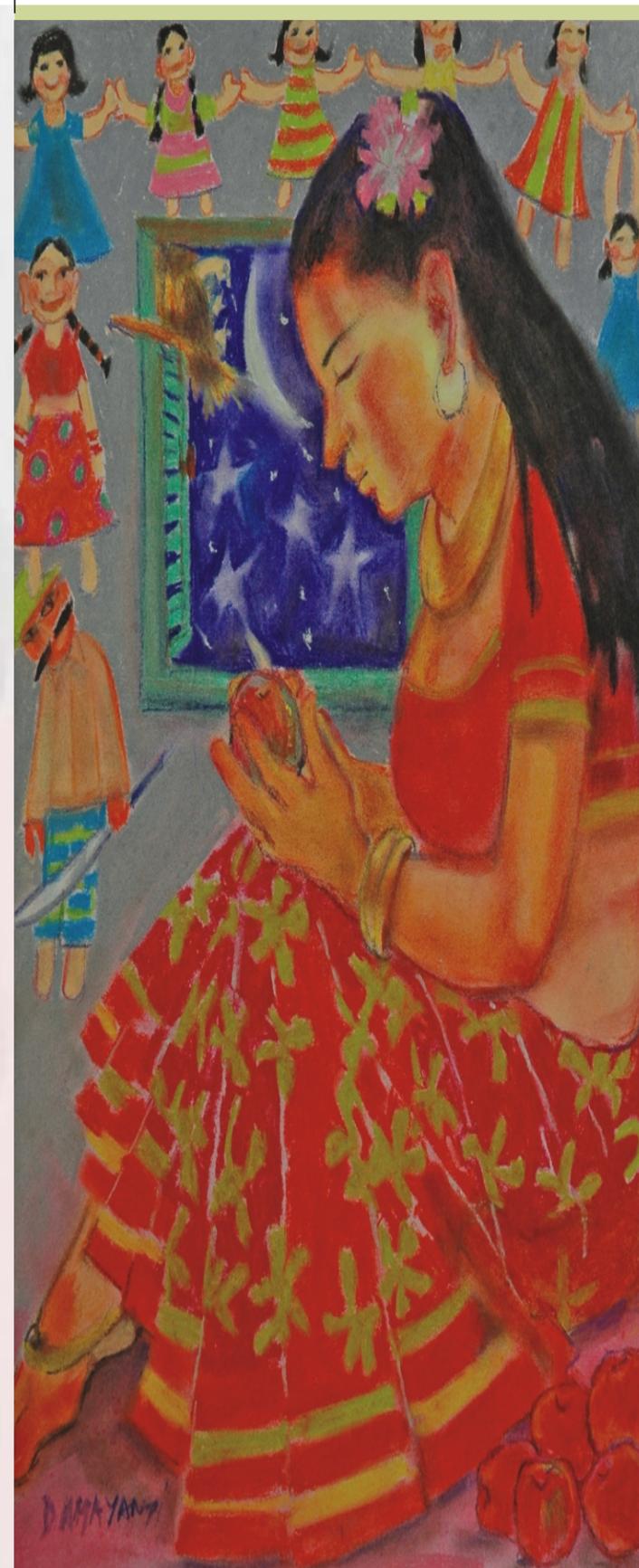


The Lawyers Collective is a group of lawyers, law students and social scientists committed to the use of law as an effective instrument for empowering and changing the status of marginalized groups. The Women's Rights Initiative of the Lawyers Collective ("LCWRI") has actively engaged with the entire legal regime of addressing the rights of women in law. Towards this, the LCWRI has undertaken extensive research and advocacy efforts aimed at effecting law reform. The LCWRI has been engaged in providing legal aid to women and marginalized groups as well as trainings on the use of gender specific laws. Focus areas of the LCWRI include domestic violence, sexual harassment at the workplace, matrimonial and family related matters, personal laws, trafficking in human beings, crimes against women particularly sexual assault and reproductive rights. The LCWRI regards its main role as evaluating laws and recommend its better use.



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Staying Alive

**First Monitoring
&
Evaluation Report 2007
on the
Protection of Women from
Domestic Violence Act 2005**

**Lawyers Collective
Women's Rights Initiative**

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Preface

The need for a civil law on domestic violence was identified from the experience gained through the provision of legal aid to women facing violence in intimate relationships. After nearly a decade of advocacy and consensus building by women's groups across the country, the Protection of Women from Domestic Violence 2005, was finally brought into force on the 26th of October 2006. The enactment of this law is regarded as a significant step towards realizing equality rights of women. Having successfully campaigned for a law on domestic violence the obvious next step was to initiate efforts to ensure its effective implementation. One method in this regard is to study the manner in which the law is being implemented, identify best practices adopted and problems that have arisen and suggest ways in which the problems may be overcome. This is a facet of monitoring that should be an integral part in the implementation of any law, particularly those furthering the objective of social justice. This report and the national conference at which this report is being presented and discussed is a modest attempt at this form of monitoring. The exercise of collating practices from different parts of the country and presenting them at a common forum was undertaken with the hope that it shall be replicated in the years to come.

As the implementation of the law is at its nascent stage, changes both positive and negative, occur almost on a monthly basis, particularly with regard to the mechanisms that are being put in place and the manner in which the law is being interpreted. This proved to be a major challenge in compiling this report. In these circumstances, the limited objective of this report is to put together practices observed in different states without indicating any conclusive trends. This report is, therefore, only an exploratory study into the workings of the law. It is hoped it shall be used as a basis for developing indicators that can be used in the times to come to monitor and evaluate the effectiveness of this law.

The patriarchal mind set, of which violence against women is a part, remains a major hurdle in realizing the goal of equality. The enactment of laws is only one of the ways in which this hurdle can be overcome. Changing patriarchal mindsets is the larger struggle that has to be tackled at all fronts. The law remains a tool, albeit a powerful one, in this struggle for empowerment. In the end analysis, it is only if women are recognized as equal stakeholders in society that the goal of equality will finally be achieved.

In particular, a law on domestic violence challenges the violence of non state actors and compels the State to take action against it.

Acknowledgements

This project was conceptualized by Ms Indira Jaising who led Lawyers Collective team in collecting data and writing the report.

The data collection was coordinated, and the report compiled by Asmita Basu and Tenzing Choesang. The Lawyers Collective team for collecting and processing the data was constituted by Rashi Prasad, Ayesha Sen Chaudhury, Rituparna Pandit, Korobi Gogoi, Pinki Mathur, Mehak Sethi, Mukta Dutta and Afreen Siddique.

All aspects of administrative and logistical support was managed by Shama Khan (Program Manager). This report was written under the supervision of Ms. Indira Jaising (Project Director) by Asmita Basu (Project Coordinator). Thanks are due to Leena Prasad for coming on as ‘Conference Coordinator’. CP Nautiyal, Manohar Lal and Ashish Soni of the administrative staff provided unflinching support.

This report would not have been possible without the assistance and support of all those mentioned in Annexure I. Their names are not mentioned here due to constraints of space. The LCWRI would like to thank each and every one of them for their invaluable insights and their efforts in collecting data under this project. We hope that we shall be able to count on their support in the years to come.

The LCWRI would like to acknowledge the role of the Office of the Chief Justice of India in collecting information on the proceedings adopted under this Act from the High Courts in each state. Special thanks are due to Ms Girija Vyas, Dr Kiran Bedi, Ms Savithri and Mr Yogesh Mehta.

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Special thanks due to Damayanti for the illustration on the cover page. Last but not the least thanks are due to Sachin Srivastava & Vinod Rawat for publishing the report within an impossible time frame.

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List of Abbreviations

AP	Aggrieved Person
CDPO's	Child Development Project Officers
CPC	Code of Civil Procedure, 1908
CrPC	Code of Criminal Procedure, 1973
DIR	Domestic Incident Report
DWCD	Department of Women and Child Development
FWE	Family Welfare Experts
HMA	Hindu Marriages Act, 1955
ICDS	Integrated Child Development Scheme
IPC	Indian Penal Code, 1860
PO	Protection Officer
PWDVA	Protection of Women from Domestic Violence Act 2005
PWDVR/ the Rules	Protection of Women from Domestic Violence Rules 2006
SP	Service Provider

Introduction

The Protection of Women from Domestic Violence Act 2005, was notified on the 26th of October 2006. This law, for the first time, recognizes a woman's right to a violence free home. In doing so, this law provides a comprehensive definition of domestic violence, recognizes a woman's right to reside in the shared household, provides for reliefs that she is entitled to in cases of violation and lays down a mechanism to facilitate her access to justice and other support services. This law is a first step towards bringing women's human rights into the home.

The women's movement's struggle against gendered violence resulted in law reform, particularly in the realm of criminal laws. The Protection of Women from Domestic Violence Act, 2005 ("PWDVA") marks a shift in paradigm by putting in place a civil law geared towards the provision of reliefs and compensation instead of being directed at the penalizing perpetrators. This is not to say that criminal laws are not required to address domestic violence, as the deterrent effect of criminal law cannot be overemphasized. This is the reason why Section 498A of the Indian Penal Code has been retained and the new law provides options of a civil nature. What this law attempts is to equalize skewed power relations within the home by first providing a violence free space to negotiate from.

It is the private sphere within which most women lead their lives. Patriarchy is perpetuated through men's control over women's bodies and their space. Amendments in criminal law addressed the issue of male violence over women's bodies in all spheres, private and public. This law challenges men's absolute control over the private space and links it with women's experiences of violence and their increased vulnerabilities due to the status of inequality they bear.

Women's status in India

Sex ratio	927 females per 1000 males
Maternal mortality	540 per 100,000 live births
Female literacy	47.8% literacy rate (compared to 73.4% male literacy rate)
Political participation	9.2% of Lok Sabha members are female.
Ratio of female to male earned income	Female Income 26%

(Compiled from Census 2001 and Human Development Report 2006)

The Constitution of India guarantees women equality rights. Gender violence is “*a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men*”.¹ Violence is a fact of every woman’s life. Her condition seems to be defined by the violence she faces, be it in the home, at the workplace or anywhere else. This makes violence against women systemic, pervasive and of epidemic proportions in our societies². The important question is - what strategies should be adopted to stop violence against women.

Unlike a few other Constitutions in the world, the Indian Constitution bestows on the government the power to take “special provisions for women and children” in Article 15 (3). Equality rights are an integral part of human rights (or in the Indian context- ‘fundamental rights’) guarantees. In principle, human rights are enforceable against the State, by easy access to justice through Article 226 to the High Courts or to the Supreme Court under Article 32. Violence in “private” sphere by “private actors”, as is the case in domestic violence, is more difficult to deal with. This poses a challenge to our understanding of human rights itself and to our notion of justice. Human rights do not reside in the private sphere where most women do, because they are enforceable only against States, and apparently, there is no State in the private sphere. After all, are we not familiar with adages such as “a man’s home is his castle”; a place where he alone and not the state has jurisdiction. One of the major successes of the women’s movement has been to pierce the veil of privacy and bring human rights standards into the home under the slogan ‘the personal is political’. This has been done by achieving international consensus in incorporating the Convention of Elimination of Discrimination against Women (“CEDAW”) in the international human rights framework. Taking cue, the Indian women’s movement, in the early years, raised its voice against dowry related harassment within the home which resulted in the recognition of the offence of “cruelty” within marriages in the Indian Penal Code.³ This, however, was a beginning of the campaign. The PWDVA marks a significant step forward. The goal of equality rights for women is still a distance away.

This report is to commemorate the first anniversary of the PWDVA. It puts together experiences of working with the law from different parts of the country to identify best practices and address concerns. The work on the report was commenced with the objective that such assessment be made on an annual basis to ensure proper implementation.

¹ Declaration on the Elimination of Violence Against Women; December 1993

² Jaising; “*One Step Closer to Equality*” ; The Little Magazine; 2007

³ Section 498A

The Rationale

The Lawyers Collective began its campaign for a law on domestic violence in the mid 90's. The need for a substantive law arose in the context of the inadequacies in the legal framework to deal with the incidence of domestic violence. Despite “cruelty within marriages” being a punishable offence, a separate legislation on the prohibition of dowry, cruelty as a ground for divorce, and a secular law on maintenance, there was no law that recognized women’s need for immediate and emergency relief to deal with a situation of violence.

The pre 2005 legal framework on domestic violence

Civil law on divorce

For married women in India, in the pre 2005 era, the legal system offered remedies of divorce, separation and maintenance, available under matrimonial laws. The most significant omission from our matrimonial laws is the fact that none of them, whether Hindu, Muslim, Christian or Parsi, contain any declaration of a right to reside in the matrimonial home. This is the root cause of the vulnerability of a woman in her matrimonial home. It is also one of the major factors by which it is possible to drive out a woman to the street and then blackmail her into agreeing to an unfair settlement. Often a settlement arrived at through a court process is either a return to the violent home and acceptance of the violence or a divorce by mutual consent giving up the right to any share in the matrimonial assets or a decent alimony. Often the woman is willing even for a divorce on the mere return of her own stridhan, or custody of her children which she fears that she is in danger of losing, considering that the father is the natural guardian of the children under the law of the land. In these circumstances, the woman is faced with the choice of bargaining away her rights in return for the dubious benefit of a divorce and her children and sometimes her stridhan. Awards for alimony are notoriously miserly and depend on the continued payment month after month. They are also dependent on the continued ‘chastity’ of the divorced wife and the fact that she does not remarry. Without the recognition of a right to reside, civil laws on divorce provide little in terms of support to women in violent situations.

It may be argued that a woman has the right to contest a divorce in cases where the terms of settlement cannot be reached. While this is possible, contested divorces involve protracted legal proceedings during which women have no access to support services, experiences of working with Section 125 of the Code of Criminal Procedure, 1973 (“CrPC”) show that there are huge delays even in obtaining interim orders for maintenance.

The breakdown of marriage in our society with its attendant discrimination means virtual civil death for women. Hence, in many cases there are women who do not

want a divorce but want to end the violence. The law on divorce has no answers for such women.

Criminal law provisions

As mentioned earlier remedies under criminal law are confined to the prosecution and possible conviction of the offender. The most commonly used provision of criminal law in dealing with cases of domestic violence is Section 498A of the Indian Penal Code (“IPC”) which makes cruelty to a wife by her husband or relatives an offence. The provision attracts a maximum punishment of three years on conviction. The explanation of the term ‘cruelty’ provided in this Section includes within its ambit not only physical but also mental injury.

The first limitation of this provision is that it does not protect women from violence in relationships that are not matrimonial in nature. The second limitation inherent in criminal laws is that it is not aimed at providing reliefs, namely maintenance, shelter, custody etc. Merely recognizing and providing for the offence does not ensure that women will take recourse in law, as they do not, in most circumstances, have the support of families, friends and relatives. Thirdly, criminal law provisions, being State driven, have little space to gauge or reflect the victim’s needs. Being a non-compoundable offence, Section 498A does not allow a woman any scope for entering into settlements once the case reaches the court. There have been cases where women drop charges in the hope of reconciliation and when such reconciliation does not fructify they find it difficult to file and pursue another complaint. Fourthly, there is a higher standard of proof required in criminal law, which is proof beyond reasonable doubt. In many cases this high burden is difficult to discharge as women find it difficult to recall incidents of violence. Finally, Section 498A is plagued with implementation problems. There are many instances where the police refuse to file complaints under this provision and recommend reconciliation instead. Section 304 B on dowry deaths, comes into play only when the woman is dead. It is our belief, that the inherent limitations in criminal law and the non-availability of civil reliefs both prevented women from using criminal law provisions and led to failed prosecutions that in turn fueled allegations of misuse from various quarters.

If the limitations of the pre-2005 legal regime are to be listed then it would be as follows:

- ◆ There was no definition of the term ‘domestic violence’ that comprehensively reflected a woman’s experience of violence in intimate relationships.
- ◆ There was no law to recognize a woman’s right to residence or her right to civil remedies.
- ◆ Legal reliefs for violence could only be availed of by women in matrimonial relationships.
- ◆ Reliefs under civil laws involved protracted legal proceedings without the guarantee of a satisfactory outcome.

- ◆ Criminal laws do not allow space for any negotiations.
- ◆ Even these limited remedies were difficult to access as women rarely had the wherewithal to approach the court. Hence a mechanism to facilitate a woman's access to courts was missing.

It must be clarified at this juncture that listing the inadequacies of the legal regime is not to say that such remedies are not needed. The conclusion of this critique is that without a right to civil reliefs it is unlikely that women would access the remedies available. The idea of a separate law on domestic violence was foregrounded in an attempt to build on existing remedies and bring it within the rubric of one law.

The rationale of the law

At the initiation of the campaign for a law on domestic violence, the first policy decision that needed to be made was on the nature of the law that would fill in the inadequacies in the existing legal regime. It was decided that the law would be primarily civil in nature, with some crossover elements from the criminal legal system. This harmonious inclusion of necessary elements from both legal systems was itself a breakthrough in the process of legislative drafting in India.

Around the world, most laws to combat domestic violence address the issue of protection from domestic violence, and not entitlements regarding custody or property. The draft of the law prepared and in its outcome, is no different. It recognizes in no uncertain terms that women have the right to live lives free from violence. It is of emergency nature providing the guarantee of immediate protection from domestic violence. The drafting was also an effort to codify common law, which states in no ambiguous terms that a woman has the right to reside in her matrimonial home.

The contents of any successful law on domestic violence, it was decided, would have to include the following contours:

- a. A clear declaration of the basic intent of the law, namely, the object of preventing domestic violence.
- b. A clear and unambiguous statement of the right to be free from domestic violence and the recognition of domestic violence as a violation of the human rights of women.
- c. The definition of domestic violence, which captures women's experience of abuse with some degree of precision.
- d. The definition of the 'shared household' so that rights can be protected within that household.
- e. The relief that can be given to protect women from violence.
- f. The infrastructure available to victims of violence that can make the remedy accessible.

- g. Clarity and simplicity of court procedures.
- h. Monitoring the functioning of the law to see whether it was serving its intended purpose.
- i. Providing a coordinated response to domestic violence by recognizing the role of other agencies such as NGO's, the medical profession, shelter homes and the police in assisting in the prevention of domestic violence.

The campaign

In keeping with these objects the first draft of the Domestic Violence (Prevention and Protection) Bill was formulated in 1998 by the Women's Rights Initiative of the Lawyers Collective ("LCWRI"), though the campaign bears its origins in an earlier period, even before the institution of the LCWRI. In the year 1992 the Lawyers Collective had proposed 3 bills to the National Commission for Women for its adoption. Of immediate concern was a law on domestic violence, at the time entitled the "Remedies from Domestic Violence Bill". In addition, the proposal had envisaged the enactment of a law on the community of matrimonial property laying down the rights of women on divorce and a sex equality legislation. While the latter proposals are being worked on, it was felt that dealing with domestic violence was an issue of immediate concern requiring urgent redress.

Though 1992 proposal envisaged an enactment of 3 laws, a distinction must be made between domestic violence laws and marriage laws. Domestic violence laws serve a different function from marriage laws. Marriage laws are meant to define the manner and method of entering into a marriage, rights on marriage and the manner and method of dissolving a marriage. It is very easy to suggest that if a marriage has broken down due to the violence of the man, why does a woman not seek a divorce under marriage laws? This question can be answered only by the woman in question; the choice is entirely hers. Many women do choose that path. Each woman decides for herself what is in her best interest, given her situation. Violence shatters a woman's home, her economic situation, her relationships with the family, her sense of security and well being and everything she held dear. She is in no position to decide on what to do next. She needs the time and space to come to her own decisions after weighing all her options. On the other hand violence is used by the abuser as a tool of blackmail, as a method of coercing her to give up her claims to her property, to her assets and to her children, all of which are often in the control of the man. Given the repeated violence, the abuser will have achieved his aim of getting rid his liabilities by driving the woman to such a point that she will agree to walk out of the house in destitution and desperation, giving up all claims only to be free from the violence.

The purpose of a domestic violence law is to prevent such a situation and to restore a woman to a position of equality within the marriage so as to give her the time and the space to decide on what she wants to do with the rest of her life. The absolute precondition for that is to stop the violence promptly. If the law does not serve that function, then it serves no function at all.

The draft of the civil law was widely circulated amongst members of the civil society and women's groups across the country in the following period. A massive consensus building process, in partnership with state level and local organizations, continued till the final enactment of the law. Simultaneously, efforts were undertaken to identify partners who would take the campaign forward in their regions. The advocacy efforts on the bill were so effective that the bill was passed unanimously in both Houses of Parliament in the year 2005. The Rules under the Act were framed and passed subsequently in 2006.

The PWDVA at a glance

The key features of this law are as follows:

1. The definition of domestic violence

Based on the UN Model Code, the definition of ‘domestic violence’⁴ has been provided for in Section 3 of the PWDVA. It includes all acts of omission and commission that result in injury or harm or threats to cause injury or harm, as well as harassment to meet unlawful demands (such as dowry). Injury may be physical or mental in nature. Conduct includes physical abuse, verbal and emotional abuse, sexual abuse and economic abuse. In arriving at a conclusion that an act of domestic violence has been committed, the overall facts and circumstances are to be considered.

2. Definition of domestic relationship

The term ‘domestic relationship’⁵ has been broadly defined to include all women who ‘live or have lived together in a shared household’ with the respondent and are related to the respondent by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

‘Respondent’⁶ has been defined to include adult male perpetrators of violence and in cases of married women (or women living in the nature of marriages); relatives of the husband or the male partner.

3. Rights recognized under the PWDVA

The PWDVA recognizes a woman’s right to live in a violence free home. The right to reside has been given statutory recognition under the law.⁷ This guards against the illegal dispossession of women from the shared household. A woman who has faced domestic violence from the respondent is entitled to reliefs under this law.

4. Remedies provided for in the law are

- a. **Protection Order** (Section 18) - protection orders or stop violence orders can be passed to restrain the respondent from committing any further acts of violence, as well as committing any other acts that detrimentally affect the rights of the aggrieved woman.
- b. **Residence order** (Section 19) - orders under this provision give effect to the right to residence recognized in Section 17. Orders may be passed

⁴ Section 3

⁵ Section 2(f)

⁶ Section 2(q)

⁷ Section 17

to prevent dispossession or disturb possession or to restore possession, directions to the respondent to remove himself from the share household (though female respondents cannot not be dispossessed), or provide alternate accommodation if the woman so desires.

- c. **Monetary relief** (Section 20)- orders for monetary relief can be passed to meet actual expenses incurred due to medical expenditure, loss of earnings, etc and includes maintenance.
- d. **Custody order** (Section 21)- orders for temporary custody may be passed in favor of the aggrieved person in pending applications for protection orders. The nature of custody provided is temporary and has no effect on personal / civil laws governing issues of permanent custody. The issue of custody is to be decided in keeping the welfare of the children in mind.
- e. **Compensation order** (Section 22)– in consonance with tort law principles of awarding damages for mental and physical suffering caused due to illegal conduct, this provision empowers a magistrate to order additional relief for mental torture and emotional distress.
- f. **Ex parte** and interim orders (Section 23) – the magistrate is empowered to pass *ex parte* and interim orders if a *prima facie* case is made out under this law. This Section is important in providing immediate and emergency relief to women in situations of violence.

Appeals from the orders of the Magistrate lie with the Sessions Court.⁸ A breach of a protection order or any interim order constitutes an offence under Section 31 attracting maximum imprisonment of 1 year and or a fine that may extend to twenty thousand rupees.⁹ An aggrieved woman may file for the discharge of a protection order¹⁰. Either parties can file for the alteration, modification or revocation of any order passed by the court.¹¹ Such an application should show a change in circumstances.

5. Infrastructure made available under the law

The implementing authority of this law is the **Protection Officer**. A Protection Officer works under the supervision of the court and is vested with the responsibility of facilitating an aggrieved woman's access to the court and assisting the court in discharging its functions.

