be
punishable with imprisonment of either description for a term
which may extend to one year, or with fine which may extend to
twenty thousand rupees, or with both.

(ii) The offence under sub-section (1) shall as far as practicable be
tried by the Magistrate who has passed the order, the breach of
which has been alleged to have been caused by the accused.

(iii) While framing charges under sub-section (1), the Magistrate may
also frame charges under section 498A of the Indian Penal Code
(45 of 1860) or any other provision of that Code or the Dowry
Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts
disclose the commission of an offence under those provisions.

32. Cognizance and proof.—

(i) Notwithstanding anything contained in the Code of Criminal
Procedure, 1973 (2 of 1974), the offence under sub-section (1) of
section 31 shall be cognizable and non-bailable.

(ii) Upon the sole testimony of the aggrieved person, the Court may
conclude that an offence under sub-section (1) of section 31 has
been committed by the accused.

33. Penalty for not discharging duty by Protection Officer.—

If any Protection Officer fails or refuses to discharge his duties
as directed by the Magistrate in the protection order without any
sufficient cause, he shall be punished with imprisonment of either
description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

34. **Cognizance of offence committed by Protection Officer.**—

No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.

35. **Protection of action taken in good faith.**—

No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

36. **Act not in derogation of any other law.**—

The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

37. **Power of Central Government to make rules.**—

(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the qualifications and experience which a Protection Officer shall possess under sub-section (2) of section 8;

(b) the terms and conditions of service of the Protection Officers and the other officers subordinate to him, under sub-section (3) of section 8;

(c) the form and manner in which a domestic incident report may be made under clause (b) of sub-section (1) of section 9;

(d) the form and the manner in which an application for protection order may be made to the Magistrate under clause (c) of sub-section (1) of section 9;

(e) the form in which a complaint is to be filed under clause (d) of sub-section (1) of section 9;

(f) the other duties to be performed by the Protection Officer under clause (i) of sub-section (1) of section 9;

(g) the rules regulating registration of service providers under sub-section (1) of section 10;

(h) the form in which an application under sub-section (1) of section 12 seeking reliefs under this Act may be made and the particulars which such application shall contain under sub-section (3) of that section;

(i) the means of serving notices under sub-section (1) of section 13;

(j) the form of declaration of service of notice to be made by the Protection Officer under sub-section (2) of section 13;

(k) the qualifications and experience in counselling which a member of the service provider shall possess under sub-section (1) of section 14;

(l) the form in which an affidavit may be filed by the aggrieved person under sub-section (2) of section 23;

(m) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE RULES, 2006

In exercise of the powers conferred by section 37 of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005), the Central Government hereby makes the following rules, namely:—

1. **Short title and commencement.**—
   
   (1) These rules may be called the Protection of Women from Domestic Violence Rules, 2006.
   
   (2) They shall come into force on the 26th day of October, 2006.

2. **Definitions.**—In these rules, unless the context otherwise requires,—
   
   (a) “Act” means the Protection of Women from Domestic Violence Act, 2005 (43 of 2005);
   
   (b) “complaint” means any allegation made orally or in writing by any person to the Protection Officer;
   
   (c) “Counsellor” means a member of a service provider competent to give counselling under sub-section (1) of section 14;
   
   (d) “Form” means a form appended to these rules;
   
   (e) “section” means a section of the Act;
   
   (f) words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. **Qualifications and experience of Protection Officers.**—
   
   (1) The Protection Officers appointed by the State Government may be of the Government or members of non-governmental organizations:
   
   Provided that preference shall be given to women.
   
   (2) Every person appointed as Protection Officer under the Act shall have at least three years experience in social sector.
   
   (3) The tenure of a Protection Officer shall be a minimum period of three years.
   
   (4) The State Government shall provide necessary office assistance to the Protection Officer for the efficient discharge of his or her functions under the Act and these rules.

4. **Information to Protection Officers.**—
   
   (1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed may give information about it to the Protection Officer having jurisdiction in the area either orally or in writing.
   
   (2) In case the information is given to the Protection Officer under sub-rule (1) orally, he or she shall cause it to be reduced to in writing and shall ensure that the same is signed by the person giving such information and in case the informant is not in a position to furnish written information the Protection Officer shall satisfy and keep a record of the identity of the person giving such information.
   
   (3) The Protection Officer shall give a copy of the information recorded by him immediately to the informant free of cost.

5. **Domestic incident reports.**—
   
   (1) Upon receipt of a complaint of domestic violence, the Protection Officer shall prepare a domestic incident report in Form I and submit the same to the Magistrate and forward copies thereof to the police officer in charge of the police station within the local limits of jurisdiction of which the domestic violence alleged to have been committed has taken place and to the service providers in that area.
   
   (2) Upon a request of any aggrieved person, a service provider may record a domestic incident report in Form I and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence is alleged to have taken place.

6. **Applications to the Magistrate.**—
   
   (1) Every application of the aggrieved person under section 12 shall be in Form II or as nearly as possible thereto.
   
   (2) An aggrieved person may seek the assistance of the Protection Officer in preparing her application under sub-rule (1) and forwarding the same to the concerned Magistrate.
(3) In case the aggrieved person is illiterate, the Protection Officer shall read over the application and explain to her the contents thereof.

(4) The affidavit to be filed under sub-section (2) of section 23 shall be filed in Form III.

(5) The applications under section 12 shall be dealt with and the orders enforced in the same manner laid down under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974).

7. Affidavit for obtaining ex-parte orders of Magistrate.—

Every affidavit for obtaining ex-parte order under sub-section (2) of section 23 shall be filed in Form III.