Service providers engaged in providing services, to women are to be registered under the Act.¹² By registering under this law, service providers attain the status of public officers.¹³

⁸ Section 29

⁹ Section 31 (1)

¹⁰ Section 25(1)

¹¹ Section 25(2)

¹² Section 10(1)

¹³ Section 30

The State is to notify **medical facilities and shelter homes** which cannot refuse to provide services to aggrieved women.¹⁴

Police are bound to provide information on this law to women approaching them with complaints of domestic violence. This is in addition to their duties to register complaints under criminal law. The court may also order the police to assist Protection Officers in discharging their functions.¹⁵

Protection Officers are vested with the responsibility of facilitating an aggrieved woman's access to legal aid services.¹⁶

6. Courts empowered to deal with applications

An aggrieved woman or the Protection Officer on her behalf may file an application for reliefs to a Magistrate.¹⁷ Section 26 provides that an application under this Act can also be filed in pending proceedings affecting the aggrieved woman. Prior to filing an application, an aggrieved woman can record her complaint of domestic violence in the form of a 'Domestic Incident Report' ("DIR"). A DIR may be recorded by the Protection Officer or by any Service Provider.¹⁸ A DIR may be attached to the application for reliefs. A magistrate shall consider any DIR's filed at the time of deciding on reliefs to be granted.

¹⁴ Sections 6 & 7

¹⁵ Section 5

¹⁶ Section 9(d)

¹⁷ Section 12

¹⁸ Sections 9 & 10

Objective and Methodology

Objective

This report seeks to map 10 month's functioning of the PWDVA with the intention of identifying best practices, shortcomings and suggesting remedial measures. It must be mentioned that 10 months is too short a period to evaluate the functioning of any law. Hence this is preliminary report focused on identifying trends emerging in the implementation of this law.

Methodology

There is currently no official or formal system for collating statistics on violence against women. Though intended at the drafting stage, the PWDVA itself does not provide for a system for collecting statistics on the number of complaints received and cases filed under this law. Even if there was, statistics rarely provide a comprehensive picture of the functioning of the law. Further, it cannot be stated with certainty that all women who face domestic violence shall take legal recourse to address it. Various factors influence a woman's choice in opting for legal measures. This includes awareness on the rights recognized under the law, the ability to access the legal system, availability of a supportive environment while she takes on legal battles and the efficiency of the justice delivery system in providing relief. This would require a community level study which is not what this report sets out to do. These are some of the limitations of the data collected and the report. This report puts together:

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

It is too early to evaluate judicial trends and judicial processes as they are dependent on the outlook of individual judges. The idea is to examine institutional issues that guarantee a woman's access to court directed reliefs. The objective of this exercise is to

- a. To assess the implementation of the PWDVA by examining the infrastructure put in place in different states and examining cases filed in courts.
- b. To study procedures being used in court to access the courts and in arriving at decisions.
- c. Look at regional variations in numbers of cases filed in courts.

- d. Looking at the type of relief being claimed and granted by courts.
- e. Identifying major users of the law.
- f. To put in place a format to facilitate future evaluation and monitoring.
- g. Collating and presenting best practices.
- h. Providing suggestions to allow for uniform interpretation and effective implementation of the law.
- i. Suggesting steps for better co-ordination towards the effective enforcement of the PWDVA

Methodology for data collection

Collaborations for data collection

The LCWRI collected data in collaboration with the following entities:

- ♦ Ministry of Women and Child Development- the Central Government was approached to collate data on infrastructure put in place at the state levels for the enforcement of the PWDVA.
- ♦ National Commission for Women- 3 regional workshops were planned in Mumbai, Bangalore and Calcutta for training stakeholders and collecting data on implementation.
- ♦ The office of the Chief Justice of India facilitated data collection on cases filed and proceedings adopted under this law from all High Courts.
- ♦ The Gender Community; Solutions Exchange program of the UNDP for eliciting responses of those working on women's rights issues.
- ♦ Lawyers and women's rights groups, including those who were partners in the campaign for the law and those who have used this law to obtain reliefs for women or have engaged with the law in any other manner. (A list of the organizations/ individuals consulted are enclosed in **Annexure I**)

Methods of data collection

Information was collected by adopting the following methods:

- I. Circulating various questionnaires to elicit feedback on
 - ♦ Infrastructure put in place, including
 - The number of Protection Officers appointed, their qualifications/ experience, and trainings undergone under the PWDVA, their designation, their location and the infrastructure provided to them and finally an assessment of their functioning.

- The number of Service Providers registered under the PWDVA and the modus of registration adopted, the nature of services provided, their status (whether state owned or private) and their availability to women facing violence in the home.
 - The number of medical facilities and shelter homes notified under the law, the method of notification and a description of services provided.
 - Awareness creation methods adopted and trainings given to various functionaries.
 - Information on cases/ complaints filed under the PWDVA.
- II. Interviews and consultations with state functionaries and individuals/ organizations and lawyers engaged in either using the law or monitoring its compliance.
- III. Collection of orders and judgments passed under the PWDVA from different courts and the functioning of authorities appointed under the PWDVA and other authorities mentioned under the law, particularly the judiciary, police, legal aid services, etc based on orders passed by the court. This was primarily done with the assistance of the office of the Chief Justice of India. In this regard a *pro forma* was circulated by the office of the Chief Justice of India to all High Courts for information on the proceedings adopted in dealing with applications under the PWDVA. This *pro forma* was accompanied with a request to send in orders passed in such proceedings. (A copy of the *proforma* is contained in **Annexure II**)
- IV. Field visits to 10 states by members of the LCWRI to gather information on implementation and through the examination of at least 10 cases filed in the magistrate's courts in the place visited. States visited as part of this exercise are:
- i. NCT Delhi
 - ii. Chandigarh
 - iii. Rajasthan (Jaipur)
 - iv. Gujarat (Ahmedabad)
 - v. Maharashtra (Mumbai)
 - vi. Kerala (Calicut and Trivandrum)
 - vii. Andhra Pradesh (Hyderabad)
 - viii. Uttar Pradesh (Lucknow)
 - ix. West Bengal (Calcutta)
 - x. Assam (Guwahati) and Manipur (Imphal)

- V. Feedback received and discussions at training workshops on the PWDVA conducted by the LCWRI or attended by the staff of LCWRI as resource persons with members of the judiciary, Protection Officers, Service Providers, lawyers, etc.

Period of data collection

Data collection was initiated in March 2007 and continued till 25th of September 2007. Information collected through the office of the Chief Justice of India is till the period ending on the 31st of July 2007.

The not insignificant volume of information gathered is being presented by dividing the materials on infrastructure put in place, manner of operationalizing the law (i.e. examining complaints and applications filed) and an examination of substantive issues deliberated upon by the courts in various judgments and orders passed.

Infrastructure

Protection Officers

Manner of appointment prescribed in the law

According to Section 8 of the Act, state governments have been vested with the responsibility of appointing Protection Officers. The numbers of Protection Officers to be appointed as well as their experience and training requirements have been left to the discretion of State Governments.¹⁹ The minimum stipulation provided for in the Rules²⁰ is that such appointees should

1. have at least 3 years experience in ‘social sector’
2. be appointed for a minimum tenure of 3 years
3. be provided with necessary assistance for the discharge of their functions.

Rule 3 allows for members of NGO’s to be appointed to the position of Protection Officers. Section 9 (2) provides that Protection Officers shall function under the control and supervision of the Magistrate and perform duties assigned by both the Magistrate and by the Government in addition to their functions under the Act. Both the Rules and the Act provide that, preference shall be given to women applying to the post of Protection Officer.

The duties and functions of the Protection Officer have been provided under Section 9²¹ of the PWDVA. This provision has been further elucidated in Rules 8 and 10. Under the Rules, the functions of the Protection Officers have been bifurcated into:

1. Pre-litigation duties: under the Act to assist the woman in accessing the courts and support services as well as taking steps to prevent further violence.
2. Post-litigation duties: under the directions of the court towards assisting the court arriving at a decision and in the enforcement of orders.

¹⁹ Rule 3

²⁰ Rule 3 (2) (3) (4)

²¹ Section 9 reads as follows:

“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;

In light of these duties and responsibilities, the appointment of the Protection Officer should be in the following lines:

1. The person should be appointed as a full time officer.
2. The person should have training in social work and/or law in addition to training on gender issues and gender sensitization.
3. There should be one Protection Officer appointed for every magistrate's court, as the Protection Officer is meant to assist the magistrate in the discharge of his / her functions.
4. There is need to provide orientation and trainings to Protection Officers on a regular basis.

Observations on appointments

Tables 1 and 1.1 shows the manner in which Protection Officers have been appointed in States and Union Territories (“UT”) respectively. In a majority of the states, Protection Officers have been appointed at the district level. In a handful of states, (Bihar, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh and Maharashtra) Protection Officers have been appointed at the Block levels in addition to district level appointments. Interestingly in 2 states (Manipur and Tamil Nadu), Protection Officers were appointed pursuant to court orders passed in public interest litigation filed by concerned civil society groups. No Protection Officers have been appointed in only 5 states and 2 UT's.

In all states, except for Delhi, existing government officials have been appointed to the post of Protection Officers. Of these appointments, in many of the states, Protection Officers were already functioning as Social Welfare Officers under the state Department of Women and Child Development (Assam, Chhatisgarh, Gujarat, Mizoram, Tamil Nadu, Uttar Pradesh, West Bengal). In others, Child Development Project Officers (“CDPO”) appointed under the Integrated Child Development Scheme (“ICDS”) have been vested with the additional responsibility of acting as Protection Officers (Arunachal Pradesh, Bihar, Himachal Pradesh, Karnataka, Madhya Pradesh, Maharashtra (in addition to Tehsildars), Manipur, Mizoram, Orissa, Uttaranchal Pradesh, and Andaman and Nicobar Islands). It must be noted that CDPO's also work under the auspices of state Departments of Women and Child Development. Other officers appointed to the post of Protection Officers include Probation Officers (in Kerala and Uttar Pradesh), police officers (in Goa and Dadar & Nagar Haveli), and Tehsildars (Maharashtra and Chandigarh). In Jharkhand, Block Development Officers have been designated as Protection Officers. Only in the NCT of Delhi have full time Protection Officers been appointed on a contractual basis. In Andhra Pradesh, Project Directors of the Department of Women and Child Development have been appointed to the position of Protection Officers who perform this function on a full time basis.

Table 1
Appointment of Protection Officers in States

Name of state	No	Level	Designation
Andhra Pradesh	23	District	Project Directors (WCD)
Arunachal Pradesh	16	District	ICDS officers in 2 dist and CDPO in 10 dist
Assam	27	District	District Social Welfare Officers
Bihar	190*	Block	CDPO
Chhatisgarh*	16	District	Women and Child Welfare Officers and/or program officers
Goa	2	District	Police (Superintendent of Police)
Gujarat	25*	District	District Social Defense Officer
Haryana	-	-	-
Himachal Pradesh	324	Some below block level	ICDS Supervisors
Jammu and Kashmir	NA	NA	NA
Jharkhand*	212	Block	Block Development Officers
Karnataka	185+27	185 - taluk level and 27 - Dist level	(185) CDPO and ICDS officers and 27 (Deputy Directors ,WCD)
Kerala	31	District	Probation Officers
Madhya Pradesh	48+313*	48 District and 313 Block	CDPO
Maharashtra*	800		CDPO, Tehsildar, Nayab Tehsildar
Manipur	7+2	District (7) +2 (State)	CDPO
Meghalaya*	-	-	-
Mizoram	9	District	Dist Child Development Officer + Dist Social Welfare Officer
Nagaland*	-	-	-
Orissa*	30	District	CDPO
Punjab	-	-	-
Rajasthan	-	-	-
Sikkim	4		Asst Director (Nutrition)
Tamil Nadu	30	District	Social Welfare Officer
Tripura*	4	District	
Uttaranchal Pradesh*	13	District	ICDS
Uttar Pradesh	39	District	Probation Officers
West Bengal	19	District	Social Welfare Officer
NCT Delhi*	19		Protection Officer (contractual basis) MSW Degree

*Information collected through unofficial sources

Table 1.1
Appointment of Protection Officers in Union Territories

Name of Union Territory	No of PO's	Level	Designation
Andaman and Nicobar	6		CDPO
Chandigarh*	3		Tehsildars
Dadar & Nagar Haveli	1		Lady police sub inspector
Daman & Diu	-	-	-
Lakshadweep	9	-	-
Puducherry	-	-	-

Issues arising

There has not been adequate time for evaluating the performance of Protection Officers as, in most states, Protection Officers have only recently been appointed. However, in many of the places where appointments were made closely following the notification of the PWDVA the following problems have been faced:

1. Lack of time

As most of the Protection Officers are not appointed on a full time basis, they are facing constraints of time and in some cases overwhelmed by their substantial workload.

This is particularly true in light of the fact that most appointments have been made at the district level which means that one Protection Officer is compelled to attend proceedings at the more than one magistrate's courts to provide assistance and comply with numerous court directions. As the implementation of the law is at its nascent stage, there is a possibility that Protection Officers will have to attend Sessions Courts and other appellate courts once appeals against orders start being filed.

This has meant that in most states, the time of the Protection Officer is mostly taken up with attending court and complying with court orders, particularly with the service of notice. This leaves the pre-litigation duties of providing support to women to prevent violence and coordinating support services unattended.

In some places, some Protection Officers have resigned or opted for transfers as they are unable to deal with the work load.

2. Lack of infrastructure

In most cases Protection Officers are located in the Department of Women and Child Development or in the Collectors' office. They have not been provided with staff to whom they can delegate their functions to ensure effectiveness. It is important to mention the Goa experience where police officers have been appointed to the post of Protection Officers. In this case the existing infrastructure of the police department has been activated to discharge court mandated duties.

In some states, Protection Officers have raised concerns of personal safety particularly in cases where they have had to assist the court in either serving notices or in the enforcement of orders.

There have also been complaints that inadequate funds have been made available to Protection Officers as they receive no travel reimbursements and have to bear all the expenditure for discharging their duties under the PWDVA.

Finally, concerns have been raised on the lack of co-ordination between Protection Officers working in different states. While in most cases, Protection Officers function under the control of the Department of Women and Child Development, there is a felt need for a State level coordinator to guide Protection Officers and support them in the discharge of their functions.

3. Lack of legal training and awareness

From the duties described earlier, it is essential that all Protection Officers are trained in legal procedures involved in the implementation of the PWDVA and principles adopted in conducting social work. In addition there is need for gender sensitization for Protection Officers in order for them to empathize with aggrieved women who approach them for support.

Though Protection Officers have been appointed in almost all states, trainings for Protection Officers have only been conducted in Andhra Pradesh, Assam, Gujarat, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, NCT Delhi, Orissa, Sikkim and Tamil Nadu. In many of the states mentioned, private initiatives such as NGO's or State Commissions have conducted the trainings. Some states such as Maharashtra and Bihar are in the process of planning trainings at the time of writing this report. In others, trainings to Protection Officers are urgently needed, particularly for the reason that most of the appointees do not have the experience of dealing with complaints of domestic violence or have knowledge on the law. One reason for the low rate of trainings may be that appointments have recently been made.

However, this indicates the need for the state governments to evolve training programmes for Protection Officers in coordination with the Central Government. This will ensure uniformity in the implementation of the law. There is need to provide regular trainings to Protection Officers appraising them of developments in the law and on how they should discharge their functions.

Best practices emerging in the appointment of Protection Officers

In the context described above best practices that emerge are as follows:

1. Full time Protection Officers, with qualifications in social work, recruited on a contractual basis by the Department of Social Welfare. This is the model applied in Delhi. The Protection Officers report to the Department of Social Welfare in addition to performing their duties under the supervision of the court.

2. Project Directors of the Department of Social Welfare appointed in Andhra Pradesh who work on a full time basis in close co-ordination with the police and Legal Aid Services Authority.
3. Appointment of Protection Officers at the Block Level in Bihar, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh and Maharashtra (though none of these appointments have been for full time Protection Officers).

It is relevant to make a note of concerns raised over the appointments of CDPO's to the post of Protection Officers. CDPO's are already overworked in providing child care and in assisting in maternal mortality programs. They do not have experience of dealing with legal procedures. Further, their work under the ICDS program shall suffer if they are vested with the additional responsibility of performing their role as Protection Officers. The practice of appointing CDPO's to the post of Protection Officers is therefore not recommended.

Service providers

Provision for registration of Service Providers under the law

Section 10 of the PWDVA provides that any voluntary organization registered either under the Societies Registration Act, 1860 or the Companies Act 1956 can apply to be registered as 'Service Providers' under the PWDVA. This includes organizations engaged in providing legal aid, medical, financial or any other assistance to women. On registration, members of Service Providers, while discharging duties under the PWDVA, are deemed to be public servants²². This means that their actions taken in good faith are protected from prosecution, they are given the powers to record a DIR and facilitate the provision of medical aid and shelter home services to any aggrieved woman approaching them. Rule 11 provides the method of registration and minimum requirements to be fulfilled by those desirous of registering under the PWDVA.

Registration of service providers under the PWDVA is a recognition of the important role played by non-governmental organizations in supporting women in distress. Their powers, recognized under this law, enable them to support women effectively and guard against undue harassment. The maintenance of a registry of service providers²³ also facilitates a woman's access to them. Service providers with the experience of dealing with complaints of domestic violence are in a position to provide Protection Officers with much needed support in dealing with complaints received under this law.

²² Section 30

²³ Rule 11 (3) mandates the State Government to provide a list of Service Providers in various localities to the Protection Officer. Sub Rule (4) vests the responsibility of maintaining a register of all service providers on the Protection Officer to allow access to women who are desirous of seeking their services.

Registration of service providers

Table 2 provides the status of registration of Service Providers. Only 5 states have registered Service Providers. There are no available details of the nature of services being provided by these registered Service Providers. In 12 states/ UT's, the process of registration is under way. Disappointingly, 17 states/ UT's have not yet initiated the process of registration. There appears to be no discernable reasons for this lapse as all states have non-governmental organizations engaged in providing services to women or work on issues concerning women's rights. Perhaps these states are concentrating on the appointment of Protection Officers and intend to commence the registration of Service Providers once the process of appointing and training of Protection Officers is complete. The other reason for non-registration may be that not many non-governmental organizations are aware of this law and hence have not applied for registration. There is also the possibility that independent service providers are reluctant to register under this law as they perceive a loss of autonomy and believe that they shall be vested with the responsibility of implementing the law once registered. These misconstrued notions can be done away with by explaining the provisions of the PWDVA and with the spread of legal awareness. There are others, particularly in Uttar Pradesh, who have put in their application for registration but have been denied the same without being given any reasons for the rejection.

Table 2
Status of registration in other States / UT's

Status	Names of States/ UT's	Total
States where Service Providers have been registered	Andhra Pradesh (72), Orissa (59), Tamil Nadu (30), Tripura (1), Uttar Pradesh (39)	5
States / UT's where applications are being processed	Assam, Chattisgarh, Gujarat, Himachal Pradesh, Karnataka , Kerala, Madhya Pradesh, Mizoram, Andaman and Nicobar	9
States / UT's that have invited applications from Service Providers	Lakshadeep , Sikkim , West Bengal	3
States / UT's where the process of registration has not been initiated	Arunachal Pradesh, Bihar, Goa, Haryana, Jharkhand , Maharashtra, Manipur Meghalaya, Nagaland, Punjab, Rajasthan, Uttaranchal, NCT Delhi, Chandigarh, Dadar & Nagar Haveli, Daman & Diu, Puducherry	17

Notification of medical facilities and shelter homes

Provision for the notification of medical facilities and shelter homes

The PWDVA obligates State Governments to notify shelter homes and medical facilities. Sections 6 and 7 provide that it is the duty of all shelter homes and medical facilities to provide their services on a request made by an aggrieved woman or the Protection Officer on her behalf. These provisions are to guard against the possibility of aggrieved persons being denied such facilities in times of need.

Status of notification of shelter homes and medical facilities

There appears to be a certain level of confusion over the registration of service providers and the notification of medical facilities and shelter homes services. The distinction that is to be made is that a service provider can be any entity defined under the Act, which applies for registration and fulfils the conditions stipulated in the law. On the other hand, any medical facility or shelter home may be notified by the state government without the receipt of applications for registration. In no state, except Kerala, have such notifications been issued. Existing government services have been providing free medical and shelter facilities to women facing violence. Information on such services available in states is provided in Table 3. No new facilities have been notified under the PWDVA. The state sponsored services are not adequate in meeting the needs of women facing violence.

Other agencies

Legal aid

Article 39A of the Constitution of India provides that State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability. The Legal Services Authority Act was enacted in the year 1987. Section 12 of the Legal Services Authorities Act, 1987 includes women as a category eligible for free legal aid in its list of eligible persons.

A nationwide network has been envisaged under the Act for providing legal aid and assistance. National Legal Services Authority is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame effective and economical schemes for legal services. It also disburses funds and grants to State Legal Services Authorities and NGOs for implementing legal aid schemes and programmes. It also envisages legal service authorities to be constituted at every state, district and taluk levels. These authorities are supposed to give effect to the policies, directions and implement legal aid schemes in their respective areas.

Table 3
Medical facilities and shelter homes available

Name of state	Medical Facilities	Shelter homes
Andhra Pradesh	Govt hospitals are provide free medical facilities	26 Swadhar Homes
Arunachal Pradesh		2 existing state run shelter homes.
Bihar	All civil surgeons instructed to provide medical facility to women who produce letters from Protection Officers.	District magistrates instructed to shortlist shelter homes
Chhatisgarh		Nari Niketan are in the process of being changed to shelter homes which will also provide vocational trainings
Gujarat	The health department has been instructed to issue notifications.	
Himachal Pradesh	National Rural Health Mission and other government hospitals already provide free medical facilities.	5-6 existing shelter homes.
Karnataka	The DWCD has requested the department of health to issue circulars to public hospitals and PHC's to provide free medical aid to to women facing domestic violence.	
Kerala	Government facilities always provide medical aid free of cost	15 shelter homes have been notified under the Act
Orissa		25 Swadhar homes already functioning as shelter homes.
Tamil Nadu	All government hospitals and PHC's have been instructed to provide free medical services	
Uttaranchal		Existing shelter homes present
Uttar Pradesh	Chief Medical Officers instructed to provide free medical treatment.	34 short stay homes + 5 protection homes + 8 shelter homes under the ITPA have been instructed to function as shelter homes under the PWDVA.

The availability of legal aid is a crucial aspect in facilitating a woman's access to reliefs under the PWDVA. Section 9 (d) provides that Protection Officers shall facilitate a woman's access to legal aid available under the law.

Practice adopted in facilitating access to legal aid

Legal aid is being provided to women through the state Legal Aid Services Authority in cases where women make a request for legal aid in court. However, this is available only at the district level in most states. In other cases, women approach the court through their own lawyers. In Andhra Pradesh, legal aid is made available to any woman filing an application under the PWDVA through the Protection Officer.

Best Practice

On the 30th of June 2007, the Andhra Pradesh Legal Services Authority issued a circular (Copy enclosed in **Annexure III**) enclosing the following directives

- ♦ All District Legal Services Authorities to organize legal awareness camps to target groups in consultation with NGO's and paralegal volunteers to create awareness about the PWDVA.
- ♦ Chairmen of the District Legal Services Authorities to organize sensitization workshops for advocates, judicial officers, Protection Officers, representatives of NGO's and para legal volunteers within the jurisdiction of the respective judicial Magistrate of the First Class / Chief Metropolitan Magistrate on the PWDVA.
- ♦ Most important in these directives is that the District Legal Service Authorities shall constitute 'Legal Aid Cell for effective implementation of the PWDVA' consisting of the Chairman, District Legal Services Authority as Chairman and Secretary, District Legal Services Authority, Superintendent of Police, Public Prosecutor, four lady advocates having social commitment, Protection Officers, Project Director, District Rural Development Agency as members of the Cell to ensure effective implementation of the Act. Compliance report in this regard shall be submitted to the State authority. Further the cell shall review the practical and procedural difficulties encountered by the Protection Officers, courts, victims, service providers, if any, in the implementation of the Act once in 2 months and submit a report to the State Authority regularly with suitable suggestions for resolving such difficulties.

Police

The police have been directed by court, in many cases, particularly in those where Protection Officers have not been appointed (Rajasthan, Punjab, Haryana) to assist the court while dealing with applications under the PWDVA and in the enforcement of orders. Police assistance has been sought in many states to serve notices prior to the appointment of Protection Officers. Even after the appointment of Protection

Officers, the police have been directed to assist Protection Officers in carrying out their functions particularly with regard to the enforcement of orders. The LCWRI's interactions with women and civil society groups indicated, in some cases, a "hands off" attitude among the police on the ground that the PWDVA is a civil law. This attitude disregards the duties cast on the police under the PWDVA, particularly under Section 5. The role of the police in assisting the court once an application is filed is discussed in detail in the subsequent chapters relating to court proceedings. The police have played an important role in the implementation of this law in Andhra Pradesh. This example is being highlighted as a 'best practice' that may be adopted in other states.

Best Practice

In a circular memo dated 22.12.2006 issued by the office of the Additional Director General of Police, CID , Hyderabad; 1650 Police stations were directed to provide the necessary/required information about PWDVA and other related laws to any women approaching them with complaints of domestic violence. The circular provides that whenever a woman approaches the Police, a general diary entry has to be made. The police officers must provide information to the aggrieved woman on

- ◆ Her right to make application to the Protection Officers.
- ◆ Of the availability of service providers.
- ◆ Of the availability of Protection Officers.
- ◆ Of her right to free legal services from Legal Services Authority.
- ◆ Of her right to file a complaint under Section 498A IPC.
- ◆ Of her right to initiate criminal proceedings by lodging FIR.

If the woman does not want to initiate criminal proceedings against the perpetrator then, she should be escorted to the office of the Protection Officer by a lady constable. The Circular further states that the police should assist the victim in making the DIR, protect the victim and assist in the implementation of the orders. In cases of emergency, the Circular directs the police to escort her to the government hospitals or the existing Swadhar (shelter homes) depending on her requirements. (A copy of this circular is provided in **Annexure IV**)

Creation of public awareness

Section 11 (a) provides that it is the duty of the Central and State Governments to give wide publicity on the Act through public media, including audio visual and print media. The importance of public awareness and training on the law cannot be overemphasized.

Practice adopted

There is little official information on measures taken for creating public awareness on the law. In fact, most of the High Courts have expressed the need for the creation of public awareness. The information gathered in this regard is not comprehensive or complete. The attempt in this section is to provide an essence of different measures

taken by public agencies across the states. It is observed that awareness creation is currently being conducted by private initiatives, often in partnership with state agencies. Awareness on the law is primarily targeted towards state agencies and service providers vested with the responsibility of implementation.

Some examples of public awareness measures taken by state agencies:

1. Andhra Pradesh

- ◆ Funds have been allocated to each Protection Officer to conduct training programmes for service providers and government officials in their respective district
- ◆ Act translated in Telugu and circulated in the in house magazine of the DWCD.
- ◆ Pamphlets and posters brought out by the DWCD
- ◆ Trainings and orientation programs have been conducted for the Protection Officers.
- ◆ A circular was issued by the Andhra Pradesh High Court to all the magistrates informing them of their duties under the PWDVA.

2. Himachal Pradesh

- ◆ Directorate of Social Justice and Empowerment printed pamphlets and organized one day workshop on the 3.4.07.
- ◆ 5000 folders of the materials on domestic violence were distributed through the CDPO's and the DPO's.
- ◆ Booklets have been printed in Hindi and disseminated.
- ◆ Radio programs, print media and the local television channels have been used to dissemination information and create awareness.

3. Karnataka

- ◆ The Legal Services Authority conducted a workshop for the members of the judiciary, Protection Officers, police and members of NGO's at the district and taluk level

4. Uttar Pradesh

- ◆ Wall paintings and hoardings have been put up in at the block, tehsil and district level to publicize the Act.

Efforts towards creating public awareness and conducting trainings have also been undertaken by the following agencies:

1. National Commission for women through regional consultations on the PWDVA
2. State Commissions for Women in certain states such as Maharashtra, Meghalaya and Orissa.

3. The National Judicial Academy and by some of the State Judicial Academies particularly in Tamil Nadu.
4. National Institute of Public Co-operation and Child Development
5. The police in Andhra Pradesh and West Bengal.
6. The Madhya Pradesh Administration Academy.
7. As has been mentioned earlier, in Andhra Pradesh the State Legal Services Authority has issued a circular directing the District Legal Services Authorities to take measures for training and sensitization of different stakeholders on the PWDVA.

Issues arising

There remains much to be done in terms of spreading public awareness on the law. Of crucial and urgent importance is the need to provide information on Protection Officers and their contact details so that women are able to access them easily. It is hoped that information on service providers and other support services shall also be available to women once these mechanisms have been put in place.

Conclusion

The infrastructure that was visualized under this Act is slowly emerging. In the next chapter it shall be seen that the lack of infrastructure has not detrimentally affected a woman's access to courts in most states. Some of the states have been using existing structures such as the police and the existing court mechanisms to conduct proceedings and provide timely relief, Rajasthan requires a particular mention in this regard. In Andhra Pradesh, an efficient system of co-ordination between the police, the office of the Protection Officer and legal aid services has been devised to facilitate an aggrieved woman's access to court and other support services.

Though not ideal, Protection Officers have been appointed in almost all states and UT's. There is however, the need for full time Protection Officers being put in place. There is also a need to commit funds for the effective functioning of Protection Officers. The slow rate of registration of Service Providers and the notification of medical facilities and shelter homes may be attributed to the nascent stage of implementation. It is hoped that all states shall, at a minimum, register state supported voluntary organizations and notify public hospitals/ clinics / medical facilities and shelter homes as a first step towards ensuring a multi-agency coordinated response to women who are faced with domestic violence.

In conclusion, the following recommendations are proposed in terms of providing infrastructure for the effective implementation of the PWDVA²⁴.

- I. Adequate budgetary allocations by the Central and State Governments to put in place necessary infrastructure for the implementation of the PWDVA.
- II. The appointment of full time Protection Officers associated with each Magistrate's court.
- III. Putting in place the office of the Protection Officer with adequate staff and infrastructure to assist the Protection Officer in the discharge of his/her functions.
- IV. Attaching a Public Prosecutor or a legal aid lawyer with each Protection Officer to aid them in performing their duties under the PWDVA.
- V. Appointing state level Protection Officers to coordinate the functions of all Protection Officers appointed.
- VI. Effective co-ordination between the departments of Women and Child Development, Home Affairs and Law and Justice to ensure that Protection Officers are able to access the police and court structures to discharge their functions under the law. Co-ordination with the Department of Legal Affairs is particularly important in ensuring that women are provided with legal aid in pursuing cases under the PWDVA.
- VII. Efforts by all state agencies to ensure a multiagency response in cases of domestic violence.
- VIII. Effort by the Legal Services Authorities at the state and district levels to review the law and its functioning on a regular basis.
- IX. Ensuring the registration of Service Providers and notifying medical facilities and shelter homes.
- X. Creating public awareness on the PWDVA by giving it wide publicity.
- XI. Ensuring the easy availability of information on Protection Officers appointed and support services.

²⁴ Some of these recommendations have already been placed before the Planning Commission for incorporation into the XIth 5 year plan.

- XII. Trainings to be imparted on a regular basis to different stakeholders vested with the responsibility of enforcing this law. At a minimum, the initiative in this regard may be taken by the following agencies:
- a. The National Judicial Academy and the State Judicial Academy to conduct trainings for magistrates and members of the judiciary. This may also be done for magistrates and advocates by the State Legal Services Authorities through the District Legal Aid Services as has been done in Andhra Pradesh.
 - b. Institutes of Public Administration in collaboration with the Departments of Women and Child Development / Social Welfare for providing trainings to Protection Officers and service providers.
 - c. National and State Police academies in collaboration with the departments of home affairs to provide training to the police.
 - d. National and State Commissions for Women and the nodal state departments for spreading awareness on the law.
 - e. National and state legal aid services authorities to provide training to lawyers and to ensure easy access to legal aid.

Access to relief under the PWDVA

In this section procedure followed, in accessing the courts for relief and the manner, in which applications under the PWDVA are being dealt with, will be examined. There appears to be divergent ways in which the Act is being implemented across the states. This is partly relatable to the kind of infrastructure put in place as well as the manner in which the Act is being interpreted. Each of the procedures has advantages and disadvantages alike. The objective of presenting these experiences is to cull out best practices as well as to look at the problems faced. Information presented in this segment has been primarily gathered from *pro formas* filled in by the High Courts of different states on the practices adopted in magistrates' courts. Before analyzing the experiences, a brief look at the number of applications filed under the Act that are pending in the courts.

Applications filed

Table 4 gives the number of cases that have been filed under the PWDVA. This table has been constructed with information received by the office of the Chief Justice of India from different High Courts across the country. This information was collected from the courts for the period ending 31st July 2007.

The highest number of cases has been filed in Rajasthan (3440) where no Protection Officers have been appointed or any infrastructure been put in place. This is followed by Kerala where 1028 cases have been under the PWDVA. No official information was received from Uttar Pradesh though interactions with civil society groups and lawyers show that over 150 cases have been filed in Uttar Pradesh. Less than 50 cases have been filed in 10 states across the country. (Assam, Chhatisgarh, Himachal Pradesh, Jharkhand, Manipur, Orissa, Sikkim, Tamil Nadu, Tripura, and West Bengal [54 cases]). No cases have been filed in 4 states (Arunachal Pradesh, Meghalaya, Mizoram and Nagaland).

One of the reasons for this wide variation may be due to the level of awareness on this law in each state. It is not necessary that awareness has been created by state agencies in the states where there is a high rate of filing, a case in point being Rajasthan. In this state it appears to be the lawyers and members of the civil society who have taken the initiative of filing applications under this Act. In Andhra Pradesh, the police have been giving women the option of either filing a civil complaint under the Act or a criminal complaint under the IPC when approached.

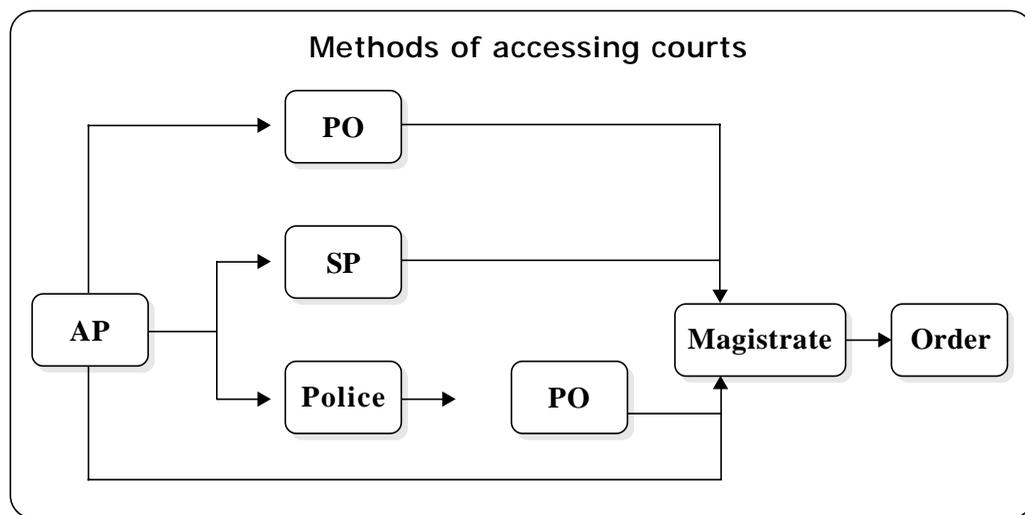
Table 4
Number of cases filed under the PWDVA

Name of State	No of cases filed
Andhra Pradesh	731
Arunachal Pradesh	0
Assam	39
Bihar	64
Chhatisgarh	5
Gujarat	315
Haryana	235
Himachal Pradesh	37
Jammu and Kashmir	NA
Jharkhand	13
Karnataka	124
Kerala	1028
Madhya Pradesh	159
Maharashtra and Goa	603
Manipur	13
Meghalaya	0
Mizoram	0
Nagaland	0
Orissa	12
Punjab	249
Rajasthan	3440
Sikkim	2
Tamil Nadu	37
Tripura	1
Uttaranchal	145
Uttar Pradesh*	-
West Bengal	54
NCT Delhi	607
Total	7913

*Information not available.

Access to courts

Section 12 of the PWDVA provides that any aggrieved person (“AP”) or the Protection Officer (“PO”) on her behalf can file an application in court seeking reliefs. The proviso to this Section states that a Magistrate shall consider any DIR filed at the time of granting relief under the PWDVA. A DIR may be considered as a civil equivalent of an NCR²⁵. A DIR may be recorded by either a PO²⁶ or a registered service provider²⁷ (“SP”). The Police, when approached by aggrieved women with a complaint of domestic violence, have the duty to assist her in recording DIR. All DIR’s are to be filed with the Magistrate with a copy to the police. The DIR is to be attached with the application for relief filed in court in cases where DIR’s have been recorded. The PWDVA is therefore a multi-option law that can be triggered off by approaching any of the authorities recognized thereunder or by directly approaching the court. In addition an application for relief under the PWDVA can also be filed in any pending proceedings that affect the aggrieved person including criminal proceedings under Section 498A or any civil suits.²⁸



The format of recording a DIR is provided in Form I of the Rules. It is to be filled in on the basis of information provided by the Aggrieved Person and has to bear the signature of either a Protection Officer or the registered Service Provider. As both

²⁵ An NCR or a non cognizable offence report is recorded in cases where the commission of a non-cognizable offence is reported.

²⁶ Section 10

²⁷ Section 11

²⁸ Section 26

²⁹ Section 30

these authorities have been accorded the status of ‘public servants’²⁹, the DIR acquires the status of a public document. Since it is akin to an NCR, it is to be factual report that contains a faithful record of a woman’s complaint of domestic violence.

In light of the fact that Service Providers have not been registered in most states, the option of approaching the court through a service provider cannot be availed of at the moment. Women are, therefore, approaching the court either directly (through a lawyer) or through the Protection Officers depending on whether Protection Officers have been appointed in the states concerned. In Andhra Pradesh, the option of approaching Protection Officers through the police is also available to women.³⁰

Options of approaching courts

Option of accessing courts in States where protection officers have not been appointed

In states where Protection Officers have not been appointed, applications are being filed without an accompanying DIR. This is the case in Rajasthan, Punjab and Haryana. In West Bengal, Karnataka and Kerala, prior to appointment of Protection Officers, lawyers were guiding women on how to give information to record the DIR and filing the application for reliefs.

In other cases, women often approach lawyers, without going to a Protection Officer, for filing applications under Section 12 without a DIR. Initially there appeared to be hesitation on the part of Magistrates, particularly in the states of West Bengal and Maharashtra to entertain complaints filed under this Act without accompanying DIR’s. This due to the directive contained the proviso to Section 12³¹ which was interpreted to be mandatory in nature. Mumbai High Court³² clarified this issue by holding:

“We have considered Section 12 of the PWDVA, 2005. The proviso to Section 12 only sets out 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. This does not mean that if no Protection Officer is appointed, the Magistrate ceases to have jurisdiction. That would frustrate the object of the Act. The proviso only sets put that if the Protection Officer is appointed, his report is to be taken into consideration.”

In the states of Haryana, Punjab, and Rajasthan DIR’s are not required to be filed as no Protection Officers have been appointed. In other states where Protection Officers have been appointed, different practices are emerging.

³⁰ Discussion on the Andhra model is provided on P-36.

³¹ The proviso to Section 12 states “*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 of the Service Provider* (Emphasis supplied)

³² *Surekha Mote v State of Maharastra* (PIL No. 10; High Court of Bombay)

Options to accessing the court in states where Protection Officers have been appointed

Practices that have been adopted in states where Protection Officers have been appointed can be broadly divided into the following categories:

1. States where DIR's are insisted upon while dealing with applications

Only in 2 states (Himachal Pradesh, Manipur and Tripura) is the filing of a DIR is being insisted upon by the courts. In these states women may approach the court either after recording the DIR with the Protection Officer or file an application in court after which the court directs the Protection Officer to file a DIR.

The main problem arising with this method is that proceedings tend to get delayed as the Magistrates are reluctant to proceed with the application in the absence of the DIR.

2. States where the filing of DIR's are preferred but not insisted upon

In all other states DIR's are not being insisted upon at the time of filing the application. However, the Protection Officer may be directed to file a DIR once cognizance has been taken on the application filed. It must be noted here that in many of the states (e.g. Sikkim, Karnataka, Uttaranchal) Protection Officers have been recently appointed. The flexible stance taken by courts in the absence of Protection Officers may undergo a change with the appointment of Protection Officers.

The practice within states may be divergent. The different practices that have been adopted by courts within the states are:

- ◆ Some Magistrates refuse to proceed without the filing of a DIR as they are of the opinion that the DIR is the basis of the case (e.g. Chattisgarh, NCT Delhi).
- ◆ In some case, lawyers or unregistered service providers fill in the DIR's and file it in courts (e.g. NCT Delhi). This does not appear to be the correct approach as the DIR requires the signature of either the Protection Officer or the registered Service Provider.
- ◆ DIR's are filled in the presence of the Magistrate or in the court. (e.g. NCT Delhi)
- ◆ The DIR is filled by the lawyer and given to the Aggrieved Person to file in the Magistrate's court. (e.g. Kerala). This again is not correct practice as the DIR is required to bear the signature of the Protection Officer or the registered Service Provider.

- ◆ In some cases where Protection Officers were not appointed, police were filling in DIR's either on complaints received from the aggrieved woman or on directions of the Court. This has been observed in orders passed in Kerala (prior to the appointment of Protection Officers).
- ◆ In Karnataka, DIR's filled in by non-registered service providers are being accepted as valid.
- ◆ In Andhra Pradesh almost all applications are filed along with DIR's. If DIR's are not filed, courts direct the PO to file the same.
- ◆ In Gujarat almost all applications are brought by the Protection Officers directly to the court.

Issues arising and problems faced

1. **Delays caused if DIR's are directed to be filed after an application is filed in court** – The idea behind the recording of the DIR is that a public record of domestic violence is created on the complaint of an aggrieved person. This can be relied upon by courts while granting orders. Once an application under Section 12 is filed for relief, there is no need for a DIR. In such cases insistence on a DIR causes unnecessary delays. For instance, in one case in Assam, proceedings were delayed by 6 months due to the Protection Officer's failure to file a DIR pursuant to the directions of the court.
2. **Protection Officers act as the first level of scrutiny** – The DIR is a public recording of a complaint of domestic violence made by the aggrieved person. It has to be the faithful record of what the aggrieved woman states to the Protection Officer. In some cases, Protection Officers, act as a first level of scrutiny before filling in a DIR. This means that they verify the situation before recording the DIR. In some cases they even refuse to record the complaint if they are of the opinion that there is no case of domestic violence. The question arises, on what basis are Protection Officers making these decisions? In these situations women's access to courts is impeded. While Protection Officer, may make some preliminary scrutiny, such as verifying details such as place of residence of the Applicant, residence of the Respondent, details of income of the respondent, status of children etc, a Protection Officers' cannot sit in judgment over the merits of the case. The Protection Officer ought to record the complaint of domestic violence in an intelligible manner. This includes collecting documentary evidence such as medical records if any. Whether or not there is any merit in the complaint is for the court to decide. A Protection Officer is meant to assist the woman in accessing the court and cannot be allowed to function as a hindrance to access to the court.
3. **Protection Officers directing women to undergo counseling** – in some cases Protection Officers send women to undergo counseling with a view of effecting reconciliations instead of assisting them file applications in court.

4. **Repeated visits to the Protection Officer** – in some cases a woman has to visit PO's offices repeatedly before a DIR is recorded.
5. **Confusion over the role of the Protection Officer vis-à-vis the lawyer representing the aggrieved woman** – cases in which women approach the courts directly through their lawyers, Protection Officers face resistance from such lawyers in recording DIR's in pursuance of the directions of the court. There appears to be some confusion in the roles of Protection Officers and lawyers, while dealing with applications under the PWDVA.
6. **Copies of DIR's are not being given to the aggrieved woman free of cost** – in some cases, aggrieved women have complained that they have not received a copy of the DIR free of charge.

Best practices identified

- ♦ The Andhra Pradesh Model may be cited as one of the best models that facilitate a woman's access to courts for reliefs under the PWDVA. In this model, an aggrieved person can either approach the police or the Protection Officer with a complaint of domestic violence. At a police station, the aggrieved woman is given the option of either pursuing a criminal complaint or a civil complaint under the PWDVA. In case, the woman wants to file an application under the PWDVA, she is escorted to the office of the Protection Officer. On reaching the Protection Officer, she is given the option of either undergoing counseling from a registered Service Provider or filing an application under the PWDVA. If she is desirous of filing an application under the PWDVA, a DIR in Form I and an application in Form II is filled in and filed in a Magistrate's court. A DIR Index containing details of all complaints filed under the PWDVA is maintained by the Protection Officer. All women filing cases under the PWDVA are automatically referred to a legal aid services lawyer (if required) once the application is filed in court. The success of this model may be indicated by the number of DIR's filed in Andhra Pradesh. (A chart giving details of proceedings filed in Andhra Pradesh is enclosed in **Annexure VI**)
- ♦ Applications filed without an accompanying DIR ought to be entertained by the Courts. Once an application reaches court, there is no need for a DIR as the application discloses the facts of the case and the cause of action. Instead a Protection Officer may be directed to conduct a home study in accordance with Rule 10 (a) in case of need, not necessarily in all cases. In such cases, insistence in filing DIR's cause unnecessary delays. It will thus be up to the woman, having regard to her individual circumstances, to choose her option of going to a Protection Officer for help in filing an application, or approach a lawyer and file an application for relief.

Other issues arising from the recording of DIR

Other issues have also been reported in relation to the recording of DIR's. These are:

1. DIR's are not being filled in properly by lawyers, who should not be filling it.
2. In some instances the Protection Officer is not trained on how to fill a DIR and the rationale behind maintaining such a record. It seems that DIR's are being filled in only in situations where the aggrieved woman has already decided to approach the court for reliefs, instead of being recorded in all instances where a complaint of domestic violence is being brought to Protection Officers.
3. Not being trained in filling DIR's also leads to inaccurate or inadequate recording of the woman's complaint of violence.
4. There is no clarity in the manner in which DIR's are being acted upon (other than the filing of an application if the woman opts for the same.) This is particularly important in cases where the DIR reveals the commission of a serious offence. It is not known whether a criminal complaint is being filed in such cases in addition to the complaint under the PWDVA, or whether any action is being taken to prevent the recurrence of violence. If the DIR, revealing the commission of a serious offence is forwarded to a Magistrate, a Magistrate may take cognizance of such an offence under Section 190 of the CrPC. It is not known whether such action is being taken by Magistrates.
5. There are also cases where multiple DIR's are being filled in for the same incidence of violence

Service of notice

Authority vested with the responsibility of serving notice

Once an application reaches the Magistrate's court, there is need to serve notice on the respondent to appear in court. Section 13 of the PWDVA vests the responsibility of serving notice on the Protection Officer. Section 13 (2) provides that a declaration made by the Protection Officer that notice has been served on the respondent shall be proof that such notice has been served. The reason for the inclusion of this provision was to ensure that there would be a state authority to assist the court in ensuring that notices are served in proceedings under the PWDVA. Rule 12 (2) (a) clarifies that notice shall be served by the Protection Officer or any other person designated by the Protection Officer. Further Section 28 allows the Magistrates to set their own procedure in dealing with applications filed under the PWDVA to meet the ends of justice that are in addition to the procedure laid down in the CrPC.

Practice adopted in serving notices

The practice adopted in serving notices can be divided into the following broad categories:

1. Notice served by Protection Officers personally
2. Notice served by the Protection Officers through some other agencies.
3. Notice served by the process server
4. Notice served by the police.