8. Duties and functions of Protection Officers.—

(1) It shall be the duty of the Protection Officer—

(i) to assist the aggrieved person in making a complaint under the Act, if the aggrieved person so desires;

(ii) to provide her information on the rights of aggrieved persons under the Act as given in Form IV which shall be in English or in a vernacular local language;

(iii) to assist the person in making any application under section 12, or sub-section (2) of section 23 or any other provision of the Act or the rules made thereunder;

(iv) to prepare a “Safety Plan” including measures to prevent further domestic violence to the aggrieved person, in consultation with the aggrieved person in Form V, after making an assessment of the dangers involved in the situation and on an application being moved under section 12;

(v) to provide legal aid to the aggrieved person, through the State Legal Aid Services Authority;

(vi) to assist theaggrieved person and any child in obtaining medical aid at a medical facility including providing transportation to get the medical facility;

(vii) to assist in obtaining transportation for the aggrieved person and any child to the shelter;

(viii) to inform the service providers registered under the Act that their services may be required in the proceedings under the Act and to invite applications from service providers seeking particulars of their members to be appointed as Counsellors in proceedings under the Act under sub-section (1) of section 14 or Welfare Experts under section 15;

(ix) to scrutinise the applications for appointment as Counsellors and forward a list of available Counsellors to the Magistrate;

(x) to revise once in three years the list of available Counsellors by inviting fresh applications and forward a revised list of Counsellors on the basis thereof to the concerned Magistrate;

(xi) to maintain a record and copies of the report and documents forwarded under sections 9, 12, 20, 21, 22, 23 or any other provisions of the Act or these rules;

(xii) to provide all possible assistance to the aggrieved person and the children to ensure that the aggrieved person is not victimized or pressurized as a consequence of reporting the incidence of domestic violence;

(xiii) to liaise between the aggrieved person or persons, police and service provider in the manner provided under the Act and these rules;

(xiv) to maintain proper records of the service providers, medical facility and shelter homes in the area of his jurisdiction.

(2) In addition to the duties and functions assigned to a Protection Officer under clauses (a) to (h) of sub-section (1) of section 9, it shall be the duty of every Protection Officer—

(a) to protect the aggrieved persons from domestic violence, in accordance with the provisions of the Act and these rules;

(b) to take all reasonable measures to prevent recurrence of domestic violence against the aggrieved person, in accordance with the provisions of the Act and these rules.
9. Action to be taken in cases of emergency.—

If the Protection Officer or a service provider receives reliable information through e-mail or a telephone call or the like either from the aggrieved person or from any person who has reason to believe that an act of domestic violence is being or is likely to be committed and in a such an emergency situation, the Protection Officer or the service provider, as the case may be, shall seek immediate assistance of the police who shall accompany the Protection Officer or the service provider, as the case may be, to the place of occurrence and record the domestic incident report and present the same to the Magistrate without any delay for seeking appropriate orders under the Act.

10. Certain other duties of the Protection Officers.—

(i) The Protection Officer, if directed to do so in writing, by the Magistrate shall—

(a) conduct a home visit of the shared household premises and make preliminary enquiry if the Court requires clarification, in regard to granting ex-parte interim relief to the aggrieved person under the Act and pass an order for such home visit;

(b) after making appropriate inquiry, file a report on the emoluments, assets, bank accounts or any other documents as may be directed by the Court;

(c) restore the possession of the personal effects including gifts and jewellery of the aggrieved person and the shared household to the aggrieved person;

(d) assist the aggrieved person to regain custody of children and secure rights to visit them under his supervision as may be directed by the Court;

(e) assist the Court in enforcement of orders in the proceedings under the Act in the manner directed by the Magistrate, including orders under section 12, section 18, section 19, section 20, section 21 or section 23 in such manner as may be directed by the Court;

(f) take the assistance of the police, if required, in confiscating any weapon involved in the alleged domestic violence.

(ii) The Protection Officer shall also perform such other duties as may be assigned to him by the State Government or the Magistrate in giving effect to the provisions of the Act and these rules from time to time.

(iii) The Magistrate may, in addition to the orders for effective relief in any case, also issue directions relating general practice for better handling of the cases, to the Protection Officers within his jurisdiction and the Protection Officers shall be bound to carry out the same.

11. Registration of service providers.—

(i) Any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance and desirous of providing service as a service provider under the Act shall make an application under sub-section (1) of section 10 for registration as service provider in Form VI to the State Government.

(ii) The State Government shall, after making such enquiry as it may consider necessary and after satisfying itself about the suitability of the applicant, register it as a service provider and issue a certificate of such registration:

Provided that no such application shall be rejected without giving the applicant an opportunity of being heard.

(iii) Every association or company seeking registration under sub-section (1) of section 10 shall possess the following eligibility criteria, namely;—

(a) It should have been rendering the kind of services it is offering under the Act for at least three years before the date of application for registration under the Act and these rules as a service provider.

(b) In case an applicant for registration is running a medical facility, or a psychiatric counselling centre, or a vocational training institution, the State Government shall ensure that the applicant fulfills the requirements for running such a facility or institution laid down by the respective regulatory
authors regulating the respective professions or institutions.

(c) In case an applicant for registration is running a shelter home, the State Government shall, through an officer or any authority or agency authorised by it, inspect the shelter home, prepare a report and record its finding on the report, detailing that—

(i) the maximum capacity of such shelter home for intake of persons seeking shelter;
(ii) the place is secure for running a shelter home for women and that adequate security arrangements can be put in place for the shelter home;
(iii) the shelter home has a record of maintaining a functional telephone connection or other communication media for the use of the inmates.

(4) The State Government shall provide a list of service providers in the various localities to the concerned Protection Officers and also publish such list in newspapers or on its website.

(5) The Protection Officer shall maintain proper records by way of maintenance of registers duly indexed, containing the details of the service providers.

12. Means of service of notices.—

(1) The notices for appearance in respect of the proceedings under the Act shall contain the names of the person alleged to have committed domestic violence, the nature of domestic violence and such other details which may facilitate the identification of person concerned.