In many states a combination of all these practices has been adopted. In states where Protection Officers have been appointed, it is primarily the Protection Officer who is directed to serve the notice. In some instances, other agencies are also directed to serve notice in addition to the Protection Officer. The practices adopted by different states is presented in Table 5 below. It is important to point out that, in view of the fact that some states have only recently appointed Protection Officers, the practice adopted in serving notices may alter.

If the CrPC is applied in applications under the PWDVA, the cost of serving notice is to be borne by the complainant as process fees.³³ Table 5 also provides details on who bears the cost of serving notices in applications filed under the PWDVA.

In most cases where Protection Officers have been appointed, it is the Protection Officer who is vested with the responsibility of serving notices.

Method of serving notices

The procedure to be adopted in serving notices is provided for in Rule 12 which combines principles from the CrPC as well as the Code of Civil Procedure (“CPC”). This formulation allows for substitution of notices- i.e. in cases where the respondent avoids taking notice, the same may either served on a person who is in charge of the place of employment or pasted in a conspicuous place either in the residence of the respondent or his place of employment.

The Act provides that the maximum period of serving notice has to be 2 days or within a further reasonable period as may be allowed by the Magistrate.³⁴

Practices adopted and issues arising in serving of notices

It is heartening to note that notice is issued on the first date of hearing in almost all cases examined.

It has been noticed that, in some states, Magistrates insist on notices being served by the Protection Officer on the Respondent personally, failing which they are reluctant to pass interim orders or *ex parte* orders. In some instances, respondents willfully

³³ Section 62 of the CrPC provides that summons shall be served in accordance with rules that the State Governments may make in this behalf. Most of the State rules, made under this provision, provide for a process fee to be paid by the complainant for serving notices.

³⁴ Section 13 (2)

Table 5
Practices adopted in the service of notice

Name of State	Manner in which notice is served	Costs of notice borne by
Andhra Pradesh	Protection Officers with the assistance of Home Guards	State
Arunachal Pradesh	-	-
Assam	Protection Officer and / or process servers	State
Bihar	Protection Officer or in the absence of the Protection Officer by the Police	State
Chhatisgarh	Process server	AP
Goa	Protection Officer (who is a member of the police)	-
Gujarat	Protection Officer In most case, borne by the state	
Haryana	Primarily the process server and in some cases the police	AP bears the cose sometimes
Himachal Pradesh	Protection Officer or the police	AP
Jammu and Kashmir	NA	NA
Jharkhand	Process server	AP
Karnataka	Police	AP
Kerala	Protection officers and by registered post	AP bears the cost for registered post. No costs are borne by the AP in cases where the notice is served by the Protection Officer.
Madhya Pradesh	Police	AP
Maharashtra	Police	AP
Manipur	Protection Officer -	
Meghalaya	-	-
Mizoram	-	-
Nagaland	-	-
Orissa	Process Server	AP
Punjab	Police or the Process Server	
Rajasthan	Police	
Sikkim	Prosecution Dept	
Tamil Nadu	Protection Officers	AP
Tripura	Proceedings have not yet been started	
Uttaranchal	-	AP if notices are to be served out of the state
Uttar Pradesh		
West Bengal	Police / Protection Officers	AP or legal aid services authorities
NCT Delhi	Protection Officers	AP

refuse to accept notices. In others, the respondents are available outside the jurisdiction of the court. In cases where the Respondents are available within the jurisdiction of the court, a substantial portion of the Protection Officer's time is spent in ensuring that notices are being served in the manner directed by the court, i.e. personally on the respondents. In circumstances of inadequate appointments of Protection Officers, this issue assumes a significant proportion. This leads to unnecessary delays that militate against the spirit of the Act which is to provide emergency relief to women in facing domestic violence. In cases where the respondent is outside the jurisdiction of the court, the service of notice by registered post has been allowed.

According to the official reports, service of notice is being completed within the statutory period. This is confirmed in most states. In certain cases notices are being served within a week (e.g. Andhra Pradesh, Gujarat and Rajasthan).

However, in some states, particularly West Bengal and NCT Delhi, where there appears to an insistence on personal service, there appears to be considerable delays in the service of notice.

In some states, e.g. Himachal Pradesh and Maharashtra, notices have been served by publication. In others, pasting of notices in a prominent places have been accepted as valid service in accordance with the PWDVR. Interestingly, in one case in Haryana, notice was issued, under directions of the court, by beating drums by the '*munadi*'.

It is observed that notices are issued on time in cases where either the police or the process server has been involved in the process.

Best practices in serving of notices

- ◆ In Andhra Pradesh, a circular has been issued stating that Home Guards shall assist in the serving notices to respondents.
- ◆ In Goa, where Protection Officers have been drawn from the police cadre, an available mechanism is present to facilitate in the serving of notices.
- ◆ In other states, either the police or the process server is being used to assist Protection Officers in serving notices.
- ◆ In some cases, service of notice through registered post in case where the respondent is available outside the jurisdiction of the Magistrate / Protection Officer, is being allowed.
- ◆ It is also recommended that substituted notices, as allowed in the law, be used to serve notices and pass orders thereupon, in cases where the respondent is willfully avoiding notice or cannot be found.
- ◆ In Haryana, failure to accept notice has lead to the issuance ofailable warrants. If the respondent has failed to appear after the issuance ofailable warrants, non-ailable warrants have been issued to ensure appearance. Even in some cases filed in Rajasthan, Magistrates have issued non-ailable warrants against the Respondents to ensure their appearance in court.

Court proceedings

Section 28 provides that applications filed under the PWDVA and breaches of orders shall be governed by the provisions of the CrPC. In addition, the Magistrate may set his own procedure to meet the ends of justice. Rule 6(5) clarifies that all applications under Section 12 of the Act shall be dealt with in accordance with the procedure laid down in Section 125 of the CrPC. As applications are to be filed before a Judicial Magistrate of the First Class or a Metropolitan Magistrate,³⁵ a summary trial may be conducted in dealing with applications under Section 12. The reason for choosing the Magistrate's court and the procedure laid out in the CrPC was to ensure the expediency of proceedings as the objective of this law is to provide emergency relief to women facing domestic violence. In this regard, Section 12 (5) provides that it shall be endeavor of the Magistrate to dispose off all applications under this law within a period of 60 days.

This procedure entails the following steps

1. Notice to be served on the respondent.³⁶
2. Respondent to appear in court and then file reply to the notice.
3. An interim order may be passed on proof of a *prima facie* made out on the basis of the application filed and /or the DIR's or on the response filed by the respondent. Under Section 23, an *ex parte* order may also be granted on the proof of a *prima facie* case, in the absence of the respondent.
4. In deciding on the final order, evidence may be taken on affidavits and the parties heard. The Magistrate has the discretion to allow the examination and cross examination of the parties, where facts are disputed.
5. On completion of taking evidence a judgment is made and the order is passed.

In so far as the PWDVA is concerned, the magistrate may also direct the following during the course of the proceedings before passing any order:

1. Direct the Protection Officer to conduct a home study prior to the passing of any order granting *ex parte or* interim relief.
2. Direct the Protection Officer to file a report on the financial status of the Respondent under Rule 10 (b).
3. Assign duties to the Protection Officer in giving effect to the law.³⁷

³⁵ Section 27 (1)

³⁶ Rule 6 (5)

³⁷ Rule 10 (2)

4. Order the parties to undergo counseling either singly or jointly at any stage³⁸ following the procedure laid out in Rule 14.
5. Take the assistance of a Family Welfare Expert in discharging his functions.³⁹

Procedure adopted in applications filed under the PWDVA

Overall view of proceedings adopted

As it is the early days of implementation of the PWDVA, in many cases, the proceedings are at the stage where the appearance of the respondent is awaited.

In most cases, proceedings under Section 125 are being followed. The respondent is allowed to file a reply to the notice served. Thereafter hearings are conducted either *in camera* or in open court in the presence of both parties. In a few states (Bihar and Sikkim), in some cases, proceedings have been conducted in chambers of the judge. In many cases evidence is taken and cross-examination of the parties is being allowed. In one case in Delhi, the Protection Officer was cross examined on the DIR filed. Table 6 provides details on the nature of proceeding adopted in applications filed under this Act.

The presence of the Aggrieved Person is not insisted upon by most courts. In Andhra Pradesh, Bihar and Tripura, presence of the aggrieved person is required. In some magistrates' courts in Tamil Nadu, the presence of the aggrieved person is insisted upon. In Karnataka and Maharashtra, though the presence of the aggrieved person is not insisted upon on all dates, her presence is required in the event of the respondent proposing a compromise.

The courts have allowed Respondents to appear through their lawyers. There are two trends observed with regard to the presence of respondents during the course of the proceedings. In some cases, there are substantial delays to the proceedings due to the non-appearance of respondents. In others *ex parte* order, both interim and final have been passed due to the respondents' non appearance.

There is an attempt to dispose off applications within the statutory time frame. During the pendency of the proceedings, women are being granted interim relief in many cases.⁴⁰ On the whole, proceedings under this law are more expeditious when compared to proceedings adopted under other laws.

³⁸ Section 14

³⁹ Section 15

⁴⁰ Detailed discussion on orders granted is contained in the following Chapter.

Table 6
Procedure adopted in cases

Name of State	Procedure adopted	Duration of proceedings
Andhra Pradesh	Summary proceedings – hearings after both parties appear in court	Generally within 60 days or within reasonable time
Arunachal Pradesh	-	-
Assam	Hearing in accordance with the CrPC in the presence of both parties	Not within statutory period
Bihar	Hearings in court in the presence of both parties	6 months
Chhatisgarh	No details provided	Proceedings are pending, 1 st case filed in December 06
Goa		
Gujarat	Hearings in open court	Cases pending
Haryana	Hearings in open court	
Himachal Pradesh	Procedure prescribed under Section 125 followed	Depends on the facts and circumstances of the case
Jammu and Kashmir	NA	NA
Jharkhand	Summary proceedings	
Karnataka	Summary proceedings in accordance with procedure laid out in Section 125 CrPC. Hearing either in chambers, or in open court or <i>in camera</i>	
Kerala	CrPC procedure adopted	2-5 months
Madhya Pradesh	Hearings in open court	4-6 months
Maharashtra	Hearings in accordance with procedure followed in Section 125	Cases are pending
Manipur	Details not available	Case pending
Meghalaya	-	
Mizoram	-	
Nagaland	-	
Orissa	Hearings in accordance with the Act Petitioners called upon to produce witnesses.	Cases pending at the 'trial' stage
Punjab	Hearings and summary procedure adopted. Hearing conducted in open court as well as <i>in camera</i> proceedings. In some cases, cross examination of parties being allowed	Cases pending

Table 6 (Contd.)
Procedure adopted in cases

Name of State	Procedure adopted	Duration of proceedings
Rajasthan	Hearings in open court and judgments passed after hearing both sides	Generally statutory time limit adhered to.
Sikkim	Hearings held <i>in camera</i>	Anywhere between less than a month to beyond 74 days.
Tamil Nadu	Hearings are conducted in open courts Evidence is taken in some courts, in other Respondent is given time to file reply	Cases are pending
Tripura	No proceedings have commenced	
Uttaranchal	Regular criminal procedure adopted	
Uttar Pradesh	-	
West Bengal	Hearings conducted and judgment passed after evidence is taken.	
NCT Delhi	Hearings conducted in the presence of the parties and or their counsels in open court.	Proceedings are pending.

Role of the Protection Officers in proceedings before the courts

The Protection Officer plays a key role in assisting the magistrate in the discharge of his functions. During the course of the proceedings, Rule 10 provides that the Protection Officer may be ordered to

- ◆ Conduct a home study prior to the passing of any *ex parte* interim order.⁴¹
- ◆ File a report on the financial status of the Respondent after enquiring into his emoluments, assets bank accounts, etc.⁴²
- ◆ Perform any duties assigned by the State Government or the Magistrate in giving effect to the provisions of the PWDVA.⁴³

⁴¹ Rule 10 (1) (a)

⁴² Rule 10 (1) (b)

⁴³ Rule 10 (2)

Practice adopted

The most states, the report of the Protection Officers is not insisted upon. In some cases, this is due to the fact that Protection Officers have not yet been appointed or have recently been appointed. In Rajasthan, where no Protection Officers have been appointed, the police are being directed to furnish such reports. Only in Andhra Pradesh, Himachal Pradesh, Manipur, and West Bengal do the courts insist upon the report of the Protection Officer. In Kerala, the report of the Protection Officer is insisted upon in certain cases. In Chattishgarh, NCT Delhi and Tamil Nadu, some courts insist upon such reports while others do not. In Madhya Pradesh, reports of Protection Officers are called for but are not considered to be the sole basis on which reliefs are granted.

Protection officers have been directed to file reports that provide the following information:

- ◆ The description of the shared household over which a residence order is being sought and the ownership thereof.
- ◆ In Delhi, the Protection Officers are being ordered to file 2 different kinds of reports:
 - A ‘status report’ to verify where the complainant was at the time of filing the complaint. This report is sometimes confused with the DIR . This report is being asked for even before notice are issued. This is being ordered primarily in cases where residence orders have claimed by the aggrieved person.
 - A ‘social investigation report’ to assess whether the acts of violence have been committed. In some cases this report assumes the nature of a conciliation report.
- ◆ In some courts, home visits are ordered in cases to locate the whereabouts of the respondents particularly where the respondents are willfully avoiding service of notice.
- ◆ Protection Officers are also being asked to file reports on the financial status of the respondents.

Issues arising

- ◆ In some cases the reports being filed by the Protection Officers are either inaccurate or biased.
- ◆ Protection Officers are not trained conducting home visits and in the preparation of reports.
- ◆ In some cases, particularly in NCT Delhi, the home visit reports are not shown to the parties though it is used as the sole basis on which reliefs are granted.

- ◆ There appears to be confusion arising over whether confidentiality is to be maintained on reports of Protection Officers filed in courts. The Protection Officers' role in conducting investigations under court directions is akin to the role played by Local Commissioners functioning under the CPC. Protection Officers can, therefore, be examined in courts on the reports submitted by them. Such reports should be disclosed to the parties to the application as it has a bearing on the orders passed.
- ◆ Protection Officers apprehend violence from the respondents while conducting court ordered visits.
- ◆ In some cases, again particularly in Delhi, lawyers do not cooperate with Protection Officers and challenge their locus in conducting investigations.
- ◆ In states where reports of the Protection Officers are being insisted upon, the courts refuse to proceed with the application or even grant interim orders in the absence of such reports. This has caused substantial delays in some cases.

Best practices

- ◆ Courts are asking for reports of Protection Officers in order to grant *ex parte* interim reliefs particularly in cases where there is an avoidance of service or where the respondents do not appear after notice is issued.
- ◆ In Madhya Pradesh, reports are called for in appropriate cases but are not considered to be the sole basis for granting reliefs.
- ◆ The practice of directing Protection Officers to submit reports on the financial status of the respondents is crucial in ascertaining the standard of living and in calculating the quantum of monetary relief to be granted.
- ◆ The Rajasthan experience, where, in the absence of Protection Officers, police are being directed to file such reports.

Counseling under the PWDVA

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. The procedure to be adopted during counseling has been set down in Rule 14. The Rule provides that counseling should be conducted by qualified members of registered Service Providers. The objective behind laying down detailed rules *in re* the manner of counseling was to guard against coerced reconciliations. 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.

Section 15 allows the Magistrate to seek the assistance of Family Welfare Experts while dealing with applications under the law. The term ‘family welfare expert’ has not been defined and the procedure to be adopted to seek such assistance has also not been provided.

Practices adopted in counseling*

Table 7 provides details on the manner in which counseling is ordered by courts and the manner in which assistance of family welfare experts is being elicited.

Table 7
Manner in which counseling is ordered by courts

Name of State	Manner of counseling	Assistance of Family Welfare Experts (“FWE”)
Andhra Pradesh	Counseling done by Protection Officers	Most districts do not have FWE
Arunachal Pradesh	-	-
Assam	Counseling is directed before the applicant is heard.	No assistance taken
Bihar	Counseling done by the Magistrate in his chamber.	Assistance taken in accordance with the law.
Chhatisgarh	-	
Goa	-	
Gujarat	No situation has arisen where counseling has been ordered.	
Haryana	No common trend followed. In some cases counseling has been ordered at the initial stage of the proceedings through Counseling Centers.	
Himachal Pradesh	Counseling done by Protection officers or counselors	
Jammu and Kashmir	NA	
Jharkhand	-	
Karnataka	Parties directed to undergo counseling conducted by FWE. Cases for counseling also referred to Lok Adalats.	FWE or family elders attempt conciliations and submit reports to the court.

* NB This section deals only with court directed counseling and not with aspects of pre-litigation counseling.

Table 7 (Contd.)
Manner in which counseling is ordered by courts

Name of State	Manner of counseling	Assistance of Family Welfare Experts (“FWE”)
Kerala	The Protection Officer is entrusted with counseling in some cases. Details of service providers have not yet been received	There have been no such instances.
Madhya Pradesh	No orders for counseling given	No assistance has been sought yet.
Maharashtra	Counseling is given on top priority though there is no information on who provides such counseling.	No assistance has been sought yet.
Manipur	Counseling being given by Protection Officers, members of the Legal Aid Services Authorities with their respective lawyers	
Meghalaya	-	
Mizoram	-	
Nagaland	-	
Orissa	Counseling done by the court with the parties and in the presence of their lawyers.	Details not provided
Punjab	Counseling by Magistrates in the presence of the lawyers.	Assistance has been sought
Rajasthan	Counseling done by Magistrate in his Chamber	No FWE available.
Sikkim	No service provider available hence no orders for counseling passed.	No FWE available
Tamil Nadu	Counseling done by service providers, Media, judges in their chambers and Protection Officers.FWE’s to submit reports to the Protection Officers on advice rendered to the parties.	
Tripura	No orders for counseling passed.	No FWE available
Uttaranchal	No orders for counseling passed as no counselors available	No FWE available.
Uttar Pradesh		
West Bengal	Counseling done by the Magistrate in the presence of both parties.	No assistance sought.
NCT Delhi	Counseling done by Magistrates. Some cases referred to mediation as per the law. Some cases are also referred to the Lok Adalat.	

Observations and issues arising

Counseling is being ordered in a substantial number of cases pending before the courts. There appears to be complete misinterpretation of the role of counseling under this law. Counseling is meant to be rendered by qualified personnel with a view to prevent the commission of further acts of violence. The fact that Service Providers have not been registered in a most states shows that qualified counselors are yet to be identified.

In this aspect, on an examination of the information contained in Table 7 as well as a perusal of court orders the following trends have been observed:

1. Women, particularly in matrimonial relationships, request the court leave to attempt a conciliation or compromise. This has been done in some cases with the assistance of other family members. This may lead to any of the following outcomes:
 - a. A compromise or a settlement is reached successfully and is filed in court. The matter is disposed off accordingly.
 - b. A compromise or a settlement is reached successfully and the complaint is withdrawn from court.
 - c. No compromise is reached and the matter is brought back to court for adjudication.
2. Cases where the court directs the parties, again primarily in matrimonial relationships to undergo counseling and attempt settlements. Such counseling may be carried out in the following manner:
 - a. The court may direct the parties to undergo joint counseling. This has been observed in a large number of cases in Andhra Pradesh.
 - b. The matter may be referred to the Lok Adalat, for instance in cases filed in NCT Delhi, Haryana and Himachal Pradesh.
 - c. The matter may be referred to the mediation cell of the Legal Aid Services.
 - d. In some cases the Protection Officers are directed to render counseling.
 - e. The court may direct the parties to undergo counseling facilitated by public service providers such as Family Counseling Centers. In Andhra Pradesh, some matters have been referred to the Women's Welfare Council and in Assam some cases have been referred to the Kendriya Mahila Samiti.
 - f. In one case in Chandigarh, the court directed the parties to approach the Lok Adalat through the Crime Against Women Cell.
 - g. The Magistrate may take on the role of the counselor and aid the parties in arriving at a compromise or a settlement.

From Table 7 it is apparent that in a majority of cases, the Magistrate has taken on the role of rendering counseling thereby indicating that the court is acting as a mediator between the parties. Given the authoritative position held the court, it is possible that women are being compelled to take decisions that may not be reflective of their needs. Their position is perhaps more equitable in cases where counseling is being done by the mediation centers of the court. This practice is not commended as it goes against the spirit of the law.

The practice of Protection Officers being ordered to conduct counseling is also not recommended as Protection Officers do not have the requisite qualifications and no training in this area.

Discussions in the subsequent section reveal that applications under this law are being brought primarily by women in marital relationships. The practice of counseling set out above show that there is lack of understanding, by both legal functionaries and women, of the fact that domestic violence constitutes a violation of the human rights of women. In some cases it is regarded merely as being disputes between married partners that are to be settled through the offices of the law.

This aspect of practice has to be referenced to the discussions in the introductory chapters. The advantage of the PWDVA lies in that it is a civil law that allows space for women to enter negotiations even after the proceedings are filed in court. This is not allowed in proceedings under Section 498A IPC as the offence provided for in Section 498A is non-compoundable in nature. Even if counseling and settlements through counseling are allowed under the PWDVA, one cannot lose sight of the fact that the overall objective of this law is to prevent violence. Hence counseling should be ordered only after an undertaking is filed either in the court or with the counselor⁴⁴ that no acts of violence shall be perpetrated. Secondly, compromises entered into should be brought before the court, so that the court can verify that the compromises entered into are fair and that they have been entered into on the free volition of the aggrieved women.⁴⁵

Best Practices

1. Parties should be ordered to undergo joint counseling, only when they so desire, by qualified counselors.⁴⁶
2. All settlements arrived at, subsequent to court orders or at the initiative of the parties, should be filed in court for verification to ensure that the settlement is fair. An example of this is a case decided in Himachal Pradesh where the matter was referred to the Lok Adalat for settlement. The compromise entered

⁴⁴ Rule 14 (6) provides that the Respondent shall furnish an undertaking to the counselor to the effect that he shall not commit violence. This cannot be regarded as an admission of violence as Rule 14 (16) provides that record of counseling proceedings shall not be deemed to be material on record in the case on the basis on which any inference may be drawn or an order passed.

⁴⁵ A requirement for such verification is present in the law in Rules 14 (13) and (14).

⁴⁶ This practice is recommended in cases where counseling or attempts at reaching a settlement are ordered by the courts and not in cases in which women themselves seek to attempt counseling.

into through this process was referred back to the court which recorded that that the settlement was 'true and genuine' before disposing the matter off.

3. In another case in Himachal Pradesh, the parties were directed to attempt a compromise only after an interim order for maintenance was granted.
4. Courts should allow leave to the parties to revert proceedings back to court in case a settlement cannot be arrived at. This has been done in some cases in NCT Delhi.

Orders passed by courts

Methodology adopted

This section puts together practices observed in orders passed by Magistrates in cases filed under the PWDVA in different states. These orders have been collated from Magistrates' courts and sent to the office of the Chief Justice of India by the High Courts of:

Name of High Court	No. of orders received
Andhra Pradesh	22
Assam (Guwahati)	10
Bombay (Maharashtra and Goa)	3
Chandigarh (Haryana and Punjab)	75*
Gujarat	112
Himachal Pradesh	17
Karnataka	14
Kerala	139
Madhya Pradesh	22
Orissa	1
Rajasthan	6
West Bengal	3
NCT Delhi	36
Total	460

*8 orders from Chandigarh, 43 orders from Haryana, 24 orders from Punjab

The orders have been collected till the period ending July 2007. It must be mentioned that due to the recentness of the enactment, most of the orders examined are interim in nature and the cases are still pending in court. Other states filled in a *pro forma* giving details of the proceedings conducted under this Act. In this section, broad trends observed in the orders granted are being provided. A detailed analysis of each of the orders passed may be attempted at a later point but is not part of this report.