(2) The service of notices shall be made in the following manner, namely:—

(a) The notices in respect of the proceedings under the Act shall be served by the Protection Officer or any other person directed by him to serve the notice, on behalf of the Protection Officer, at the address where the respondent is stated to be ordinarily residing in India by the complainant or aggrieved person or where the respondent is stated to be gainfully employed by the complainant or aggrieved person, as the case may be.

(b) The notice shall be delivered to any person in charge of such place at the moment and in case of such delivery not being possible it shall be pasted at a conspicuous place on the premises.

(c) For serving the notices under section 13 or another provision of the Act, the provisions under Order V of the Civil Procedure Code, 1908 (5 of 1908) or the provisions under Chapter VI of the Code of Criminal Procedure, 1973 (2 of 1974) as far as practicable may be adopted.

(d) Any order passed for such service of notices shall entail the same consequences, as an order passed under Order V of the Civil Procedure Code, 1908 (5 of 1908) or Chapter VI of the Code of Criminal Procedure, 1973 (2 of 1974) respectively, depending upon the procedure found efficacious for making an order for such service under section 13 or any other provision of the Act and in addition to the procedure prescribed under the Order V or Chapter VI, the Court may direct any other steps necessary with a view to expediting the proceedings to adhere to the time limit provided in the Act.

(3) On a statement on the date fixed for appearance of the respondent, or a report of the person authorized to serve the notices under the Act, that service has been effected appropriate orders shall be passed by the court on any pending application for interim relief, after hearing the complainant or the respondent, or both.

(4) When a protection order is passed restraining the respondent from entering the shared household or the respondent is ordered to stay away or not to contact the petitioner, no action of the aggrieved person including an invitation by the aggrieved person shall be considered as waiving the restraint imposed on the respondent, by the order of the Court, unless such protection order is duly modified in accordance with the provisions of sub-section (2) of section 25.
13. Appointment of Counsellors.—

(1) A person from the list of available Counsellors forwarded by the Protection Officer, shall be appointed as a Counsellor, under intimation to the aggrieved person.

(2) The following persons shall not be eligible to be appointed as Counsellors in any proceedings, namely:—

(i) any person who is interested or connected with the subject matter of the dispute or is related to any one of the parties or to those who represent them unless such objection is waived by all the parties in writing.

(ii) any legal practitioner who has appeared for the respondent in the case or any other suit or proceedings connected therewith.

(3) The Counsellors shall as far as possible by women.

14. Procedure to be followed by Counsellors.—

(1) The Counsellor shall work under the general supervision of the Court or the Protection Officer or both.

(2) The Counsellor shall convene a meeting at a place convenient to the aggrieved person or both the parties.

(3) The factors warranting counselling shall include the factor that the respondent shall furnish an undertaking that the would refrain from causing such domestic violence as complained by the complainant and in appropriate cases an undertaking that he will not try to meet, or communicate in any manner through letter or telephone, electronic mail or through any medium except in the counselling proceedings before the counselor or as permissibly by law or order of a Court of competent jurisdiction.

(4) The Counsellor shall conduct the counselling proceedings bearing in mind that the counselling shall be in the nature of getting an assurance, that the incidence of domestic violence shall not get repeated.

(5) The respondent shall not be allowed to plead any counter justification for the alleged act of domestic violence in counselling the fact that and any justification for the act of domestic violence by the respondent is not allowed to be a part of the Counselling proceeding should be made known to the respondent, before the proceedings begin.

(6) The respondent shall furnish an undertaking to the Counsellor that the would refrain from causing such domestic violence as complained by the aggrieved person and in appropriate cases an undertaking that he will not try to meet, or communicate in any manner through letter or telephone, e-mail, or through any other medium except in the counselling proceedings before the Counsellor.

(7) If the aggrieved person so desires, the Counsellor shall make efforts of arriving at a settlement of the matter.

(8) The limited scope of the efforts of the Counsellor shall be to arrive at the understanding of the grievances of the aggrieved person and the best possible redressal of her grievances and the efforts shall be to focus on evolving remedies or measures for such redressal.

(9) The Counsellor shall strive to arrive at a settlement of the dispute by suggesting measures for redressal of grievances of the aggrieved person by taking into account the measures or remedies suggested by the parties for counselling and reformulating the terms for the settlement, wherever required.

(10) The Counsellor shall not be bound by the provisions of the Indian Evidence Act, 1872 (1 of 1872) or the Code of Civil Procedure, 1908 (5 of 1908), or the Code of Criminal Procedure, 1973 (2 of 1974), and his action shall be guided by the principles of fairness and justice and aimed at finding way to bring an end to domestic violence to the satisfaction of the aggrieved person and in making such an effort the Counsellor shall give due regard to the wishes and sensibilities of the aggrieved person.

(11) The Counsellor shall submit his report to the Magistrate as expeditiously as possible for appropriate action.

(12) In the event the Counsellor arrives at a resolution of the dispute, he shall record the terms of settlement and get the same endorsed by the parties.

(13) The Court may, on being satisfied about the efficacy of the
The Protection of Women from Domestic Violence Act, 2005

(4) If, at any time after a protection order has been breached, the aggrieved person seeks his assistance, the Protection Officer shall immediately rescue her by seeking help from the local police station and assist the aggrieved person to lodge a report to the local police authorities in appropriate cases.

(6) When charges are framed under section 31 or in respect of offences under section 498A of the Indian Penal Code, 1860 (45 of 1860), or any other offence not summarily triable, the court may separate the proceedings for such offences to be tried in the manner prescribed under Code of Criminal Procedure, 1973 (2 of 1974) and proceed to summarily try the offence of the breach of Protection order under section 31, in accordance with the provisions of Chapter XXI of the Code of Criminal Procedure, 1973 (2 of 1974).

(7) Any resistance to the enforcement of the orders of the Court by the respondent or any other person purportedly acting on his behalf shall be deemed to be a breach of protection order or an interim protection order covered under the Act.