In addition, members of the LCWRI conducted field trips to states and the observations of the proceedings in cases filed in these states have also been incorporated in the analysis below. The members of the LCWRI gathered information on case proceedings by interacting with lawyers, civil society organizations, Protection Officers, and in

West Bengal through interactions with Magistrates dealing with such cases. The states visited and the number of cases examined is presented in the following table:

Name of state visited	No. of cases examined
Andhra Pradesh	16
Assam	4
Chandigarh	10
Gujarat	17
Kerala	14
Maharashtra	14
Manipur	2
Rajasthan	14
Uttar Pradesh	12
West Bengal	11
NCT Delhi	18
Total	132

Domestic Relationship

Practice observed

In a large majority of the cases, the parties are in matrimonial relationships. The applications are therefore being sought against husbands primarily. In this, reliefs have been granted in some cases where no legal proof of marriage has been shown but the aggrieved person has been able to prove a relationship in the nature of marriage⁴⁷. In-laws and members of the husband's family have also been added as respondents in many of these cases. In some cases, proceedings have only been initiated against the in-laws and the husband has not been implicated.

Other women seeking reliefs under this law are as follows:

- ♦ Widows filing against relations of the deceased husband, particularly to prevent dispossession from the shared household. In Maharashtra, there are some cases in which HIV+ women have filed for reliefs against their in-laws.
- ♦ Daughters have filed cases against their fathers seeking reliefs against acts of violence. These are in cases where the daughters have attained majority. Complaints on behalf of minors have been filed by the aggrieved woman in some cases.

⁴⁷ NCT Delhi, from the Metropolitan Magistrate's court.

- ◆ Sisters, particularly in cases where the father is deceased, have filed complaints against their brothers.
- ◆ Mother-in-laws have filed cases against their sons and daughter-in-laws.

Issues arising

On the issue of access to courts there appears to be confusion regarding applications being brought on behalf of the child. Though the PWDVA defines the term ‘child’⁴⁸, there is no clarity on who can file a complaint on behalf of the child who has been faced with domestic violence. In one case filed in Goa, the Respondent has argued that a mother is not a natural guardian of a child and hence is not in a position to bring an application. This interpretation is based on a reading of the requirements in Form III which provides the format in which affidavits are to be filed for claiming interim relief. In this format, the applicant (i.e. the aggrieved person) filing on behalf of her children has to certify that she is the natural guardian of the child. A strict reading of family laws (particularly the Guardianship and Wards Act) shows that the father is the natural guardian of the child. It is only in the absence of the father that a mother can claim to be the natural guardian of the child. This position has been clarified by the judgment of the Supreme Court in *Githa Hariharan v Reserve Bank of India*⁴⁹ where the term ‘absence’ has been given a broad interpretation to include instances where the father, though present in person, does little to support the child.

On the other hand there also seems to be confusion over who can be made a ‘respondent’ in the applications filed. This is in part due to the proviso to Section 2 (q) that defines the term ‘respondent’. While this provision limits the term ‘respondent’ to include only adult male members with whom the aggrieved person has been in a domestic relationship, the proviso includes female relatives of the husband or the partner of the aggrieved person within the category of respondents.⁵⁰ This proviso reads as follows:

“Provided that an aggrieved wife or female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner.”

The reason for the inclusion of all relatives of the husband or the male partner was to bring the PWDVA in consonance with Section 498A which allows for prosecutions to be brought against relatives of the husband who have perpetrated acts of cruelty on the wife.

In several cases, brought to the attention of the LCWRI, people have been under the impression that women cannot be made respondents under this law. Conversely, there are some cases where the daughter-in-law has been made respondents in applications

⁴⁸ Section 2 (b)

⁴⁹ (1999)2 SCC228

⁵⁰ Though female relatives of the husband or the partner may be proceeded against, an order for dispossession cannot be passed against a female respondent according to the proviso to Section 19 (1)

brought under this law for perpetrating violence on the mother-in-law without joining the son i.e. her husband as respondent.⁵¹ This is a wrong interpretation of the law. In cases where mother-in-laws have been subjected to acts of domestic violence, it is the son who can be proceeded against under the PWDVA and the daughter-in-law, if she is implicated may be a party.

Orders passed

Sections 12 provides that an aggrieved person may file an application for reliefs to the Magistrate. The nature of reliefs that may be granted by Magistrates are as follows:

- ◆ Section 18- provides for protection orders – these may be for restraining the respondents from committing acts of violence, communicating or harassing the aggrieved person or minor children at places frequented by them, alienating assets to the disadvantage of the aggrieved woman, causing violence to dependents, etc.
- ◆ Section 19- provides for residence orders- these may be to restrain dispossession, remove the respondent from the shared household⁵², prevent alienation of the property in any manner, or secure alternative accommodation. Orders for restoration or re-entry into the shared household may also be granted on a reading of Section 17 with the definition of “shared household” in Section 2 (s)
- ◆ Section 20- orders for monetary relief- the respondents may be directed to pay for medical expenditure incurred, loss of earnings and for the destruction or damage of properties. Orders for maintenance with reference to Section 125 may also be granted under this provision.
- ◆ Section 21 – provides that orders granting temporary custody of children may be passed in applications for protection orders. Decisions on temporary custody is to be made in keeping the best interests of the child in mind
- ◆ Section 22- allows the magistrates to direct the respondent to pay compensation to the aggrieved woman for damages and injuries caused, including mental agony.
- ◆ Section 23 – empowers magistrates to pass interim and *ex parte* orders during the course of the proceedings. In order to obtain an interim relief, an affidavit in Form III has to be filed along with the application by the aggrieved woman.

⁵¹ In Rajasthan an application filed by a mother-in-law claiming reliefs from her widowed daughter-in-law was admitted.

⁵² Proviso to Section 19 (1) states that no residence order for eviction shall be passed against a woman respondent.

Overall practice observed

Relief sought

It is in rare cases that women seek only one relief. Multiple relief are usually sought in applications. The most common relief sought is for maintenance and residence in addition to protection orders. Orders for compensation and custody have also been sought in some cases.

Period within which relief is granted

It is heartening to note that in almost all states, across the country, orders have been granted by courts. In most states, most of the orders that have been granted are interim in nature and the proceedings are pending. In many cases it is difficult to ascertain the time taken to grant interim orders as the order sheets do not provide details on the date on which the application was filed. It is, however, important to highlight some instances where orders have been granted expeditiously, such as in some cases in NCT Delhi and Maharashtra, interim orders have been passed on the first day of hearing. In some cases in Punjab, interim relief has been passed within 3 days of the filing of the application. In Andhra Pradesh, interim relief has been granted within 5 days of filing of the application. In Rajasthan, there are many instances where interim orders have been granted within 1 week of filing. Only in the states of Bihar, Jharkhand and Orissa have no interim orders been passed.

The dominant trend appears to be the grant of interim orders only once the respondent has appeared in the court or on the filing of the report of the Protection Officer. Undue delays in passing interim orders have been noticed particularly in some cases filed in West Bengal and Gujarat. The delay in passing interim orders can be attributed to either the non-appearance of the respondent or due to delays in filing reports by the Protection Officer.

There appears to be some reluctance on part of Magistrates to grant *ex parte* interim orders. This is perhaps due to apprehensions of misuse by the aggrieved and violating principles of natural justice i.e. granting an order without giving the respondent the opportunity of being heard.

Karnataka, however, is an exception to this rule as there are is significant number of *ex parte* orders passed in cases where respondents have willfully not appeared pursuant to the issuance of notice. *Ex parte* orders have been granted on the basis of *prima facie* evidence shown in the application, or on the basis of medical certificates produced in courts. There are some other states where a number of *ex parte* orders have been granted in cases where the respondents have failed to appear for example in Chandigarh, Kerala and Madhya Pradesh.

Reasons for denying interim reliefs

In cases where interim orders have not granted the following reasons have been given:

- ◆ In cases where the aggrieved person and the respondent, who are in a marital relationship have been living apart for some time and there is no immediate threat of violence.
- ◆ In cases where the affidavit (Form III) for interim orders has not be filed by the woman.
- ◆ For reasons of non-appearance of the Respondent.
- ◆ In case, the respondent has appeared in court and agreed to enter into a settlement with the aggrieved person.
- ◆ There is no need to grant interim orders in cases where the applications are disposed off expeditiously (within a month's time).

However, *ex parte* interim orders have been granted in cases where violence against children are apprehended and in cases where the aggrieved person has been subjected to severe acts of violence.

Nature of reliefs granted

Orders for maintenance

The most commonly granted order passed by courts in the interim stage is for maintenance, though the maintenance amount granted is often lesser than what is claimed for by the aggrieved person. Maintenance orders are granted in the first instance even if other reliefs such as protection or residence orders are denied. This is perhaps due to the fact that Magistrates are used to granting maintenance amounts as a matter of right in proceedings under Section 125 CrPC. This is apparent from the fact that most Magistrates are granting maintenance on proof of marriage or in cases where the matrimonial relationship is admitted. In claims for other orders, Magistrates have expressed the need to hear both parties and assess evidence before passing any orders.

Orders for maintenance are denied if it is shown that the aggrieved woman has an independent source of income or in cases where there are pending proceedings for the grant of maintenance such as Section 125 proceedings or claims for maintenance under Section 13 of the Hindu Marriages Act 1955.

It is observed that while orders for maintenance are easily obtained, other orders for monetary reliefs such as claims for medical expenditure and loss of earnings are not as easily granted. Courts require proof violence in such cases. On the other hand proof of violence is not called for while granting orders for maintenance. Even in cases where the woman has been dispossessed from the shared household, orders for maintenance have been granted without corresponding residence orders.

In one case in West Bengal, a maintenance order was granted through the execution of an order previously passed in a Section 125 proceeding. In NCT Delhi and in Andhra Pradesh, employers of the respondent have been directed to deduct maintenance amounts from the husband's salaries or retirement benefits and pay it directly to the aggrieved woman. In one case in Haryana, though maintenance was denied, an order was passed directing the respondent to pay the loan for acquiring the shared household property.

Protection orders

The second most commonly granted relief is protection orders. It is observed that in most cases a general protection order is passed prohibiting the respondents from committing further acts of domestic violence. The specific acts that are being prohibited are not provided in most cases. This is not a commendable practice as it will be difficult to make out a case of breach of an order when the exact nature of the acts prohibited is not specified. Some orders, however, provide details on the nature of the acts prohibited. The most common in this regard are

- ◆ Orders restraining the alienation of the shared household property and assets.
- ◆ Orders directing the return of *stridhan*.
- ◆ Orders restraining the respondents from communicating with the aggrieved person or causing disturbance to the children's education.

A good practice that may be highlighted in this regard is that of Kerala where the prohibited acts are specified in the order such as

- ◆ Restraining the respondent from spreading scandals about the aggrieved person.
- ◆ Restraining the respondent from throwing waste into the portion of the shared household occupied by the aggrieved person
- ◆ Causing hindrance to offspring taking pre-degree exams.
- ◆ Obstructing the applicant from going to work or harassing her on her way to work.

In some instances in Andhra Pradesh, protection orders have been denied on the ground that there are pending proceedings under Section 498A IPC. In other cases protection orders have been denied at the interim stage as the Magistrates have expressed the need to evaluate evidence before passing such orders.

There have been very many cases, especially in Kerala, where women have asked for orders restraining a violent spouse from approaching them. Such "stay away" orders have been granted restraining respondents from approaching women and children. These are mainly cases, in which the woman has moved out of the shared household and is living on her own or with her natal family.

Residence orders

Residence orders have also been granted in many cases (for instance in Kerala). The most common residence order granted is against dispossession from the shared household. Orders prohibiting the respondents from causing disturbance to the peaceful possession of the woman of the shared household have also been passed in many cases. There are some cases where the woman has been restored to the shared household or allowed re-entry into the shared household. In some, particularly observed in Rajasthan, orders directing the respondent to pay rent amounts for alternate accommodation have been granted instead of restoration into the shared household.

There are, however, many cases where residence orders have been denied on the ground that the shared household is not in the name of the husband but is in the name of the in-laws. In these cases, the judgment of the Supreme Court in *S R Batra*⁵³ has been relied upon to deny reliefs⁵⁴. In this judgment it has been held as follows:

“...the wife is entitled to claim a right to residence in a shared household, and a ‘shared household’ would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member.”

This has been particularly observed in cases filed in Punjab, Harayana and NCT Delhi. This is a grave issue on the implementation of this law. This is due to specificity of the Indian experience wherein most couples live in joint family set ups⁵⁵ which are usually in the name of the eldest patriarch (i.e. the father-in-law or the eldest brother-in-law) or the mother-in-law. Though the Act, in Section 17 read with the definition of the shared household contained in Section 2(s), specifically recognizes a woman’s right to reside in the shared household, irrespective of the nature of ownership, the *Batra* judgment comes in the way of the beneficial interpretation of this law.

There are cases in which the *Batra* judgment has been relied upon by the respondents but the Magistrates have granted residence orders by successfully distinguishing the case at hand from the *Batra* judgment on facts and have interpreted the law in favor of the aggrieved woman. Two examples in this regard are:

- ♦ In an order passed by the Metropolitan Magistrate (NCT Delhi) dated 03.01.07, wherein the shared household was in the name of the mother-in-law, it was held that

“It is an admitted position in this case that the premises....., (presently in which the complainant is staying due to order....) is jointly owned by respondents no 2 and 3, i.e. the father-in-law and elder brother-in-law of the complainant and that it is not a joint family. As he husband is not the

⁵³ (2007) SCC 169.

⁵⁴ The Supreme Court judgment in *Batra v Batra* is included in Annexure IX.

⁵⁵ The term ‘joint family’ is being used loosely and not in the sense of the Hindu Undivided Family. In these cases, the property is often separately owned by the person in whose name it has been registered.

owner of the above said property, therefore in view of the above said judgment of the Hon'ble Supreme Court, this property cannot be termed as shared household property and therefore due to change of circumstances in view of the said Judgment of the Hon'ble Supreme interim order..... is vacated. However, as the complainant is living at present at the given address and is in possession of one room of the ground floor of the same, therefore by way of abundant caution, it is directed that the respondents shall not dispossess the complainant without due process of law."

(Emphasis supplied)

- ♦ In a case in Madhya Pradesh (Order dated 09.07.2007), a residence order was granted despite arguments based on the *Batra* judgment were relied upon by the counsel for the respondent. In this case the house was in the name of the mother-in-law. The court held that just because the house was in the mother-in-law's name did not indicate the source of income used to acquire the property. In such circumstances, where the source of income could not be ascertained, a residence order could not be denied to the woman.

"In SR Batra.. the Supreme Court has interpreted the shared household and has decided that the shared household is the home of the husband or one rented by him or home that is of a joint family of which the husband is a member. Property of the mother in law cannot be called a shared household. Rights accruing from a matrimonial home can be obtained against the husband and not the father in law or the mother in law. The private residence of the mother in law cannot be called a shared household. But in the instant pleading the respondents have not produced any documents to show that this residence belongs exclusively to respondent, they have not revealed the appropriate source of income for acquiring such property. In such a situation, it seems that the residence at belongs to the joint family and hence the complainant has a right in it. Hence the right to residence under Section 19 is being ordered in favor of the complainant."

(Emphasis supplied)

It is also observed that widows have been successful in receiving residence orders against dispossession from courts, particularly in cases where the property was in the name of the deceased husband. In this regard an order of a Mumbai magistrate must be highlighted. In this case filed by a widow, a detailed interim order was granted restraining the respondents from dispossessing the applicant from the shared household which was in the name of her deceased husband. The court went on to direct the Protection Officer to facilitate the applicant's access to legal aid in the pending property disputes. In a case decided in Kerala, the respondents (who were the sons of the applicant) were prohibited from interfering in the management of the property that devolved on the applicant on the death of her husband.

There have also been cases in Delhi where magistrates have restored women to possession of the shared household, where they have been disposed earlier. Orders have been passed directing the Protection Officer to accompany the aggrieved person to the shared household to restore possession.

Finally, there are cases where the magistrates have innovatively used the provisions of this law in granting residence orders. For instance, in a case in Haryana, though the court denied the grant of maintenance, it directed the Respondent to repay the loan availed of to acquire the shared household properties. In another case in Haryana, the court directed the respondent to pay 50% of the sale proceeds from the sale of the shared household properties to the aggrieved person. There have also been cases in Punjab and Haryana where the applicant has been allowed to stay in one portion of the shared household.

Orders for temporary custody of children

There appears to be relative ease in obtaining temporary custody orders, particularly in cases where violence against children is apprehended. In passing these orders, courts have, in most cases, specifically provided for visitation rights of the respondents. In some of these cases, the Protection Officer has been directed to supervise and facilitate the visits.

Orders for compensation

Though few in numbers, compensation has been granted in some cases for mental agony undergone by the woman. However, it is observed that compensation amounts are lesser than what is claimed by the aggrieved woman.

Practice observed in different states

In this section, trends observed in orders provided by the High Courts or collected by the members of the LCWRI are presented. This section attempts to provide an essence of the kind of orders that are being passed in various states. No conclusions are being drawn from this analysis.

Andhra Pradesh

22 orders were received from the High Court of Andhra Pradesh and proceedings in 16 cases were studied by the members of the LCWRI.

- ◆ Final orders have been granted in a number of cases in Andhra Pradesh. In some cases final orders have been passed and cases disposed off within a period of 60 days.

- ◆ In 3 cases examined by the LCWRI and one order forwarded by the High Court, applications were dismissed on grounds that proceedings under Section 498A were pending.
- ◆ The most commonly granted order by the courts is for maintenance. It appears that this maintenance orders can be easily availed of by women even at the interim stage. It is observed that in cases even if protection orders and residence orders have been denied, the applicant has been granted maintenance orders.
- ◆ In one case, order for maintenance was denied after the Protection Officer submitted a report showing that the aggrieved person was in a position to maintain herself.
- ◆ It is observed that the maintenance awards are, in most cases, lesser than what was claimed for by women. It is also seen that while maintenance orders are easily granted, other orders for monetary relief such as payment of medical expenses are not as easily obtained. In one case, the court directed the employer of the respondent (a public authority) not to release retire benefits in view of the application filed.
- ◆ Residence orders are most commonly granted orders after orders for maintenance. In Andhra Pradesh, the most common residence order are those prohibiting the respondent from disturbing the peaceful possession of the applicant over the shared household. In one case, restoration has been ordered and in a few cases alternate accommodation has been ordered. Interim orders restraining the alienation of the shared household have also been granted in a number of cases.
- ◆ Protection orders have also been granted in most of the cases examined. Most protection orders are to restrain harassment of the aggrieved persons, prohibit communication with the aggrieved person and the children as well as restrain disturbance of peaceful possession.
- ◆ In some cases, orders granting the custody of children have been granted to aggrieved women making seeking such orders.
- ◆ In most cases, reasons for not granting orders have not been provided. In one case, interim residence order was not been granted for the reason that the parties had been living apart for a couple of years before the application was filed in court. In another, no orders were granted as the respondent was out of India.
- ◆ There are also a number of cases where settlements have been reached by the parties during the course of the proceedings. This has been observed in the cases collected by the LCWRI.

Assam and Manipur

There were 10 orders sent by the Guwahati Bench of the Assam High Court. The members of the LCWRI collected information on 4 proceedings in Assam and 2 in Manipur.

- ◆ There are 2 final orders in the compilation
- ◆ The most common order passed by the Magistrates in Assam appears to be the protection order. In these orders, respondents are prohibited from committing further acts of violence, alienating shared household properties and orders to return *stridhan*.
- ◆ The second most common order granted, is for maintenance. In most cases, maintenance is awarded to the aggrieved woman and the children. Only in one case was maintenance denied to the woman, though no reasons were mentioned for the denial.
- ◆ Residence orders have also been granted in a few cases wherein the Respondent has been restrained from dispossessing the aggrieved person from the shared household.
- ◆ In one case, where a final order was passed by the court, the maintenance amount was reduced and the interim protection order vacated in consideration of the response filed by the respondent.

Gujarat

The High Court of Gujarat forwarded 112 orders. Information on 17 proceeding was collected by the members of the LCWRI.

- Though there appears to be a substantial number of proceedings, there are few in which any interim reliefs have been granted. All these proceedings are pending in court. Not all the orders provide adequate information on the proceedings.
- There a number of cases which are at the stage of serving notice.
- In some cases either the Protection Officers or the police have been directed to file investigation reports.
- There are significant number of cases in which relief has been denied on grounds that there are pending proceedings under Section 498A of the IPC.
- In many cases reasons for not granting reliefs have not been mentioned.

- In one case, the application was dismissed as it was incomplete in that it was not signed by the Protection Officers, the Magistrate and the applicant.
- In one case the court refused to pass interim orders granting temporary custody, as matters of permanent custody are to be decided under the Guardians and Ward Act and this was considered a 'short cut' manner of obtaining custody. The applicant was granted permission to visit the child but no other interim relief was granted.
- In a few cases, the application has been withdrawn by the applicants to attempt a compromise.
- There are some cases where an order for maintenance has been granted.
- In one case an interim order was passed to provide legal aid to the aggrieved woman.

Himachal Pradesh

The High Court of Himachal Pradesh forwarded 17 orders.

- ♦ Out of the orders examined, interim relief has been granted in 6 cases. The other cases, proceedings are at the stage of evidence collection or have been delayed due to the failure in serving notice or due to the non appearance of the respondent. In one case, costs have been imposed on the respondent for the failure to file a reply to the notice issued.
- ♦ The most commonly granted order is for maintenance. In one case the Magistrate observed, while granting interim maintenance, that though there was not enough evidence to prove domestic violence, a woman is entitled to maintenance to avoid destitution.
- ♦ In one case, an interim maintenance order was granted before the parties were directed to undergo conciliation.
- ♦ Protection orders have been granted in some cases restraining the respondents from committing further acts of violence and entering the shared household premises under the influence of alcohol.
- ♦ Residence order has been granted in one case, prohibiting the respondent from disturbing the peaceful possession of the applicant.
- ♦ There has also been a custody order in one case which also provides for visitation rights of the respondent.

Karnataka

The High Court of Karnataka has provided 14 orders. In these, one order has been passed in a pending proceeding.

- ♦ In almost all cases interim orders have been passed and the cases are pending.
- ♦ There are a significant number of *ex parte* orders being granted on the presentation of a *prima facie* case.
- ♦ Orders for maintenance have been granted *ex parte* in almost all cases where it has been sought. In cases where protection orders have been denied due to the fact that a *prima facie* case has not been made out, the court has granted orders for maintenance. Even in cases where the woman has been dispossessed, maintenance orders have been given without any corresponding residence orders.
- ♦ In two cases, an *ex parte* order for maintenance was passed on proof of valid marriage.
- ♦ Protection orders have been passed only in cases on the proof of a *prima facie* case. In order to prove a *prima facie* case, the DIR or medical certificates have been relied upon by the courts. The protection orders rarely provide details on specific acts that are being prohibited. Only in one instance has the court prohibited the respondent from communicating the applicant or threatening her in any manner.
- ♦ Residence orders have been passed only in one case where the respondent has been restrained from disturbing the peaceful possession of the applicant.

Kerala

139 orders were forwarded by the High Court of Kerala. Information on 17 proceedings was collected by the members of the LCWRI.

- ♦ Most of the orders are interim in nature, though there are a number of cases where final orders have been granted. In the latter cases, interim orders have been finalized at the time of granting final orders.
- ♦ In many of the cases *ex parte* interim orders have been granted on proof of a *prima facie* case.
- ♦ In most cases residence orders have been claimed and granted. Residence orders have been passed in the following manner:
 - Primarily to prevent dispossession and allow for free entry into the shared household and not to disturb peaceful possession.

- Ordering the respondent to remove himself from the shared household.
- In one case, the sons were prohibited from interfering in the management of the property of their mother that devolved on her after the death of their father.
- In one case, residence order was passed despite the respondent's objections raised on technicalities related to the role of protection officers and the filing of DIR's.
- The assistance of police officers has been directed to remove the respondent from the shared household.
- ◆ Residence orders have been denied in cases where a finding of a property dispute is arrived. This has been done by examining information on pending proceedings in civil suits.
- ◆ Alternate accommodation has been ordered in one case, that too in the event that the respondent dispossessed the applicant after the grant of the residence order.
- ◆ Protection orders
 - Commonly passed to prohibit further acts of violence.
 - Prevent alienation of shared household properties and/or assets
 - Prohibit the respondent from communicating with the applicant.
 - Return of *stridhan* and ornaments belonging to the applicant that have been misappropriated by the respondent.
 - In one case the respondent was ordered not to spread scandals about the aggrieved woman.
 - In some orders specific acts have been prohibited by a protection order e.g. throwing waste into the portion of the residence occupied by the applicant, obstructing the applicant from going to work or harassing her on the way, causing hindrance to offspring in taking pre-degree exams, committing acts that interfere with the children's studies, etc
- ◆ Monetary orders for maintenance in many of the cases. In one case the sons were ordered to pay maintenance to their widowed mother.
- ◆ Compensation for losses suffered due to acts of domestic violence has been granted in a few cases
- ◆ Custody orders have been granted in cases where the respondent has threatened to take away the child.

- ◆ It appears that only in very few cases have orders been denied.
- ◆ There are a number of cases where complaints were withdrawn as a settlement was reached between the parties.

Madhya Pradesh

The High Court of Madhya Pradesh has forwarded a total of 22 orders.

- ◆ In most cases monetary reliefs are being awarded by courts.
- ◆ In one case maintenance was denied due to the fact that the applicant had a pending litigation under Section 13 of the HMA.
- ◆ In one case though a claim for separate residence was denied, the applicant was granted maintenance award.
- ◆ In some cases, the income of the respondent was ascertained before passing the maintenance order. In order to ascertain income, the respondent was directed to produce his salary certificates.
- ◆ There are a significant number of protection orders granted.
 - In one case, a protection order was granted even though witnesses were produced to show that the woman was violent. In this case the court iterated the importance of protecting women from violence in the spirit of the PWDVA.
 - In some of the cases where protection orders have been granted, the respondents have been asked to furnish an undertaking that he shall not abuse the applicant or commit any further acts of violence.
 - In some cases residence orders have been granted. This is particularly in cases where the claim for residence order has asked along with claims for other orders.
 - Interestingly in one case, the *Batra* judgment was cited in arguments against the grant of residence orders. In this case the house was in the name of the mother-in-law. The court held that just because the house was in the mother-in-law's name did not indicate the source of income used to buy the property. In such circumstances, where the source of income could not be ascertained, a residence order could not be denied to the woman.
- ◆ In a couple of cases orders for the return of *stridhan* have been granted.
- ◆ In one case final orders were passed *ex parte* for the reason the respondents refused to accept notice.

- ◆ The court denied relief in the case filed by the daughter against her father and brothers on grounds that she was married and was living separately.

Maharashtra and Goa

The High Court has provided only 3 orders passed by the Magistrate's courts. In addition the members of the LCWRI examined proceedings in 14 cases.

- ◆ One of the cases was by a widow seeking reliefs against the members of her husband's family (particularly the brother-in-law). A detailed interim order was granted restraining the respondents from dispossessing the applicant from the shared household which was in the name of her deceased husband, preventing the respondent from renouncing rights in the joint family property and removing himself from the said property. Enforcement of this order was ensured by directing the respondent to execute a bond and by directing the SHO to provide protection. In addition the Protection Officer was directed to facilitate access to legal aid to the applicant in pending cases on property disputes. A compensation order was also granted.
- ◆ A residence order was granted in the other case.
- ◆ An order granting interim custody and detailing visitation rights was granted.
- ◆ A protection order has also been granted.

In the cases observed by the LCWRI the following practices were observed

- ◆ In some of the cases women opt to initiate proceedings both under PWDVA as well as Section 498A IPC.
- ◆ In one of the cases an *ex parte* interim order was been passed on the first day. This order restrained the respondent from alienating shared household property and assets.
- ◆ Non bailable warrants have been issued to ensure the attendance of the respondent during court proceedings.
- ◆ In one case the police was directed to file a DIR and then to serve notice.
- ◆ Interim residence orders have been granted in cases filed under this law
- ◆ Widows bearing a HIV+ status have been granted interim protection orders in cases filed against their in-laws. A specific residence order was passed in one case restraining the respondents from cutting off electricity and disturbing possession.

- ◆ In one case, monetary relief was granted over and above the maintenance amount including amounts for medical expenses incurred and losses sustained, including loss of reputation.
- ◆ Many cases are pending at the service of notice stage.
- ◆ Custody orders have been granted by courts in proceedings under this law.
- ◆ Maintenance orders are commonly availed of.

Orissa

Only one order was supplied by the High Court of Orissa. In this case a protection order was granted on appeal to the Sessions Court. In this order the respondent was restrained from alienating shared household property and assets. He was also prohibited from committing further acts of violence and was directed to execute a bond in this regard. A residence order granting rent for alternate accommodation and maintenance was also granted by the court.

High Court of Chandigarh (Punjab, Haryana, Chandigarh)

The High Court of Chandigarh forwarded 8 cases from Chandigarh, 43 cases from Haryana and 24 cases from Punjab. In addition the LCWRI examined proceedings in 5 cases filed under the PWDVA in Chandigarh.

Chandigarh

- ◆ Protection orders have been granted by the courts and undertakings have been taken from the respondents that no further acts of violence shall be committed.
- ◆ In one case *ex parte* orders were passed after the respondents failed to file their response.
- ◆ In one case a widow was granted a residence order as 1/3rd of the property was in the name of her husband.
- ◆ Residence order was denied in one case as the parties are living separately.
- ◆ Interim maintenance has been provided in 2 cases.

Punjab

- ♦ It appears that in many of the cases the applicants have sought residence orders. The response of the courts can be broadly categorized as follows:
 - Cases where residence order have been passed specifically restraining the respondent from dispossessing the applicant.
 - Cases where residence orders have been passed allowing the woman to stay in a separate portion of the house.
 - Cases in which residence orders have been denied for the reason that the shared household is not in the name of the husband. In these cases, the *Batra* judgment has been relied upon.
- ♦ Maintenance orders have been granted even in cases where other reliefs have been denied.
- ♦ Custody orders have been granted in the cases where it has been sought.

Haryana

- ♦ The orders passed by the Haryana courts do not provide specifics on the acts of violence that are being prohibited.
- ♦ In a significant number of cases maintenance has been granted. In some, maintenance has been granted on proof of a legally valid marriage.
- ♦ In a few cases, though maintenance was denied other innovative orders were passed such as in one case the respondent was directed to pay the loan for the shared household acquisition. In another case, the court directed that 50% of the sale proceedings of the shared household property be given to the applicant as monetary relief.
- ♦ Orders for maintenance have been denied in some cases for the following reasons:
 - In some cases, maintenance has been denied as there are pending proceedings in other fora (e.g. under the HMA, Section 125 proceedings).
 - In one case maintenance was denied for the reason that there was no proof of the husband's income.
- ♦ Protection orders have been granted in a number of cases. However no details have been provided on the specific acts that have been prohibited. In some cases protection orders have been granted after medical records have been produced in courts.

- ◆ In a couple of cases, orders for the return of *stridhan* have been granted.
- ◆ There are instances where the respondent has been directed to execute a bond for maintaining peace and abiding with the protection order.
- ◆ In very few cases have residence orders been granted. These orders restrain the respondent from dispossessing the respondent from the shared household and from disturbing the peaceful possession of the applicant. Only in 2 cases has the applicant been granted an order to re-enter. In one case, the respondent furnished an undertaking that he shall not restrain the applicant from entering the shared household. In one case the in-laws have been restrained from dispossessing the widow from the shared household.
- ◆ Residence orders have been denied in a number of cases. In some no reason has been given for such denial. In others, the reason for denial has been that the couple moved out of the household which is in the name of the in-laws. It is inferred that the *Batra* judgment has been relied upon in these cases.
- ◆ Custody order has been granted in a case where there was an existing compromise between the parties on this issue.

Rajasthan

Despite having the highest number of cases filed, the Rajasthan High Court has provided orders only in 6 cases. The LCWRI, in its field visit has observed proceedings in 15 cases filed under this law.

- ◆ In a majority of the cases, residence orders have been sought and granted. The manner of granting residence orders are as follows:
 - Orders to the respondent to provide alternate accommodation or rent for alternate accommodation
 - Orders for the restoration of the woman into the shared household.
 - Orders against dispossession or causing disturbance in the peaceful possession of the applicant.
 - Orders allowing the woman use of particular portion of the shared household.
 - Residence orders have been refused in cases where the woman has been living separately.
- ◆ Maintenance orders have been granted in most cases. Even in those cases where other orders claimed have been denied.

- ◆ Protection orders have also been granted in many cases primarily restraining respondents from committing further acts of violence and the return of *stridhan* items. In one case, a protection order was passed in a third party application brought by the parents of the applicant. In this case the applicant was based in the USA. An order was granted to prohibit violence and harassment over the email and through other forms of communication by the in-laws.
- ◆ In one case in Rajasthan, the appellate court passed an order imposing costs on the woman for misusing the law. In this case, the applicant had been successful in obtaining a maintenance award from the lower court under the PWDVA. Emails were shown as proof of an adulterous relationship that she was allegedly in. Based on the emails, the court held that the aggrieved person had not come to court with clean hands and imposed costs on her.⁵⁶

West Bengal

The High Court of Calcutta provided 3 orders passed by the magistrates. In addition members of the LCWRI examined proceedings in 10 applications filed under the PWDVA.

- ◆ Interim residence order has been passed in one case prohibiting the respondent from entering the shared household.
- ◆ In the other cases no orders have been passed as the respondent is not traceable. Protection Officer directed to file report on all moveable and immovable properties owned by the respondent. A monetary order was allowed through the execution of an interim order passed in a Section 125 proceeding.
- ◆ From the cases examined by the LCWRI it was observed that orders have been granted in other cases. These are
 - Protection orders prohibiting the respondent from committing further acts of violence
 - In one case specific orders were passed prohibiting the respondent from entering the applicant's place of employment, alienating assets, causing violence to dependents.
 - In another order, the respondent was restrained from alienating assets and dispossessing the applicant.
 - In one case the applicant was directed to show proof of residence before an interim protection order was passed.

⁵⁶ Order dated 07.08.2007

Uttar Pradesh

No cases were supplied by the High Court of Uttar Pradesh. However, the members of the LCWRI gathered information on 12 cases filed under this law.

- ◆ Interim and final orders have been granted in applications filed under the law. In some cases *ex parte* orders have also been granted. Many cases are still pending in court. In one case, final orders were passed within 2 days.
- ◆ Protection orders have been passed to prohibit respondents from committing any acts of violence
- ◆ In some cases, protection orders contain specific information on the conduct that is being prohibited. There are instances where the respondents have been directed to return *stridhan*.
- ◆ Residence orders have been granted in some case, primarily against dispossession. In some cases, orders for restoration and alternate accommodation have also been passed.
- ◆ Orders granting maintenance have been passed along with orders for protection and residence.
- ◆ In one case, relief was denied on the grounds that the parties were not in a legally valid marriage.
- ◆ Respondents have been directed to furnish undertakings to the effect that orders shall be obeyed and no further acts of violence shall take place.
- ◆ In some cases, police assistance has been directed to ensure the enforcement of orders granted by the court.

NCT Delhi

36 cases were collated by the High Court of Delhi. Proceedings in 18 cases were examined by the members of the LCWRI.

- ◆ Maintenance orders are being passed by courts with relative ease. Interim orders for maintenance have been granted on proving a *prima facie* case, while other orders are passed after hearing entire case.
- ◆ Other monetary relief's claimed such as medical expenditure etc is not always granted. Maintenance orders have been denied in some cases where the woman has an independent source of income.
- ◆ In one case, the employer of the husband was directed to deduct maintenance amounts from the husband's salary.

- ◆ Protection orders have been passed
 - To maintain peace.
 - Restraining the respondents from committing further acts of violence, including restraining acts of verbal and emotional abuse.
 - Restraining respondents from communicating with the applicants and her children.
 - Restraining respondents from alienating shared household property and assets.
- ◆ In some cases, the respondents have filed an undertaking that no further acts of violence shall be committed.
- ◆ In many cases, residence orders have been sought by applicants. Residence orders have been granted to
 - Restrain respondents from dispossessing applicants
 - Orders for providing rent for alternate accommodation.
 - Orders for providing separate accommodation.
 - Orders for re-entering the shared household has been accorded as a matter of right without going into the merits of the case, in a few instances.
 - Restraining the respondent from selling or mortgaging the shared household properties.
 - Orders directing respondents to remove themselves from the shared household.
- ◆ Residence orders have been denied in cases where the shared household is not owned by the husband. The *Batra* judgment has been relied upon in these cases to deny reliefs. In one case, though the *Batra* judgment was referred to and the shared household was not in the name of the husband, it was held that a woman can be dispossessed only in accordance with procedure established under the law. In another case wherein the shared household belonged to the brother-in-law, the court passed a residence order restraining dispossession.
- ◆ Residence orders have been denied in cases where the couple has been living separately for a certain length of time prior to the filing of the application.
- ◆ There are a number of cases where residence and protection orders have been denied without providing reasons for such denial.

- ◆ Custody orders have been granted in some cases that include details on visitation rights.
- ◆ Compensation orders for mental agony caused have been granted in some cases.
- ◆ In some cases applications have been dismissed for the reason that there are pending proceedings in other cases.

Enforcement of Orders

The PWDVA has inbuilt provisions to ensure the enforcement of orders. These are:

- ◆ Procedure set out in Section 125 of the CrPC may be applied to enforce orders.
- ◆ The Protection Officer under Rule 10 may be directed to assist in the enforcement of orders.
- ◆ Under Section 19 (7) the officer in charge of the police station may be directed to enforce Protection Orders.
- ◆ Section 19 (4) allows the Magistrate to order the Respondent to execute a bond for preventing any further acts of violence being committed. Such an order is to be enforced in accordance with Chapter VIII of the CrPC.
- ◆ Section 31 treats any breach of a protection order or any interim order granted by a court as an offence.

Practice adopted

In states where Protection Officers have been appointed, they are directed to assist in the enforcement of orders. In some of these states, police are directed to assist the Protection Officer in the implementation of orders. In Himachal Pradesh members of the Panchayat assist the Protection Officer in enforcing order. In Andhra Pradesh, Protection Officers seek specific orders from the court to ensure that orders are obeyed.

In others, where either Protection Officers have not been appointed or have been recently appointed, it primarily the police who are directed to enforce orders. The exception to this rule is, Rajasthan, where the woman has to file an application for the enforcement of an order. Even in states where Protection Officers have been appointed directions have been given to the police to either provide protection to the aggrieved women or assist in the enforcement of the order.

Additionally, in many cases where protection orders have been granted the courts direct the respondents to furnish an undertaking stating that no further acts of violence shall take place and that the orders shall be complied with.

Best Practices

- ◆ The Andhra Pradesh example, where Protection Officers seek order for enforcement of orders granted, including orders directing police assistance in the enforcement of orders.
- ◆ The court directs the respondent to execute a bond or furnish an undertaking that no further acts of violence shall be committed and all orders shall be complied with. Any breach of conditions provided for in a bond is a punishable offence and criminal proceedings may be initiated against the respondent in cases of such breach.

Breach of orders

Section 31 provides that the breach of any protection orders or interim orders is an offence attracting a maximum sentence of 1 year and / or a maximum fine of Rs 20,000/-. The offence of breach is cognizable and non-bailable. A report of breach can be made to the Protection Officer for further action⁵⁷. A woman may also directly file a complaint of breach with the police or the Magistrate⁵⁸.

Instances of breach have been reported in only in Andhra Pradesh, Chhatisgarh, Rajasthan and Uttaranchal. In others, proceedings under the law are still pending and there are very few final orders passed. Not all cases of breach are being dealt with seriously. In some cases in Rajasthan and Uttaranchal, warrants have been issued in cases where breach has been reported to the police.

A controversy has arisen as to whether only a breach of an order passed under Section 18, that is a protection order, can be punishable under Section 31 when breached. This is because of the wording of Section 31, which says that a breach of a protection order is punishable under that section. This has led to an apprehension that a breach of any other order under Sections 19 to 22 will not be punishable under this Section. It must however be remembered that orders under the other sections can be obtained along with a protection order and it is advisable that a protection order is always asked for along with any other relief.

There is also a controversy relating to the procedure to be adopted under this Section. Undeniably, the Section creates an offence and the procedure prescribed in the CrPC will have to be followed. Being an offence punishable with a maximum sentence

⁵⁷ Rule 15 (1)

⁵⁸ Rule 15 (4)

of one year imprisonment, the summons procedure has to be followed. However, given that the Section authorizes the Magistrate to also frame charges under Section 498A of the Indian Penal Code, the question has arisen, what procedure will be followed for that purpose? The suggestion has been that if the complaint of breach of a protection order, also discloses an offence under Section 498A, it may be treated as “information” before a Magistrate within the meaning of Section 190 of the CrPC and dealt with accordingly. Alternatively, if the facts disclose that while committing a breach of a protection order, an offence under Section 498A is also committed, a woman may lodge an independent complaint with the police for an offence under Section 498A. It has been observed, that in Andhra Pradesh, to avoid any such controversies, complaints of breach of orders and of offence under Section 498A are being lodged with the police, who then conduct an investigation.

In Andhra Pradesh, complaints of breach are made to the police and charge sheets are prepared on the basis of the complaint of breach. A copy of a charge sheet is enclosed herewith and marked as **Annexre X**.

Issues arising

The issues that have arisen are as follows:

- ◆ Under Section 31, only the breach of protection orders have been deemed to be offences. Hence in cases of breach of other orders, the aggrieved woman will have to go back to court seeking an order of execution. Hence the practice has been to ask the court for a protection order in almost all applications filed under the law.
- ◆ There appears to be confusion on the procedure to be applied in cases of breach. From a reading of the PWDVA it is clear that a summons procedure is to be applied in cases of breach of a protection order. Section 31(3) provides that the Magistrate may frame charges under Section 498A in cases where breach of the protection order amounts to an offence under the same. In cases under Section 498A, warrants procedure has to be applied. Hence Rule 15 (6) states that while trying cases of breach and Section 498A together, the proceedings may be separated.

Best practices

- ◆ Aggrieved persons should claim a protection order, along with other reliefs.
- ◆ Aggrieved persons should register a complaint with the police for violation of a protection order.
- ◆ Aggrieved persons should lodge a separate complaint with the police for violation of Section 498A, if the facts so warrant.

Appeals

Section 29 provides that appeals against any order of the Magistrates lie before the Sessions Court. The use of the term 'any' has been interpreted to include appeals against interim order. Either of the parties may also apply for revision of the order following the procedure set out in the Cr PC.

Practices observed

Appeals or criminal revision petitions have been filed in 10 states (Andhra Pradesh, Gujarat, Haryana, Karnataka, Madhya Pradesh, Orissa, Rajasthan, Punjab, Sikkim, Tamil Nadu, Uttaranchal and West Bengal.). The appeals can be divided into the following categories

1. Appeals against interim orders, which constitute the bulk of appeals as in most case final orders have not been granted.
2. Appeals against final orders
3. Appeals to High Courts seeking orders for the implementation of the law. (Haryana, Maharashtra and Punjab)

There have also been petitions (under Article 227 of the Constitution) filed directly with the High Courts seeking the implementation of the law (Tamil Nadu and Manipur). There are also 3 constitutional challenges to the PWDVA (NCT Delhi, Rajasthan and Andhra Pradesh.)

In some cases orders have been stayed on appeals filed. In very few cases have appeals against interim orders not been entertained. The Kerala High Court has held⁵⁹ as follows:

“Section 29 speaks of appeals. It implies that appeal is maintainable against ‘the order’ .To construe the ambit of the expression ‘the order’ in Section 29 of the Act, it will first be necessary to consider the plain language of the statutory provision, the definite article ‘the’ used in Section 29 must certainly have reference to the orders referred earlier. Otherwise the employment of the definite article ‘the’ would lose its significance. All orders referred to earlier in Chapter 4 of the statute must be held to be fall within the sweep of the expression ‘the order’ as there is no other or better method of understanding the definite article ‘the’ used immediately before the expression ‘order’ in Section 29 of the Act. Therefore going by the plain language of Section 29, I have no hesitation to agree that the expression ‘the order’ must take within its sweep all orders passed under Section 18-23 and I find no reason to exclude going by language and semantics, an order passed under Section 23 from the sweep of the expression ‘the order’ in Section 29.”

⁵⁹ *Sulochna v Kuttapan* 2007 CriLJ 2057

The right to appeal is an important aspect of due process guarantees. However, there is cause for concern in cases where interim orders in favor of the aggrieved person are appealed against and stayed by the appellate court. The PWDVA, in Section 25 (2), allows either of the parties to file an application for alteration or modification of orders showing a change of circumstances. It is suggested that appellate courts examine whether this option has been exercised before granting the stay of any orders passed by the lower courts.

Substantive Issues

Within a year of the enactment of the PWDVA there have been several issues raised on the constitutional validity of the Act. This may not be the proper place to deal with the issues raised on the constitutional validity of the PWDVA in great detail, however, it is necessary to point out that most of these objections raised can be dealt with within the constitutional framework by placing a reasonable interpretation on the Act and having regard to the object of the law, which is to prevent and stop violence against women.

The constitutional mandate

The Constitution of India includes a Bill of Rights in Part III. The rights enshrined in this chapter are called ‘fundamental rights’. In this, the right to life under Article 21 and the right to equality in contained in Articles 14 and 15, are of crucial significance. Part IV of the Constitution puts in place “Directive Principles of State Policy”, which, though not legally enforceable, are fundamental to the governance of the country and have been relied on a number of times in interpreting the fundamental rights, particularly the right to life⁶⁰. The Supreme Court has also opined that the directive principles are fundamental in the governance of equity. Article 13 lays down that laws that are violative of the provisions contained in Part III are liable to be struck down.

In order to appreciate the PWDVA, it must be remembered that India has signed Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) and also the UN Declaration on Violence Against Women (“DEVAW”). The CEDAW mandates the State to outlaw all forms of discrimination against women. It is now recognized that violence against women is a form of discrimination against women. Viewed that context, the Act must be seen as an attempt by the Indian State to outlaw all forms of violence against women and thus guarantee equality for them.

Few of the issues that have been raised are as follows:

i. The definition of “domestic violence”⁶¹ is vague and unguided.

To begin with it needs to be pointed out that the definition of domestic violence has been taken from the “UN Framework for Model Legislation on Domestic Violence against Women” and therefore has a sound basis in international law.

If there is any ambiguity in an expression in an Act, the Preamble and the “Statement of Objects and Reasons” are required to be looked at to ascertain the meaning of the expression. In the case of this Act, the object is to protect women against violence to

⁶⁰ Article 37; *Manchegowda v. State of Karnataka* AIR 1984 SC 1151

⁶¹ Section 3

give effect to the guarantee of equality. Thus there is sufficient guidance to interpret the meaning of the words in the definition and no basis for the apprehension that the expressions are capable of being interpreted in an arbitrary manner.

When the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in the context in which it was enacted and the mischief it was intended to remove. In the context of this law, it was meant to address violence against women, which is a form of discrimination based on sex and hence a violation of equality. The statute is meant to be read as a whole.⁶²

Hence the criticism that the definitions are unguided does not appear to be correct and the apprehension that innocent persons would be covered by the law, in view of the wide language, is unfounded. Judges are trained to assess the correctness of the claim that domestic violence has occurred and pass orders after assessing all the circumstances. The law also states, that all the circumstances of the cases will be looked into before passing an order.⁶³

ii. The PWDVA is discriminatory against men as only women can complain of domestic violence under this Act and is hence violative of Article 15 as it discriminates against men on the round of sex alone.

The Act is not confined to women on the basis of sex alone, but it limits its operation to women, in view of the fact that women are victims of domestic violence as indicated by statistics and social reality. Sex specific legislation can be made if data indicates that women suffer certain disabilities which are specific to them. Section 376, Section 354 and Section 498A of the IPC are confined to women. Laws relating to dowry prohibition are similarly confined to women, having regard to the fact that dowry is given by a woman's family to the man on marriage.