(8) A breach of a protection order or an interim protection order shall immediately be reported to the local police station having territorial jurisdiction and shall be dealt with as a cognizable offence as provided under sections 31 and 32.

(9) While enlarging the person on bail arrested under the Act, the court may, by order, impose the following conditions to protect the aggrieved person and to ensure the presence of the accused before the Court, which may include—

(a) an order restraining the accused from threatening to commit or committing an act of domestic violence;
(b) an order preventing the accused from harassing, telephoning or making any contact with the aggrieved person;
(c) an order directing the accused to vacate and stay away from the residence of the aggrieved person or anyplace she is likely to visit;
(d) an order prohibiting the possession or use of firearm or any other dangerous weapon;

15. Breach of Protection Orders.—

(1) An aggrieved person may report a breach of protection order or an interim protection order to the Protection Officer.

(2) Every report referred to in sub-rule (1) shall be in writing by the informant and duly signed by her.

(3) The Protection Officer shall forward a copy of such complaint with a copy of the protection order of which a breach is alleged to have taken place to the concerned Magistrate for appropriate orders.

(4) The aggrieved person may, if she so desires, make a complaint of breach of protection order or interim protection order directly to the Magistrate or the Police, if she so chooses.

(5) If, at any time after a protection order has been breached, the
(e) an order prohibiting the consumption of alcohol or other drugs;
(f) any other order required for protection, safety and adequate relief to the aggrieved person.

16. Shelter to the aggrieved person.—

(1) On a request being made by the aggrieved person, the Protection Officer or a service provider may make a request under section 6 to the person in charge of a shelter home in writing, clearly stating that the application is being made under section 6.

(2) When a Protection Officer makes a request referred to in sub-rule (1), it shall be accompanied by a copy of the domestic incident report registered, under section 9 or under section 10:

Provided that shelter home shall not refuse shelter to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to the making of request for shelter in the shelter home.

(3) If the aggrieved person so desires, the shelter home shall not disclose the identity of the aggrieved person in the shelter home or communicate the same to the person complained against.

17. Medical facility to the aggrieved person.—

(1) The aggrieved person or the Protection Officer or the service provider may make a request under section 7 to a person in charge of a medical facility in writing, clearly stating that the application is being made under section 7.

(2) When a Protection Officer makes such a request, it shall be accompanied by a copy of the domestic incident report:

Provided that the medical facility shall not refuse medical assistance to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to making a request for medical assistance or examination to the medical facility.

(3) If no domestic incident report has been made, the person-in-charge of the medical facility shall fill in Form I and forward the same to the local Protection Officer.

(4) The medical facility shall supply a copy of the medical examination report to the aggrieved person free of cost.

FORM I

[See rules 5(1) and (2) and 17(3)]

DOMESTIC INCIDENT REPORT UNDER SECTIONS 9(B) AND 37(2)
(C) OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 (43 OF 2005)

1. Details of the complainant/aggrieved person:

(1) Name of the complainant/aggrieved person:

(2) Age:

(3) Address of the shared household:

(4) Present Address:

(5) Phone Number, if any:

2. Details of Respondents:

S. No. Name Relationship Address Telephone No., if any
with the aggrieved person

3. Details of children, if any, of the aggrieved person:

(a) Number of children:

(b) Details of children:

Name Age Sex With whom at present residing

4. Incidents of domestic violence:

S. No. Date, place and time of violence Person who caused domestic violence Types of violence Remarks

(e) an order prohibiting the consumption of alcohol or other drugs;
(f) any other order required for protection, safety and adequate relief to the aggrieved person.

16. Shelter to the aggrieved person.—

(1) On a request being made by the aggrieved person, the Protection Officer or a service provider may make a request under section 6 to the person in charge of a shelter home in writing, clearly stating that the application is being made under section 6.

(2) When a Protection Officer makes a request referred to in sub-rule (1), it shall be accompanied by a copy of the domestic incident report registered, under section 9 or under section 10:

Provided that shelter home shall not refuse shelter to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to the making of request for shelter in the shelter home.

(3) If the aggrieved person so desires, the shelter home shall not disclose the identity of the aggrieved person in the shelter home or communicate the same to the person complained against.

17. Medical facility to the aggrieved person.—

(1) The aggrieved person or the Protection Officer or the service provider may make a request under section 7 to a person in charge of a medical facility in writing, clearly stating that the application is being made under section 7.

(2) When a Protection Officer makes such a request, it shall be accompanied by a copy of the domestic incident report:

Provided that the medical facility shall not refuse medical assistance to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to making a request for medical assistance or examination to the medical facility.

(3) If no domestic incident report has been made, the person-in-charge of the medical facility shall fill in Form I and forward the same to the local Protection Officer.

(4) The medical facility shall supply a copy of the medical examination report to the aggrieved person free of cost.
(i) Sexual violence

Please tick mark (✓) the column applicable

- Forced sexual intercourse
- Forced to watch pornography or other obscene material
- Forcibly using you to entertain others
- Any other act of sexual nature, abusing, humiliating, degrading or otherwise violative of your dignity (please specify details in the space provided below)

(ii) Verbal and emotional abuse

- Accusation/aspersion on your character or conduct, etc.
- Insult for not bringing dowry, etc.
- Insult for not having a male child.
- Insult for not having any child.
- Demeaning, humiliating or undermining remarks/statement.
- Ridicule.
- Name calling.
- Forcing you to not attend school, college or any other educational institution.
- Preventing you from taking up a job.
- Preventing you from leaving the House.
- Preventing you from meeting any particular person.
- Forcing you to get married against your will.
- Preventing you from marrying a person of your choice.
- Forcing you to marry a person of his/their own choice.
- Any other verbal or emotional abuse.
  (please specify in the space provided below)