The right to equality is recognized as fundamental right in our Constitution both in the formal and substantive sense. Substantive equality requires the removal of disabilities. Violence against women prevents the full exercise of the right to equality. Article 15(3) recognizes substantive equality in allowing the state to enact laws for specific groups such as women and children. Article 15(3) is thus a constitutionally mandated social justice measure and takes into account the historical and systematic processes through which discrimination against women has been effected and seeks to alter the status quo. The constitutionality of the law confined to women can be sustained on the basis of Article 15(3). The PWDVA is thus an extended facet of this concept and is based on an understanding that violence is a tool used to keep women in a status of subordination. Further in understanding the repercussions of violence and its role in denying equal access to resources, the PWDVA provides mechanisms to facilitate a woman's access to justice.

⁶² *Philips India Ltd. V. Labour Court (1985) 3 SCC 103,*

⁶³ Explanation II , Section 3

iii. Conferring the right to residence⁶⁴ is unreasonable as it would enable the aggrieved woman to claim such a right even though she may have lived in the shared household for only a day or two.

Section 17 of the PWDVA states that “*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*”.

The Section only confers a right to reside and does not in any way transfer title to property on the woman. In the context of marriage, the right to reside in the shared household arises from the status of being married. The said right existed prior to the passing of the Act in the case of married women. The right is not dependent on the fact of living for any length of time in the shared household. The Supreme Court in *Mangat Mal v Punni Devi*⁶⁵ has categorically stated that the word “*maintenance*” in Section 14 of the Hindu Succession Act 1956, must encompass a provision for residence, in addition to food and clothing and that a woman was entitled to live in a manner to which she was accustomed. Though this judgment was related to the rights of widows, it can be used to determine the rights of women accruing on marriage. The right to reside in the shared household can thus be said to be a pre existing right for married women.

In other situations, it arises from the fact of the domestic relationship and the fact of living in a household in a domestic relationship. The Section recognizes the fact that no person in a domestic relationship can be dispossessed from a shared household by force or unilaterally, and that such a person can only be dispossessed by procedure established by law. It therefore cannot be said to be unreasonable.

iv. The provisions relating monetary relief⁶⁶ are unguided due to the absence of guidelines to determine the quantum of monetary relief payable to the aggrieved woman.

Existing laws on maintenance already contain enough guidelines on determining the quantum of monetary relief payable to an aggrieved woman.

Under Section 23(2) of the HAMA the court has to consider the following factors while arriving at the amount of monetary relief that is to be granted.

- a. Social status of the couple, this includes the husband’s income and the standard of living of the couple.
- b. The reasonable needs of the wife, this includes m at the very minimum her need to food, clothing, residence and medical expenses.
- c. The value of the wife’s property and income.

⁶⁴ Section 17

⁶⁵ (1995) 6 SCC 88

⁶⁶ Section 20

- d. The number of persons entitled to maintenance from the husband under the HAMA, this includes, besides the wife, the children, parents and widowed daughter-in-law.

Further Sections 125-128 of the CrPC already contains adequate guidelines for determining the same. All existing laws and judgments guide the grant of maintenance.

- v. **Whether the Act, in not providing a provision on limitation of time within which the aggrieved person should approach the Court, violates the rule of public policy.**

The PWDVA does not provide for any particular time limit within which the aggrieved woman should come and file for relief. This is due to the fact that the concept of “domestic violence” has to be looked into in the form of a continuing offence rather than a one time offence. Forms of domestic violence such as destitution, non payment of maintenance, emotional abuse are not one time or incident specific and are more in the form of an ongoing act.

It was held in the case of *Vanka Radhamaniohari v. Vanka Venkata Reddy and others*⁶⁷ that general rule of limitation is based on the Latin maxim “*vigilantibus et non dormientibus, jura subveniunt*” which means that the vigilant and not the sleepy are assisted by the law. This maxim cannot be applied in connection to offences relating to cruelty against women. That the fact that the victim was subjected to cruelty repeatedly is more or less like a continuing offence. Indeed, this is not the only law, which does not provide for limitation. Labor laws, for example do not provide for limitation and have been upheld when challenged.

- vi. **The Act cannot be retrospective in its operation.**

There is a difference between “retrospectivity” and “retroactivity”. A statute cannot be properly called “retrospective” only because a set of facts on which the relief depends are drawn from a period prior to the coming into force of the Act. It may be said that the violence may have occurred before the Act came into force, but because the impact of the violence is still being felt, it may constitute a continuing wrong entitling the woman to relief. A criminal statute can never be retrospective. The PWDVA is civil law, where it is only Section 31 which relates to a particular crime. This Section can never be retrospective. It stands to reason, that a breach of an order can only be after the Act is brought into force and not before. The Act therefore cannot be said to be “retrospective” in its operation.

⁶⁷ (1993)3 SCC 4

vi. **Whether provisions are violative of the due process of law in the following situations.**

- ◆ **In permitting the passing of *ex parte* orders**
- ◆ **In granting the power to the Magistrate to pass orders without laying down any rule of evidence or procedure.**
- ◆ **In granting the power to a Magistrate to conclude that an offence under Section 31 has been committed, upon the sole testimony of the aggrieved person.**

The PWDVA includes sufficient provisions for the rules of natural justice to be complied with. Under Section 23 *ex parte* order are passed only when the circumstances so require and parties are heard within a few days of the order. Most courts do have the power to pass *ex parte* orders. Thus only if there is an imminent threat, for instance- of dispossession, can an *ex parte* order be passed to prevent irreparable damage which may be altered after the notice is served.⁶⁸

Interim orders are passed after notice on the making of a prima facie case.⁶⁹ These are well recognized concepts in law and this Act makes no departure from them. Where facts are disputed and a decision cannot be made on documentary evidence, oral evidence is led and parties are subjected to cross examination.⁷⁰ Hence, it can be said that there is no violation of due process as such.

In so far as conviction on the sole testimony of the woman is concerned, the existing law on conviction for rape also permits conviction on the sole testimony of the woman⁷¹. Courts have a tendency to insist that a woman's testimony be corroborated and it was to undo this trend that the Supreme Court held that a conviction could be based on the sole testimony of the woman, as she was in fact the injured witness. This, however, does not mean that the court will not evaluate the probative value of the evidence and the look at all other circumstantial evidence to come to a conclusion on whether an offence has been committed. The Act makes no departure in that respect.

Finally, the views expressed here are based on a particular understanding of the law and are not intended to provide a complete answer to all issues, but indicate direction of research. It will undoubtedly be for a competent court to decide on the constitutional challenge. We must await those decisions for a fuller and better understanding of the law on the subject.

⁶⁸ Section 25(2)

⁶⁹ Section 23(2)

⁷⁰ Section 28

⁷¹ *Bharwada Bhoginbhai Hirjibhai v State of Gujarat* (1983) 3 SCC 217

Role of the Media

When the law was brought into force, there was a very welcome and extraordinary interest in the law and it was projected and rightly so, as a major milestone on the road to justice to women. At the request of the Lawyers Collective, NDTV conducted a week long program discussing the law with case studies. This program played a role in spreading awareness, though it was confined to an English speaking audience. Several regional language channels also ran programs on the subject. The print media also covered most of the initial cases, contributing to awareness on the law.

However, over the year, there has been a significant increase in negative publicity associated with the new law. The usual cry of “misuse” is being loudly voiced from every forum. There is no doubt that this is an orchestrated effort to spread misinformation about the law and portraying women as being unscrupulous. While the complaint about the use of Section 498A was that women are getting elderly family members arrested and thus “misusing” the law, the same propaganda is being spread about this law, without any understanding that this law does not involve arrest, but is a law providing civil relief. Websites have sprung up, groups of men such as “Save The Indian Family” have led vituperative campaigns against the law. These groups have been vociferous in approaching the media to denounce this law.

As time has progressed, the media has consistently carried stories, indicating how men have been victimized. One item needing particular mention is a front page report in The Times of India (19.09.2007) on a statement made by the Chairperson of the Orissa Commission for Women, that women misuse the law. This was made headline news. Stray incidents were cited to substantiate this report with no attempt at understanding the larger context within which violence is perpetrated. On the same day, a Judge of the Supreme Court, deciding a rape case in which he acquitted the accused after two courts had convicted the accused, referred to the news report as if it constituted evidence and almost in justification of his decision! The role of the media in these circumstances is highly suspect and it has become a convenient tool to contribute to bias against women.

The freedom of expression is a constitutionally guaranteed right. However, rights are to be exercised with concomitant responsibility otherwise it leads to the misuse of rights. The media must be vigilant in backing up their news reports with data and appropriate statistics. The issue of domestic violence must be understood as being violative of the human rights of women and cannot be trivialized on the basis of personal experiences.

In Conclusion

It is too early to draw conclusions from the data presented in the report as the implementation of this law is at its preliminary stage. The practices identified in the report may change depending on the manner in which infrastructure put in place under the law function, in terms of accessibility, effectiveness and sensitiveness to the needs of women facing domestic violence, and the interpretation of the law by courts. In addition, public awareness and trainings on the law, for which only first steps, if at all, have been taken, may also have an impact on the effectiveness of the law. In the current context the trends in implementation can be broadly divided into three separate categories. The following terminology is used on an experimental basis for want of better descriptions.

1. The “Private Model”

The trend in these cases is of heavy reliance on lawyers appointed by the women themselves. This assumes that these women can afford to pay for their own lawyers or access lawyers. It also assumes that women are highly aware of the existence of the new law or in any case have become aware of its advantages when advised by lawyers of their rights under the new law. Lawyers themselves have shown an ability to understand the complexity of the new law in a relatively short time. Since the law can be accessed only by women, a considerable amount of expertise has been built up by them on the advantages of this law, as compared to other laws. This has worked to the benefit of women. Equally, however, lawyers appearing for respondents have marshaled arguments against the law, forgetting the object of the law i.e. to prevent violence against women. This is inherent in the system and needs to be dealt with by building capacity among the legal community and in forging multi-agency responses, so that women can take full advantage of the law.

Since the DIR can be signed only by the Protection Officer or by a registered Service Provider, the applications are being filed without a DIR. Significant reliance is being placed on the Police and on the existing machinery of the courts in these States for activating the law, in the absence of Protection Officers and with hardly any State provided infrastructure. Examples of states currently following this model are Rajasthan, Punjab and Haryana. Significantly, the largest number of cases in the country has been filed in the state of Rajasthan. It is however, not possible to hazard a guess about the reasons for these numbers and that would have to await a more detailed study. Views have been expressed by major users of the law that the existence of Protection Officers would have helped the more vulnerable among the women who use the law.

2. The “Mixed Model”

In these States, it appears that women who can afford lawyers go to court through lawyers directly, with or without a DIR signed by a Protection Officer, in place. Some

lawyers advise women to go to a Protection Officer and record a DIR after counseling them on the advantages of a DIR. Others have chosen to file applications without a DIR and left it to the courts to direct the Protection Officer to record a DIR, if the circumstances so require. This leaves the option to the woman to decide the most appropriate course to follow, having regard to her individual circumstances.

In these States, lack of information about the existence of Protection Officers and their whereabouts or their inadequate numbers has been a serious handicap to women accessing justice through public channels. This model may be called the “Mixed Model”. This appears to be the common model followed by most of the states, examples being NCT Delhi, Kerala, West Bengal and Goa.

3. The “Public Model”

This constitutes, the best existing example of multi agency responses, in that the Police, the Protection officers, the Service Providers and the Legal Aid Services Authorities, coordinate their services to facilitate access to courts. Police continue to be the first port of call for women in distress. They have been trained to set the law in motion. A DIR Index has been created to track the cases and all developments in the case, so that anyone looking at the record can ascertain the status of the case.

It is too early to make any definitive conclusions about the working of this model, except to say that the numbers indicate that a large number of cases have been filed by the Protection Officers. Equally there are indications that a large number of cases are being referred to counseling before the DIR is filled in. Often, the Protection Officer has referred the woman to registered or unregistered Service Providers for counseling. Many of these have been organizations working with women over the years. It is not clear to us, if this is being done at the request of the woman herself. There are complaints that legal aid lawyers also demand money for the cases they handle. When questioned about this, the authorities did not deny that there are complaints, but explained that when any such complaint is received, even anonymously, the lawyer is taken off the panel. There are a few cases where women have approached the courts directly with their own lawyers. In such cases, the courts have asked Protection officers to file a DIR. For want of a better name, this will be referred to as the “Public Model”. The only example of this model is Andhra Pradesh.

Evaluation

It is far too early to make any meaningful evaluation of these three different models. Much depends on the numbers of Protection Officers appointed, their qualifications, their accessibility and the coordination between different agencies. However, the manner in which the law has been operationalized does indicate the need for multiple agencies to assist the woman in distress and to assist the courts in the discharge of their functions.

There is inadequate information about Service Providers and their role. This could be because of the delay in registering Service Providers. In this report, therefore the

voice the registered Service Provider seems to be missing. However, this is not to suggest that they have not been active on advocacy on the law. Many have published literature in vernacular languages on the law in an effort to spread awareness on it. While there is sufficient engagement of women's organizations with advocacy there is no evidence of engagement with court processes except in some cases where women's organizations have been engaging with the law before this law came into force.

As is to be expected, highly publicized cases have led to awareness of the law in significant manners. Pooja Chauhan's case in Gujarat requires a special mention. Frustrated by Police inaction, she walked the streets of Rajkot to draw attention to the neglect of the law enforcement agencies to her situation. Several groups, taking note of her needs came to her assistance, particularly the state coalitions on violence against women⁷². The Lawyers Collective did a fact finding report exposing the total apathy of the Police to her complaints under Section 498A. Poonam was assisted by her lawyer and support groups to file an application under the PWDVA. She has obtained some relief under the law. Poonam, has today become a source of inspiration to other women wanting to use the law.

It is evident that women are using the PWDVA rather than Section 498A as it provided them direct access to the Court, rather than being dependent of the Police. It is also evident that the law is providing them with multiple reliefs under one roof and in that sense it has functioned as a "single window clearance" for them, resulting in a decline in the levels of court related harassment and trauma.

Other trends that require to be highlighted are:

- ◆ Delays have been reduced due to the availability of a separate track for service of notice and the time lines stipulated in the Act for the disposal of cases. The provision for interim relief in the law has meant that many women are approaching the courts for interim relief and getting it.
- ◆ Unfortunately, the right to reside in the shared household has been severely limited due to the ruling in *Batra v Batra*. Even in cases, where it is being granted, it is being given in the form of alternative accommodation, rather than in the shared household.
- ◆ Maintenance is the one order being granted liberally. This could be because it has existed in Section 125 of the CrPC for more than a century.
- ◆ Married women continue to be the most frequent users of the law, rather than other categories such as daughters, sisters or mothers.
- ◆ The number of cases filed in different States varies widely. We are unable to arrive at any explanation without adequate data for the reasons, at this point.

⁷² The names of these groups are not mentioned in deference to their expressed desire to remain incognito and to maintain confidentiality.

- ◆ A common reason for denying reliefs appears to be on the ground that there are pending proceedings under other laws such as proceedings under Section 498A, civil suits on property disputes, custody proceedings under different personal laws. This reason is being given despite the stipulation of the law, in Section 26, that applications for reliefs can be filed in pending proceedings that affect the rights of the aggrieved woman.
- ◆ A particularly disturbing case has been observed in Rajasthan in which, an appeal court recorded a finding of fact against a woman which was very damaging to her, without any evidence being led in the Magistrate's court. This raises serious questions of denial of the right to hearing to the woman. The decision is under challenge by the women in the High Court hence no comment can be made at this stage.
- ◆ There appears to be divergent practices adopted in different states in interpreting the provisions of the law.

Recommendations

Efforts must be made to find ways and means of sensitizing society to the right to live with dignity for women, which includes the right to live a life free from violence. This understanding must inform the decision making process at all levels. It is a pre-condition for the success of the law, which was premised on an understanding of women's rights as human rights in both the public and the private domain. Law must effectively regulate the violence of the non state actors.

The following section has specific recommendations for authorities involved in the implementation of the PWDVA.

I Central and State Governments

1. Public awareness: The Central and State Governments are duty bound to build awareness on the law, in the public domain, under Section 11. This can be done through media campaigns in the print and electronic media and other means.
2. Trainings on the law- Under Section 11, it is the duty of the Central and State Governments to provide trainings to various functionaries under the law on a regular basis for them to discharge their functions in an effective and sensitive manner. It is recommended that both the Central and State Governments increase their efforts in this regard.
3. Putting in place infrastructure: Adequate infrastructure and appropriate budgetary allocations are needed in all states for the effective implementation of this law. Infrastructure, budgets and the number of courts should be enhanced to meet the demands of the law. This may be done through gender budgeting which is now an accepted tool of budgeting. In light of the high incidence of domestic violence, there should be separate allocations for the implementation of laws relating to domestic violence.

Though the responsibility of putting in place infrastructure has been vested with State Governments, one cannot lose sight of the fact that the PWDVA is a Central law. The Center has a duty in the federal structure to make an adequate budget available to the states for the purposes of implementation of this law.

4. Appointment of Protection Officers: Focus must be placed on the appointment of Protection Officers. All Protection Officers should be appropriately qualified, trained on the law and appointments must be made on a full time basis. The role of the Protection Officer must be understood as being akin to 'outreach officers' of the court. Their duty is to facilitate access to courts. They also are part of the infrastructure of the court inasmuch as they assist courts in fact finding and in the implementation of court orders.

5. Registration of service providers: The registration of service providers must be commenced in earnestness as not only will women be able to access them better, but because the Protection Officer will be able to rely on them for guidance. In all states there are women's groups with long standing experience of dealing with issues of women's rights. Such organizations shall play a valuable role in supporting and guiding Protection Officers in the discharge of their duties. It is however, clarified that only those private service providers who volunteer should be registered.
6. Identification of qualified counselors: Also important is the need to identify qualified counselors, particularly keeping mind the high rates of referrals to counseling ordered by the Magistrates. Counselors may be identified from service providers providing such services.
7. Building a multi-agency response: There is need to build a multi-agency response between the Protection Officers, police, Legal Services Authorities, service providers, counselors, etc. to aid women facing domestic violence. This response requires coordination amongst the different departments of the government as well as partnerships with civil society organizations.
8. Collection of data with the objective of reviewing the functioning of the law: Monitoring of a law is an integral part of implementation. The Central and State governments should put in place a system of collating and computerizing data on domestic violence, including court orders and DIR's filed. The compilation of the data in order to evaluate the functioning of the law should be done on an annual basis.
9. Appointing 'domestic violence rapporteurs' - a national level rapporteur⁷³ should be appointed to collate data on violence in the manner discussed above. This

⁷³ The LCWRI draft bill had suggested the appointment of national and state coordinators on violence as being part of the duties of the government. This suggestion was not accepted. The manner of appointment and duties of coordinators were provided as follows:

(1) The Government of India and the State Governments shall respectively appoint an eminent person as the National and State Coordinator for the prevention of domestic violence who shall submit annual reports to the Government of India or to the State Government respectively on the incidence of domestic violence in India and the State and on the implementation of this Act which report shall be laid before both houses of Parliament and before the State Legislature, as the case may be.

(2) The Coordinator for the Prevention of Domestic Violence, appointed under sub-section (1) of this section shall have the powers to perform all or any of the following:

- i) powers to investigate and examine all matters relating to Prevention of Domestic Violence generally*
- ii) make in its annual reports to the Government of India, recommendations for the effective implementation of the provisions of this bill*
- iii) review, from time to time, the existing provisions of the law on domestic violence.*
- iv) Look into complaints and take suo-moto notice of matters relating to domestic violence and the non-implementation of the law on domestic violence*
- v) Call for special studies or investigations into specific incidence of domestic violence*
- vi) Participate and advise on the planning process for securing a safe environment free of domestic violence.*
- vii) Evaluate the progress of the development of women under the law on domestic violence.*

authority should be vested with the responsibility of submitting annual reports on the incidence of violence and on measures to be taken for its prevention.

10. Bringing children within the ambit of the PWDVA: Having regard to the fact that the child is disadvantaged in matters of access to court and it was never the intention to exclude children from the ambit of the law it is recommended that the definition of “aggrieved person” be amended to include children within its ambit.
11. Direct access to courts: Finally, none of the provisions of the law should be interpreted to deny women access to court directed reliefs. Hence an amendment should be effected to the proviso to Section 12 (1) clarifying that neither a DIR nor a home study report is mandatory before passing any order under the Act. Whether or not they are required is a matter of judicial discretion and may be called for by the judge.

II Legal Services Authorities

The Legal Services Authorities have an important role to play in facilitating access to justice, particularly for those women who cannot afford lawyers. The National and State Legal Services Authorities must identify panel lawyers for women filing cases under this Act. These lawyers should be adequately trained and paid to encourage the provision of legal aid.

III The Police

For most women, the police remains the first port of call, having regard to their vast infrastructure. Police personnel, across the states should be trained in providing information on the PWDVA as per the mandate provided in Section 5. They should be in a position to refer women, opting to pursue civil action, to the Protection Officers available in the jurisdiction. They should also be aware of the provisions of the PWDVA in order to facilitate a woman’s access to service providers, medical facilities, shelter homes and other support services. It is imperative that the police work closely with Protection Officer to ensure that women are provided protection against acts of domestic violence. As is evident from the report, the support of the police is crucial in discharging court directed duties particularly in the service of notice and in the enforcement of orders granted by the courts.

Further, in cases where the complaint of the aggrieved woman reveals the commission of an offence under Section 498A, the police should initiate appropriate action under criminal law instead of adopting a ‘hands off’ approach and passing the responsibility on to a Protection Officer or any other authority.

IV Judiciary

1. Having regard to the wide variations in the manner of implementation the Supreme Court of India and the High Courts may issue guidelines as protocols for dealing with all procedural and substantive issues including the manner and method of conducting hearings on applications filed under Section 12 and trials under Section 31.
2. The PWDVA is a civil law and was never intended to prevent direct access to court. Hence no provisions, rule or procedure should be interpreted to deny or obstruct direct access or in any way impede proceedings in court. A clarification may be issued that with regard to the proviso to Section 12 (1), that DIR's are not mandatory.
3. On the substantive law a clarification in a protocol must be issued that the law can be used in addition to other sections and in pending proceedings.
4. On issues of substantive law- the judgment in the *Batra* case requires review by the Supreme Court of India.
5. As the breach of the protection order can lead to an offence, guidelines may be issued to all Magistrates that a protection order should be written with clarity indicating clearly to the respondent what acts are being prohibited so that compliance is made possible.
6. Having regard to the fact that the law stipulated time lines Magistrates should adhere to the time lines stipulated and dispose cases in a speedy manner.

Final remarks from the Project Director's Desk.

Women's rights as Human rights

It is a matter of great regret to have to conclude that after all is said and done, that society has not internalized the norm of human rights when it comes to the status of women and their interactions within the home. The prevention of violence against women is matter relating to maintaining the dignity of women in the family, howsoever defined, whether as daughters, as sisters, as wives, as mothers and as co-habitees in intimate relationships. It seems as if the very concept of "relationship" is not understood. Women within families continue to be viewed as performing only specific functions of reproduction and domestic labor. They continue to be property less, rather they continue to be seen as "*lakshmi*" in the sense that they will bring in the dowry. The case analysis substantiates this, in as much as in almost all cases, dowry seems to have been given by the woman's family and received by the husband's family. The Dowry Prohibition Act has been a complete failure after more than 40 years of being on the statute book. Violence is a non issue for the family. Human rights continue to be "a bull in a china shop" as one judge put it several years ago while dealing with the challenge to Section 9 of the Hindu Marriages Act 1955, which permits husband to file a petition for restitution of conjugal rights.