(iii) Economic violence

- Not providing money for maintaining you or your children

- Not providing food, clothes, medicine, etc., for you or your children
- Forcing you out of the house you live in
- Preventing you from accessing or using any part of the house
- Preventing to obstructing you from carrying on your employment
- Not allowing you to take up an employment
- Non-payment of rent in case of a rented accommodation
- Not allowing you to use clothes or articles of general household use.
- Selling or pawing you Stridhan or any other valuables without informing you and without your consent.
- Forcibly taking away your salary, income or wages etc.
- Disposing your Stridhan
- Non-payment of other bills such as electricity, etc.
- Any other economic violence
  (please specify in the space provided below)

(iv) Dowry related harassment

- Demands for dowry made, please specify
- Any other detail with regard to dowry, please specify
  Whether details of dowry items, Stridhan, etc. attached with the form
  - Yes
  - No

(v) Any other information regarding acts of domestic violence against you or your children
Wherever the information provided in this Form disclosed an offence under the Indian Penal Code or any other law, the Police Officer shall—

(a) inform the aggrieved person that she can also initiate criminal proceedings by lodging a First Information Report under the Code of Criminal Procedure, 1973 (2 of 1974).

(b) if the aggrieved person does not want to initiate criminal proceedings, then make daily diary entry as per the information contained in the domestic incident report with a remark that the aggrieved person due to the intimate nature of the relationship with the accused wants to pursue the civil remedies for protection against domestic violence and has requested that on the basis of the information received by her, the matter has been kept pending for appropriate enquiry before registration of an FIR.

(c) if any physical injury or pain being reported by the aggrieved person, offer immediate medical assistance and get the aggrieved person medically examined.

Place: (Counter signature of Protection Officer/Service provider)

Date: Name:

Address (Seal)

Copy forwarded to:—

1. Local Police Station
2. Service Provider/Protection Officer
3. Aggrieved Person
4. Magistrate
The Protection of Women from Domestic Violence Act, 2005

(f) Pass such interim orders as the Court dreams just and proper;
(g) Pass any orders as deems fit in the circumstances of the case.

3. Orders required:

(i) Protection Order under section 18

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

(ii) Residence Order under section 19

- An order restraining Respondent(s) from
- Dispossessing or throwing me out from the shared household
- Entering that portion of the shared household in which I reside
- Alienating/disposing/encumbering the shared household
- Renouncing his rights in the shared household
- An order entitling me continued access to my personal effects
- An order directing Respondent(s) to
- Remove himself from the shared household

FORM II

[See rules 6(1)]

APPLICATION TO THE MAGISTRATE UNDER SECTION 12 IF THE PWDVA, 2005 (43 OF 2005)

To,

The Court of Magistrate

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

SHOWETH:

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

   (a) Aggrieved person
   (b) Protection Officer
   (c) Any other person on behalf of the aggrieved person

   (tick whichever is applicable)

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

   (a) Pass protection orders under section 18 and/or
   (b) Pass residence orders under section 19 and/or
   (c) Direct the respondent to pay monetary relief under section 20 and/or
   (d) Pass orders under section 21 of the Act and/or
   (e) Direct the respondent to grant compensation or damages under section 22 and/or
(vi) Compensation order under section 22
(vii) Any other order, please specify

4. Details of previous litigation, if any
   (a) Under the Indian Penal Code, section.............. Pending in the Court of
       Disposed off, details of relief
   (b) Under Cr. P.C., section......Pending in the Court of
       Disposed off, details of relief
   (c) Under the Hindu Marriage Act, 1955, section...... Pending in the Court of
       Disposed off, details of relief
   (d) Under the Hindu Adoptions and Maintenance Act, 1956, sections.............Pending in the Court of
       Disposed off, details of relief
   (e) Application for maintenance, under section.....under Act
       Interim maintenance Rs. p.m.
       Maintenance granted Rs. p.m.
   (f) Whether Respondent was sent to Judicial custody
       ❑ For less than a week           ❑ For less than a month
       ❑ For more than a month
       Specify period
   (g) Any other order

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

Place : Complainant/Aggrieved person through
Dated : Counsel
AFFIDAVIT UNDER SECTION 23(2) OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 (43 OF 2005)

In the Court of................. MM......................
P/S .....................

IN THE MATTER OF:
Ms.........................& Others ...Complainant

Versus

Mr.........................& Others ...Respondent

Affidavit

I, .................,W/o Mr. ................., R/o ................. D/o .................

Mr. ................., R/o ................., presently residing at .................
do hereby solemnly affirm and declare on oath as under:

1. That I am the Applicant in the accompanying Application for filed for myself and for my daughter/son.

2. That I am the natural guardian of .................

3. That being conversant with the facts and circumstances of the case I am competent to swear this affidavit.

4. That the Deponent had been living with the Respondent/s at ................. since ................. to .................

5. That the details provided in the present Application for the grant of relief under section(s) have been entered into by me/at my instructions.

6. That the contents of the application have been read over, explained to me in English/Hindi/any other local language (Please specify ).

7. That the contents of the said application may be read as part of this affidavit and are not repeated herein for the sake of brevity.

8. That the applicant apprehends repetition of the acts of domestic violence by the Respondent(s) against which relief is sought in the accompanying application.

9. That the Respondent has threatened the Applicant that .................

10. That the reliefs claimed in the accompanying application are urgent in as much as the applicant would face great financial hardship and would be forced to live under threat of repetition/escalation of acts of domestic violence complained of in the accompanying application by the Respondent(s) if the said reliefs are not granted on the ex-parte ad-interim basis.

11. That the facts mentioned herein are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

DEPONENT

VERIFICATION

Verified at ................. (place) on this ................. day of ................. That the contents of the above affidavit are correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.

DEPONENT
FORM IV
[See rule 8(1)(ii)]

INFORMATION ON RIGHTS OF AGGRIEVED PERSONS UNDER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005
(43 OF 2005)

1. If you are beaten up, threatened or harassed in your home by a person with whom you reside in the same house, then you are facing domestic violence. The Protection of Women from Domestic Violence Act, 2005, gives you the right to claim protection and assistance against domestic violence.

2.  

1. Physical Violence:

For example—

(i) Beating,
(ii) Slapping,
(iii) Hitting,
(iv) Biting,
(v) Kicking,
(vi) Punching,
(vii) Pushing,
(viii) Shoving or
(ix) Causing bodily pain or injury in any other manner.

2. Sexual Violence:

For example—

(i) Forced sexual intercourse;
(ii) Forces you to look at pornography or any other obscene pictures or material;
(iii) Any act of sexual nature to abuse, humiliate or degrade you, or which is otherwise violative of your dignity or any other unwelcome conduct of sexual nature;
(iv) Child sexual abuse.

3. Verbal and Emotional Violence:

For example—

(i) Insults;
(ii) Name-calling;
(iii) Accusations on your character or conduct etc.;
(iv) Insults for not having a male child;
(iv) Insults for not bringing dowry etc.;
(v) Preventing you or a child in your custody from attending school, college or any other educational institution;
(vi) Preventing you or a child in your custody from attending school, college or any other educational institution;
(vii) Preventing you from taking up a job;
(viii) Forcing you to leave your job;
(ix) Preventing you or a child in your custody from leaving the house;
(x) Preventing you from meeting any person in the normal course of events;
(xi) Forcing you to get married when you do not want to marry;
(xii) Preventing you from marrying a person of your own choice;
(xiii) Forcing you to marry a particular person of his/their own choice;
(xiv) Threat to commit suicide;
(xv) Any other verbal or emotional abuse.

4. Economic Violence:

For example—

(i) Not providing you money for maintaining you or your children,
(ii) Not providing food, clothes, medicines etc. for you or your children,
(iii) Stopping you from carrying on your employment or,
(iv) Disturbing you in carrying on your employment,
(v) Not allowing you to take up an employment,
(vi) Taking away your income from your salary, wages etc.,
(vii) Not allowing you to use your salary, wages etc.,
The Protection of Women from Domestic Violence Act, 2005

(c) General Order:
(i) Stop the domestic violence complained/reported

(d) Special Orders:
(i) Remove himself/stay away from your place of residence or workplace;

(ii) Stop making any attempts to meet you,

(iii) Stop calling you over phone or making any attempts to communicate with you by letter, e-mail etc.;

(iv) Stop talking to you about marriage or forcing you to meet a particular person of his/their choice for marriage;

(v) Stay away from the school of your child/children, or any other place where you and your children visit;

(vi) Surrender possession of firearms, any other weapon or any other dangerous substance;

(vii) Not to acquire possession of firearms, any other weapon or any other dangerous substance and not to be in possession of any similar article;

(viii) Not to consume alcohol or drugs with similar effect which led to domestic violence in the past;

(ix) Any other measure required for ensuring your or your children’s safety.

(e) an order for interim monetary relief under sections 20 and 22 including—

(i) Maintenance for you or your children,

(ii) Compensation for physical injury including medical expenses,

(iii) Compensation for mental torture and emotional distress,

(iv) Compensation for loss of earning,

(v) Compensation for loss caused by destruction, damage, removal of any property from your possession or control.

Note I.— 1. Any of the above relief can be granted on an interim
The Protection of Women from Domestic Violence Act, 2005

2. A complaint of domestic violence made in Form I under the Act is called a “Domestic Incident Report”

4. If you are a victim of domestic violence, you have the following:

(i) The assistance of Protection Officer and service providers to inform you about your rights and the relief which you can get under the Act under section 5.

(ii) The assistance of Protection Officer, service providers or the officer-in-charge of the nearest police station to assist you in registering your complaint and filing an application for relief under section 9 and 10.

(iii) To receive protection for you and your children from acts of domestic violence under section 18.

(iv) You have right to measures and orders protecting you against the particular dangers or insecurities you or your child are facing.

(v) To stay in the house where you suffered domestic violence and to seek restraint on other persons residing in the same house, from interfering with or disturbing peaceful enjoyment of the house and the amenities, facilities therein, by you or your children under section 19.

(vi) To regain possession of your Stridhan, jewellery, clothes, articles of daily use and other household goods under section 18.

(vii) To get medical assistance, shelter, counselling and legal aid under section 6, 7, 9 and 14.

(viii) To restrain the person committing domestic violence against you from contacting you or communicating with you in any manner under section 18.

(ix) To get compensation for any physical or mental injury or any other monetary loss due to domestic violence under section 22.

(x) To file complaint or applications for relief under the Act directly to the Court under sections 12, 18, 19, 20, 21, 22 and 23.

(xi) To get the copies of the complaint filed by you, applications made by you, reports of any medical or other examination that you or your child undergo.

(xii) To get copies of any statements recorded by any authority in connection with Domestic Violence.

(xiii) The assistance of the Protection Officer or the Police to rescue you from any danger.

5. The person providing the form should ensure that the details of all the registered service providers are entered in the manner and space provided below. The following is the list of service providers in the area:

<table>
<thead>
<tr>
<th>Name of Organization</th>
<th>Service Provided</th>
<th>Contact Details</th>
</tr>
</thead>
</table>

Continue the list on a separate sheet, if necessary..................

FORM V

[See rule 8(1)(iv)]

SAFETY PLAN

1. When a Protection Officer, Police Officer or any other service provider is assisting the woman in providing details in this form, then details in columns C and D are to be filled in by the Protection Officer, Police Officer or any other service provider, as the case may be, in consultation with the complainant and with her consent.

2. The aggrieved person in case of approaching the Court directly may herself provide details in columns C and D.

3. If the aggrieved person leaves columns C and D blank and approaches the Court directly, then details in the said columns are to provided by the Protection Officer to the Court, in consultation with the complainant and with her consent.
FORM VI
[See rule 11(1)]

FORM FOR REGISTRATION AS SERVICE PROVIDERS UNDER SECTION 10(1) OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

1. Name of the applicant

2. Address alongwith Phone number, e-mail address, if any

3. Service being rendered
   - Shelter
   - Psychiatric Counselling
   - Family Counselling
   - Vocational Training Centre
   - Medical Assistance
   - Awareness Programme
   - Counselling for a group of people who are victims of domestic violence and family disputes
   - Any other, specify

4. Number of persons employed for providing such services

5. Whether providing the required services in your institution requires certain statutory minimum professional qualification?
   - Yes
   - No

6. Whether list of names of the persons and the capacity in which they are working and their professional qualification is attached?
   - Yes
   - No

7. Period for which the service are being rendered:
   - 3 years
   - 4 years
   - 5 years
   - 6 years
   - More than 6 years

8. Whether registered under any law/regulation
   - Yes
   - No

   If yes, give the registration number

9. Whether requirements prescribed by any regulatory body or law fulfilled?
   - Yes
   - No

   If yes, the name and address of the regulatory body:

Note:— In case of a shelter home, details under column 10 to 18 are to be entered by registering authority after inspection of the shelter home.

10. Whether there is adequate space in the shelter home
    - Yes
    - No

11. Measured area of the entire premise

12. Number of rooms

13. Area of the rooms

14. Details of security arrangements available

15. Whether a record available for maintaining a functional telephone connection for the use of inmates for the last 3 years
    - Yes
    - No

16. Distance of the nearest dispensary/clinic/medical facility
    - Yes
    - No

17. Whether any arrangement for regular visits by a medical professional has been made?
    - Yes
    - No
ANNEXURE I

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The Protection of Women from Domestic Violence Act, 2005

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23. Whether a list of names of counsellors along with their qualifications has been annexed

☐ yes  ☐ No

24. (A) Type of counselling provided

☐ Supportive one-to-one counselling

☐ cognitive behavioural therapy (CBT) (Mental process that people use to remember, reason, understand, solve problems and judge things)

☐ Providing counselling to a group or people suffering

☐ Family counselling

24. (B) Facilities provided

☐ Offering personal professional and confidential counselling sessions

☐ A safe environment to discuss problems and express emotions

☐ Information on counselling services, support groups and mental health care resources

☐ One to one counselling and group work

☐ Therapies, ongoing counselling and health related support

☐ Any other, please specify

24 (C) Any other service

(1) Services being provided
FORM VII

[See rule 11(1)]

NOTICE FOR APPEARANCE UNDER SECTION 13(1) OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005
(43 OF 2005)
IN THE COURT OF....... P/S:...............

IN THE MATTER OF:
Ms..........

VERSUS
Mr................    RESPONDENT

To,
Mr. .....................................................
S/o .....................................................
R/o .....................................................
.....................................................
.....................................................

WHEREAS the Petitioner has filed an application(s) under section....of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005);

Your are hereby directed to appear before this Court on the...... day of......20......at.......... O’ clock in the......noon personally or through a duly authorised counsel of this Court to show cause why the relief(s) claimed by the Applicant against you should not be granted, failing which the Court shall proceed ex parte against you.

Given under my hand and the seal of the Court of.....on the...... day of......20......

Seal of the Court    Signature

Place: Signature of authorised official
Date: Designation:
1. The issues raised in the writ petition relate to the non-implementation of the provisions of the Protection of Women from Domestic Violence Act, 2005 (for short, the ‘Act of 2005’) in the State of Bihar. To be specific, the petitioner has raised grievance that steps in giving publicity to the provisions of the Act of 2005 have not been taken by the Central Government and the State government. It is alleged that the Central Government and the State Government have failed to discharge their duties provided in Section 11 of the Act of 2005. The petitioner has also raised grievance that in the entire State of Bihar, there is not a single shelter home notified for the purposes of this Act; no service providers, nor full-time Protection officers have been appointed.

2. There are counter affidavits by the opposite parties. In so far as the Central Government is concerned, counter affidavits have been filed by Under Secretary, Ministry of Women and Child Development, wherein he has stated that the copies of the Act of 2005 have been circulated to all the State Governments to implement the Act of 2005. The proforma listing out certain essential indicators relating to the implementation of the Act has also been sent to all the State Governments and they have been asked to supply the information as per proforma on a quarterly basis to enable the Ministry to assess the actual status of implementation of the Act of 2005. The Deputy Secretary has further stated that as per the information supplied by the Government of Bihar, the Child Development Project Officers have been given the additional charge of Protection Officers as a temporary measure until regular Protection Officers are appointed.

3. On behalf of the State Government and its functionaries, it is stated that the provisions of the Act had been sent to the Information and Public Relations Department for advertising in all the leading newspaper in the State vide letter no.10/Sanstha/22/2006-1194
dated 19-07-2007. In the new comprehensive scheme on women
development and empowerment titled ‘Nari Shakti’, a number of
components for the rehabilitation of the victims and mass level
awareness programme have been planned. In the near future all the
thirty eight districts shall be equipped with helpline services and
short stay homes for the victims of domestic violence. Additionally,
‘Samajik Punervas Kosh’ has been created to provide support to
those victims of violence whose rehabilitation requirements are not
met by other schemes. An amount of Rs.5,69,32,000/- (Rupees five
crore, sixty nine lakhs thirty two thousand only) has been sanctioned
to provide rehabilitation services to the victims of violence and
exploitation, including domestic violence and to raise awareness
with regard to the Act. The capacity building programme for all the
Protection Officers is planned to be organized in the near future.

4. The enactment of Protection of Women from Domestic Violence Act,
2005 is virtually a legislative effort to have a law incorporating the
framework of the Vienna Accord of 1994 and the Beijing declaration
and the platform for Action (1995). That the domestic violence is a
human rights issue is beyond doubt. The Act intends to provide for
an effective protection of the rights of women guaranteed under the
Constitution who are victims of violence of any kind occurring within
the family. It is major social welfare legislation for the women.

5. The role of Protection Officers and the Service Providers is of
immense importance in the scheme of this legislation. The duty
has been cast upon the State Government to appoint such number
of officers in each district as it may consider necessary. The Act
provides that Protection Officers shall as far as possible be women
and possess such qualifications and experience as may be laid down
by the Central Government by rules. Section 8 and 9 of the Act of
2005 which provide for appointment of Protection Officers and their
duties and functions may be reproduced by us as it is:

“8. Appointment of Protection Officers.-

(1) the State Government shall, by notification, appoint such
number of Protection Officers in each district as may consider
necessary and shall also notify the areas within which a
Protection Officer shall exercise the powers and perform the
duties conferred on him by or under this Act.

(2) The Protection Office shall as far as possible be women and
shall possess such qualifications and experience as may be
prescribed.

(3) The terms and conditions of service of the Protection Officer
and other officers subordinate to him shall be such as may be
prescribed.

9. Duties and Functions of the Protection Officers.-

(1) It shall be the duty of the Protection Officer-

(a) to assist the Magistrate in the discharge of his functions
under this Act;

(b) to make a domestic incident report to the Magistrate, in
such form and in such manner as may be prescribed, upon
the receipt of a complaint of domestic violence and forward
copies thereof to the police officer in charge of the police
station within the local limit of whose jurisdiction domestic
violence is alleged to have been committed and to the
service provider in that area;

(c) to make an application in such form and in such manner as
may be prescribed to the magistrate, if the aggrieved person
so desires, claiming relief for issuance of a protection order;

(d) to ensure that that the aggrieved person is provided legal
aid under the Legal Aid Services Authorities Act, 1987 (39 out
of 1987) and make available free of cost the prescribed form
in which a complaint is to be made;

(e) to maintain a list of all service providers providing legal aid
or counseling, shelter homes and medical facilities in a local
area within the jurisdiction of the Magistrate;

(f) to make available a safe shelter home, if the aggrieved
person so requires and forward a copy of his report of
having lodged the aggrieved person in a shelter home to the
police station and the Magistrate having jurisdiction in the
area were the shelter home is situated;

(g) to get the aggrieved person medically examined, if she
has sustained bodily injuries and forward a copy of the
medical report to the police station an the Magistrate having
Annexure II

Shruti Singh, Advocate Versus Press Council of India & Ors.

1. The role of Service Providers under the Act, 2005 is no less. A service provider has the power to record the domestic incident report; ensure that the aggrieved person is medically examined and that the victim woman is provided shelter in a shelter home.

2. Section 10 of the Act, 2005 provides for registration of voluntary association, registered under the Societies Act 1860 or a company registered under the Companies Act, 1956 having the objective of protecting the rights and interest of the women to register itself with the State Government as service provider. In none of the affidavits, anything has been said about the registration of service providers.

3. Availability of Shelter Homes for an effective implementation of the Act is a must and without that the aggrieved persons may continue to suffer domestic violence; protecting women from such violence is the main objective.

4. The wide publicity to the provisions of the Act by the Central Government as well as the State Government have to be given. That there has to be sensitization and awareness training on the issues addressed by the Act, 2005 needs no emphasis as without that the objective sought to be achieved by the Act may not be achieved.

5. It is true that the state government has referred to a few schemes with regard to women development and empowerment and also budget sanction for rehabilitation services to the victim of violence. But such schemes may not have any meaning unless the benefits percolate down to needy victim of domestic violence.

6. We need not remind the State Government that talk of women development and empowerment may remain hollow unless there is sincere implementation of the Act, 2005.

7. Taking all these aspects into consideration and that the Act, 2005 has to be effectively implemented for protection of the rights of women in the State of Bihar, we are satisfied that the following order will meet the ends of justice:

(i) The State Government shall ensure that for the time being at least one Protection Officer is appointed in each district as early as possible and in no case later than November 30th, 2008. Looking into the incidents of Domestic Violence, if there is need of more than one protection officer in each district, the State Government shall appoint such number of Protection Officers in each district as it may consider necessary and also notify the area or areas within which the Protection Officers shall exercise the powers and perform the duties conferred upon them under the Act.

(ii) The State Government shall notify at least one shelter home for the purposes of the Act, 2005 in each district. While making available shelter home, the State Government shall ensure
that such shelter home is safe for the women. If possible, the provision of adequate medical facilities shall also be provided at such shelter homes. This exercise shall be completed by the State Government positively by November 30th 2008.

(iii) The State Government shall create an environment or provide incentives that may lead non-governmental organizations, voluntary associations and companies registered under the Companies Act having an objective of protecting the rights and interests of women to register them as service providers.

(iv) The State Government shall organize periodic sensitization and awareness training to the police officers and the members of the judicial services. Such sensitization and awareness training shall be held at least once a year.

(v) The State Government shall ensure effective coordination between the ministries and the departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence and shall further ensure that periodical review of the matter is conducted.

14. The writ petition is disposed off accordingly.

Sd/
R.M.LODHA C.J

Sd/
KISHORE KUMAR MANDAL
MARG is a pioneer in the field of legal empowerment through legal literacy training workshops and development of legal training tools. Since its establishment in 1985, MARG has actively worked towards creating legal awareness, conduct socio-legal research, undertake advocacy initiatives and provide legal aid to disadvantaged and marginalized persons and groups. MARG works both at the mass level and engages with policy makers, using its insight and analysis to inform both. MARG’s aim is to empower marginalized communities to enable them to access and secure rights.

MARG has produced innovative legal training materials and advocacy tools. The legal literacy training tools include:

- **Hamaare Kanoon** – a series of 13 legal manuals on rights of working women
- **Hamaare Maulik Adhikar** – a handbook
- **Bol Basanto** – a 10 episode legal literacy film on women’s rights
- **Posters** on laws relating to violence against women and rights of citizens