Over the last several years, there has emerged the concept of the "Indian family" as a variant of the family generally. This family seems to be, among other things, defined by fear. While Section 498A seems to have put the fear of arrest in the "Indian Family" this law has put the fear of loosing property into the "Indian family". For women, it seems the effort is to create a no win situation. Even while the law confers rights on them, as in this case- the right to reside in the shared household, there is a consorted attempt to undermine the very basis of that right through unfair means of creating false propaganda, a propaganda which cannot be met with reason or statistics. The "Indian Family" still defines itself as minus the woman, despite the Constitutional guarantees of the right to equality before the law, equal protection of laws, despite several rights conferred by laws of inheritance, coparcenery rights and laws to prevent violence against women. It is apparent that the PWDVA , though based on the understanding that women are individuals in their own right possessed of human rights , they are in fact perceived only as members of a unit namely the patriarchal family, male headed and disenfranchised in every sense of the word. If the legislature creates rights, as in this case- the right to reside the shared household, Court have leant to simply ignore those rights, through the strategy of what is known as

“interpretation”. This has become evident to us, not only from judgments of the court but also from discussions in workshops conducted across the country where judges have interacted with us and discussed their point of view on larger social issues.

This is not to however suggest that all judges are biased against women. This is simply not true. Many have delivered judgments showing an acute awareness of human rights of women.⁷⁴ The purpose of this exercise is rather to draw attention to underlying ideological issues driving the decision making process. Even when relief is granted liberally, the nature of the relief indicates that it is being granted to women as “dependents” maintenance, or return of stridhan, but the right to the shared household is a different matter. Decision making is not always rights driven. As some judges have expressed that “love and affection have been replaced by law”.⁷⁵ To those, our answer is “Where is the love? Women in families where is love, don’t come to judges”.

Indira Jaising

October 2007

⁷⁴ Judgment of the Chennai High Court (OA No 7640 of 2007 in C.S No 548 of 2007) included in Annexure IX.

⁷⁵ Report of the external evaluator on the workshop held at the National Judicial Academy on the 11th of October 2007. (10.10.2007)

Annexure I

List of organizations and resource persons LCWRI collaborated with during the process of data collection*

1. Andhra Pradesh

- ◆ S. Umapathi (IGP, CID, Hyderabad)
- ◆ Swarnalata (Project Director/Protection Officer , DWCD)
- ◆ Rajyalakshmi (Project Director/Protection Officer, DWCD)
- ◆ Vanaja Mandya (Adv.)
- ◆ Mohsina Parveen (Adv.)
- ◆ Sanhita Centre for Women and Girl Children, Hyderabad
- ◆ Asmita Collective, Hyderabad

2. Arunachal Pradesh

- ◆ Jarjum Ete, Chairperson, Arunachal State Women's Commission

3. Assam

- ◆ Anudas, Department of Women and Child Development, Guwahati
- ◆ Anurira Hazarika, North East Network, Guwahati
- ◆ Ashish Dey, Gharao, Lamding, Assam
- ◆ Mukul Goswami, Ashadeep

4. Bihar

- ◆ Preeti Srivastava, UNICEF
- ◆ Chitraley Bhattacharya, Lakshya
- ◆ Sashi Sail, NAWO

5. Goa

- ◆ Poonam Salgaokar, Chairperson, Goa Women's Commission
- ◆ Caroline Callaso (Adv.)
- ◆ Albertina Almeida (Adv.)

* This list does not indicate any order of priority.

6. Gujarat

- ◆ Sumitra Patel, Jigna Surkar and Ms Shailender Zala, Gender Resource Centre
- ◆ Poonam Khaturia, Swati
- ◆ C. N. Solanki, Protection Officer, Ahmedabad
- ◆ Minakshi Bhavsar, Protection Officer, Rajkot
- ◆ R. B. Joshi, Protection Officer, Bhavnagar
- ◆ Kanaksinh Protection Officer, Surendranagar
- ◆ H. N. Ghasura, Protection Officer, Banaskantha

7. Himachal Pradesh

- ◆ Sutra

8. Karnataka

- ◆ Jayana Kothari (Adv.)
- ◆ Gita, Lawyers Collective, HIV and AIDS Unit

9. Kerala

- ◆ Asha (Adv.), Trishoor
- ◆ Gina (Adv.), Sakhi Resource Centre
- ◆ Aleyamma Vijayan, Sakhi Resource Centre, Trivandrum
- ◆ Ajitha, Anweshi Counseling Centre for Women, Calicut

10. Madhya Pradesh

- ◆ Dr. Mohan Gopal, Director, The National Judicial Academy, Bhopal
- ◆ Prarthna Mishra, Sangini

11. Maharashtra

- ◆ Anjali Dave, TISS
- ◆ Veena Gowda (Adv.)
- ◆ Prasanna, National Centre for Advocacy Studies
- ◆ Sharda Sathe (Adv.), Stree Mukti Sangathan
- ◆ Asim Sarode (Adv.)
- ◆ Veena Johari, HIV and AIDS Unit, Lawyers Collective
- ◆ Asuntha Pardhe (Adv.)

12. Manipur

- ◆ Umakant (Adv.)
- ◆ Rakesh (Adv.), Human Rights Law Network
- ◆ Sushil (Adv.)
- ◆ Linthoy

13. Orissa

- ◆ Namrata Chadha (Adv.)
- ◆ Farooque, Chief Executive, Fellowship, Bhadrak

14. Rajasthan

- ◆ Ajay Jain (Adv.)
- ◆ Kavita Srivastava, PUCL

15. Tamil Nadu

- ◆ Vaigai (Adv.)
- ◆ Geeta Ramaseshan (Adv.)
- ◆ Shiela Jaiprakash (Adv.), NAWO

16. Uttaranchal

- ◆ Geeta Gairola, Mahila Smakhya

17. Uttar Pradesh

- ◆ AALI
- ◆ Sanyog, Allahabad
- ◆ Madhavi Kukreja and Pushpa, Vanangana
- ◆ Neelam Chaturvedi, Sakhi Kendra

18. West Bengal

- ◆ Justice S. Talukdar
- ◆ Justice Anirudhha Bose
- ◆ Mr. Mahadeb Ghosh
- ◆ Anuradha Kapoor, Swayam
- ◆ Amalesh Ghoshal (Adv.)
- ◆ Madhuparna Ghosh (Adv.)
- ◆ Aloka Mitra, Women's Interlink foundation.

19. NCT of Delhi

- ♦ Malvika Rajkotia (Adv.)
- ♦ M. A. Hassan (Adv.)
- ♦ Pragya Routry (Adv.)
- ♦ Radha Singh (Adv.)
- ♦ Vasu (Adv.)
- ♦ Vijay Agarwal (Adv.)
- ♦ Megha (Adv.)
- ♦ Rashmi Singal (Adv.)
- ♦ Ruksana Choudhary (Adv.)
- ♦ Arpita (Adv.)
- ♦ Jawahar Raja (Adv.)
- ♦ Shrimoyee Ghosh (Adv.)
- ♦ Anish Dhingra (Adv.)
- ♦ Chirag Jamwal (Adv.)
- ♦ Sree Kala, North East Network

20. Chandigarh

- ♦ Manjit Kaur Sandhu (Adv.)
- ♦ Veena Kumari (Adv.)
- ♦ R. Arvind Sandhu (Adv.)
- ♦ Rubina Singh

Annexure II

Pro forma circulated to the High Courts of each state on proceedings adopted while dealing with applications under the PWDVA

1. Number of cases filed in the state giving district-wise breakdown under the Act.
2. Appointment of Protection Officers to assist the Magistrate and the Infrastructure provided to the protection officers, if any by courts.
3. Nature of relief's claimed in the application under Section 12 of the Protection of Women from Domestic Violence Act, 2005.
 - ◆ Please provide copies of the orders (interim or final) passed.
4. Proceedings adopted by courts while dealing with such complaints such as
 - ◆ Procedure adopted for serving notices. It is being served in the statutory time limit? If so, by whom? And who bares the costs of the notice.
 - ◆ Manner in which counseling is being directed by the court.
 - ◆ Manner in which the assistance of "Family Welfare Experts" are being elicited.
 - ◆ Manner in which hearings are conducted.
 - ◆ Duration of proceedings.
 - ◆ Availability of legal aid.
 - ◆ Availability and access to support services during the pendency of proceedings.
 - ◆ Whether the presence of the aggrieved person/complainant is being insisted upon by the Magistrate on each date?
5. Whether a report by the Protection Officer is insisted upon by the Magistrate before passing an order in all cases?
 - ◆ Forum of filing complaints under the law- whether it is in pending proceedings or in separate proceedings.
6. Whether an aggrieved person can file an application without the PO's DIR?
7. Nature of orders passed by the courts with particular regard to Ad interim ex-parte orders, interim orders.
 - ◆ Person directed to ensure the effective implementation of the order.

- ◆ Whether or not the orders were effective in preventing violence and providing relief to the aggrieved women.
 - ◆ Manner in which women's right to residence and economic relief is being given effect to.
 - ◆ Procedure followed for enforcing orders on monetary relief.
 - ◆ Cases in which compensation orders have been granted by courts.
8. Consequences of orders granted by the Court.
- ◆ Nature of proceedings initiated when the breach of an interim protection order is reported.
 - ◆ Proceedings adopted in cases where breach of an order is being complained of, if any.
 - ◆ Nature of appeals filed. Appeals filed against interim orders and stay granted, if any.
 - ◆ Challenges to the law.
9. Do you know of any case where the police has recorded a DIR?
10. Are there any cases where women have been ordered by the courts to withdraw their application?
11. What is the role of Protection Officers in enforcing court orders?
12. Is there easy availability of support services?
13. Does the police cooperate in these cases?
14. Do you know of any Petitions filed in the High Courts, challenging the validity of the Act or any other petitions challenging orders under the Act?
15. Any other relevant information that you would like to share on this subject.
16. Any general advice/suggestion to prevent and protect women from domestic violence in India.

Annexure III

Circular dated 30.06.2007 issued by the Andhra Pradesh Legal Services Authority



GOVERNMENT OF ANDHRA PRADESH

A.P.STATE LEGAL SERVICES AUTHORITY

Nyaya Bava Sada, City Civil Court Compound
Purani Haveli, Hyderabad - 500 002
Ph.23446700, 23446702, 23446703 Fax:23446701
E-Mail:apslsa@authority@yahoo.com
E-Mail:apslsa@authority@rediff.com

D.SUBRAMANYAM
Member Secretary

ROC No:APLSA/LSW/DVAot/ 145 /07 Dt:30-06-2007

C I R C U L A R

Sub: Steps for effective implementation of Protection of Women from Domestic Violence Act 2005 in Andhra Pradesh - Regarding.

Ref: Circular ROC No:329/APLSA/LSW/06 Dt: 23-11-2006.

We wish to inform you that in the Workshop of Protection of Women from Domestic Violence Act 2005 organised by National Women Commission at Bangalore on 21st and 22nd June 2007, the Chairperson, A.P.Women Commission, representatives of NGOs and Sri Umapathi, I.G, C.I.D who represented on behalf of A.P.State Police stated that the A.P.State Legal Services Authority, District Legal Services Authorities in the State have been extending full cooperation to all the agencies for effective implementation of the Protection of Women from Domestic Violence Act 2005. In the said Workshop the Chairperson, Karnataka State Women Commission stated that they have proposed to organize 4000 Legal Awareness Camps in their State in coordination with Karnataka State Legal Services Authority. We have also requested the Chairperson, A.P.State Women Commission to organize similar programmes and to conduct legal awareness camps extensively throughout the State in coordination with District Legal Services Authorities and Mandal Legal Services Committees. Under Section 5(d) of Protection of Women from Domestic Violence Act, Police Officers/Service Providers and Magistrates shall inform the aggrieved person of her right to free legal services under the Legal Services Authorities Act. Further women are one of the beneficiary groups entitled for legal services under the Legal Services Authorities Act. Therefore it is obligatory on our part to take all possible steps for better implementation of the Act.

In this regard I am directed by the Hon'ble Executive Chairman, A.P.State Legal Services Authority to request you to take the following steps.

1. District Legal Services Authorities have to organize Legal Awareness Camps to target groups in coordination with NGOs and Para Legal Volunteers to create awareness about the protection of women from Domestic Violence Act 2005.

....2

2. Chairmen, District Legal Services Authorities have to organize Workshops through Secretary, District Legal Services Authority in all the Judicial Magistrate of First Class Courts/Chief Metropolitan Magistrate Courts of their respective Unit to sensitize the Advocates, Judicial Officers, Protection Officers, Police Officers, representatives of NGOs and Para Legal Volunteers within the jurisdiction of the respective Judicial Magistrate of First Class Courts/Chief Metropolitan Magistrate Courts on "Protection of Women from Domestic Violence Act". Each such workshop may be treated as Legal Literacy Camp for incurring expenditure.

District Legal Services Authorities shall constitute "Legal Aid Cell for effective implementation of the Protection of Women from Domestic Violence Act" consisting of Chairman, District Legal Services Authority as Chairman and Secretary, District Legal Services Authority, Superintendent of Police, Public Prosecutor, four lady Advocates having Social commitment, Protection Officers, Project Director, District Rural Development Agency as members of the Cell to ensure effective implementation of the Act, for monitoring the cases, providing legal aid to the victims and to provide assistance to the protection officers and service providers in implementation of the Act. Compliance report in this regard shall be submitted to this Authority by 10th August 2007. Further the cell shall review the practical and procedural difficulties encountered by the protection officers, courts, victims, service providers if any in implementation of the Act once in two months and submit a report to this Authority regularly with suitable suggestions if any for resolving such difficulties.


MEMBER SECRETARY

To,
All the Chairmen
District Legal Services Authorities.

Annexure IV

Circular dated 22.12.2006 issued by the Office of the Additional DGP, CID, Hyderabad, Andhra Pradesh.

C.No.2358/C14/WPC-2006

Office of the Addl.
Director General of Police,
C.I.D. A.P., Hyderabad.
Dt: 22 -12-2006.

CIRCULAR MEMO

Sub:- The Protection of Women from Domestic Violence Act, 2005
(Act No.43 of 2005) - Instructions issued - Reg..

Ref: 1) This office Circular Memo of even No. Dt: 31-10-2006.
2) G.o. Ms. No.22 of WD, CW&DW Dept., Govt. of A.P., dt: 9-11-2006.

* * *

In continuation of instructions issued in earlier circular memo, all the Unit Officer, Range DIsG & Regional IsGP are requested . to circulate the following instructions issued regarding duties of Police in connection with the Protection of Women from Domestic Violence Act, 2005.

DUTIES OF POLICE

1. As soon as the complaint is received, Police shall inform the aggrieved person (Sec.5)
 - (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 Authority Act, 1987;
 - (e) Of her right to file a complaint under section 498-A of the Indian Penal Code, wherever relevant;

Further, if from the content of the complaint, ingredients of cognizable offence under IPC or any other Act are revealed then he/she shall inform her right to initiate criminal proceedings by lodging FIR. But if aggrieved person doesn't want to initiate criminal proceedings, then make a Daily diary entry (General Diary entry) to this effect that complainant wants to pursue civil remedy.

2. Assist the victim in making Domestic Incident Report (D.I.R) in the prescribed form and forward it to the Magistrate through Protection Officer (P.O). or service provider or victim can directly represent to Magistrate for passing appropriate Protection Order as prayed by the victim or as deemed fit by the court. Vide G.O. No.22 (Ref. 2nd cited) the Project Directors of Women & Child Welfare Department, Government of Andhra Pradesh are designated as P.O's.
3. Forward the victim to hospital for proper medical aid, if necessary.
4. **Protection to Victim:** The police shall provide protection to the aggrieved person if so directed by the Court (S.19)
5. **Assistance in Implementation:** The Police shall assist in the implementation of the Protection Order if directed by the Court (S.19)
6. In emergency cases, if Protection Officer (P.O) feels the necessity of Police assistance, then Police shall visit the place of occurrence and render all possible help in recording Domestic Incident Report (DIR) (Rule 9)
7. Protection Officer can seek the assistance of police in confiscating the weapon used by respondent in the act of domestic violence (rule 10 (f))
8. **Aggrieved person or Protection Officer may report breach of protection order to Police for initiating action U/s 31/32 {Rule (15)} and for issuance of F.I.R as dull. : offence is of Cognizable nature and non-bailable one, which is punishable with imprisonment upto one year or fine up to Rs. 20,000/-.**
9. If Domestic Incident Report (DIR) is made by Protection Officer he/she shall forward copies there to the police officer incharge of the police station with in the local limits of whose jurisdiction domestic violence is alleged to have been committed. (Sec.9)

- 10) In State of Andhra Pradesh, Project Directors of Women & Child Welfare Department are appointed as Protection Officers of their jurisdiction. A list of all protection officers & their contact numbers is separately enclosed. (Annexure-I)
- 11) Copies of Domestic Incident Report (D.I.R.) form I & II is also enclosed to have a knowledge about D.I.R. (Annexure II & III). The Project Director will be issuing DIRs with DIR number and the Magistrate will be giving Domestic Violence case number. APPs will be appearing for aggrieved person.
- 12) An Law enforcement officers should note that the Act is basically of Civil nature intended to render quick civil relief like Protection Order, Residence Order, Monetary Relief Order, Custody Order and! Compensation Order. Of these orders breach of Protection Order alone is Cognizable & Non-bailable Offence. However, this does not preclude the police from initiating legal action in all Cognizable Offences.

Encl : Annexure I & III

Sd/-

M. RATAN, IPS

Addl. Director General of Polices,
CID, AP, Hyderabad

To :

All the Unit Officers in the State to circulate to all SHOs / Inspectors/ SDPOs for necessary action.

An Range DisG and Regional IsGP in the State.

Copy to the Chairperson, A.P. Women's Commission, Hyderabad.

Copy to the Director, Women Development & Child Welfare Dept., Yousufguda, Hyd.

Copy to the Secretary to Government, Women Development, Child Welfare & Disabled Welfare Dept., A.P., Secretariat, Hyderabad.

Copy to the Director, Juvenile Welfare, Correctional Services & Welfare of Street Children, Nampally, Hyderabad.

Copy to the Director, A.P. Police Academy, Hyderabad for information.

Copy to the Inspector General of Police (Training), A.P. Hyderabad for information to circulate to all PTCs.

Copy to Addl.DGP, APSP to circulate to all Commandants for necessary action.

Copy to Addl.DGP (Legal), Chief Officer, Hyderabad.

Copy to the Principal Secretary to Government (Home), A.P. Hyderabad.

N.O.O. for all Inspectors & above of CID.

Copy to PS to Home Minister. AP. Hyderabad.

Copy to Stock & file.

Chart on Mechanisms for Implementation of the PWDVA put in place by States and Union Territories

The data reflected below has been gathered from formal and informal sources. The formal source would be the data received from the Women and Child Development Department of each state or the state report questionnaires filled by the nodal department. Information received other than these two sources would be informal sources (marked as *).¹

	State	No of Protection officers	Designation	Service providers	Medical facility	Shelter home
1	Andhra Pradesh	23, 1 in each district.	Project directors (WCD)	72 Service providers as of now. But registering going on as new applications keep on coming.*	All Govt hospitals giving free MF.*	26 Swadhar homes are providing shelter to women.*
2	Arunachal Pradesh	15 PO's – 1 in each dist	ICDS (deputy director in 6 dist and CDPO in 10 dist).	No SP	None	2 shelter homes providing shelter but not notified under the Act.*
3	Assam	26, 1 in each distt.	District Social Welfare Officers.	Applications in process.*	None	None
4	Bihar	190 (1 PO per block)*	They are CDPO.		All Civil surgeons have been instructed to provide free medical aid in case the woman comes with a letter from the PO.*	The District Magistrates have been asked to shortlist the helter homes.*

¹ All data reflected is as per till the 25th September 2007

5	Chattisgarh*	16 PO , 1 per district	Women and Child welfare Officers	Applications in process.	No such notification.	Nari Niketan is in the process of being changed to shelter homes which shall provide vocational training to women also.
6	Goa	2 , 1 in every distt.	Police (Superintendent of Police)	None	None	None
7	Gujarat	25*	Social Defence officers of each district.	The final list is not out.*	None - Apparently the health Ministry is in the process of issuing the notification.*	None
8	Haryana	None		None	None	None
9	Himachal Pradesh	324	ICDS supervisors (some below block level , State report)	The applications are being received.*	National rural health mission and other government hospitals are already providing medical facilities.*	5-6 shelter homes under the WCD are functioning as homes for women, but new ones have not been notified under the Act.*
10	Jammu and Kashmir	NA	NA	NA	NA	NA
11	Jharkhand*	212 – 1 in each district.	Block development officers.	None	None	None
12	Karnataka	212	(185 CDPO's and ICDS officers and 27 Deputy directors of the WCD.27 have been appointed at the distt level and 185	No service providers appointed as yet. In the process.*	WCD has asked the health dept to issue circulars asking all Govt hospitals and primary health centers to provide free medical	Short stay homes which are there have applied to be registered under the PWDVA. Process is on going.*

			have been appt in the Taluk level.		aid to women.*	
13	Kerala	14 PO's were appointed. 1 in every district. Recently 17 more have been appointed.	PO's are basically probation officers.	No service providers. Govt has invited applications.*	In Govt hospitals free medical have always been provided. No particular notification after the PWDVA.*	15 shelter homes notified by the government under the PWDVA.
14	Madhya Pradesh	ICDS and CDPO officers are working as PO in 48 districts and 313 blocks.* Government wants NGO's as protection officers.	ICDS and CDPO.	Applications are in the process of being received.*	None	None
15	Maharashtra*	800 (CDPO's, Tehsildars and Nyaya Tehsildars)	CDPO's , Tehsildars and Nyaya Tehsildars	No	No	No
16	Manipur	7 + 2, ICDS and CDPO. In every distt.	ICDS and CDPO.	None	None	None
17	Meghalaya	No PO's	None	No SP's as yet.	None	None

18	Mizoram	9 district level.	DSWO, CDPO's Superintendent of shelter homes.	Applications are in the process.*	None	Most NGO's that are applying for SP have Shelter homes.*
19	Nagaland*	Not appointed.	The women development dept's recommendation of EACs (Extra Assistant Commissioners- These are Nagaland Civil service cadres) in all the 52 blocks as POs to the state government has been approved in Sept 2007. The appointment is yet to be done.	Not appointed	Not appointed	Not appointed
20	Orissa	30*	CDPO. Programme officers of WCD in each district. They are located at the officer of the collectorate under the district welfare officer.	59 service providers in 30 distt.*	None	25 Swadhar homes are already functioning as shelter homes. However no notification under the Act*
21	Punjab	None	None	None	None	None
22	Rajasthan	None	None	None	None	None
23	Sikkim	4 PO's – 1 in each district.	Assistant Director (Nutrition).	NGO's have been asked to submit applications.*	None	None

24	Tamil Nadu	30 PO – 1 per district.	District Social Welfare Officers.	30, 1 per district.	All government hospitals and primary health care centres have been instructed to provide free medical services.*	No SH notified under the act.*
25	Tripura*	4 Po – 1 in each district.	None	1 SP	None	None
26	Uttaranchal*	13 PO's – 1 in each Dist -	ICDS officers.	None	None	The existing SH are
27	Uttar Pradesh	39 PO's, 1 in each district.	Probation officers.	39 NGO's announced as service providers in the month of May.*	Government order authorizing Chief Medical Officer's (CMO) to provide free medical treatment to all the domestic violence victims.*	34 short stay homes + 61 counseling centres (already existing have been instructed to function as shelter homes under the PWDVA.5 protection homes and 8 Shelter homes functioning under the ITPA are also instructed to work as shelter homes under the PWDVA.*
28	West Bengal*	19 PO's	1 in every dist, District Social Welfare Officer (including Kolkata) For Kolkata it is district project officer (ICDS).	No organization registered as service providers Government is in the process of receiving applications from NGO's	None	None

29	NCT of Delhi*	19	Welfare officers. (Appointed on a contractual basis) MSW Degrees.	None	None	None
	UT					
30	Andamann Nicobar	6 PO's	Child Development Project officers.	In the process of registering SP.*	All government hospitals provide free medical facilities.	
31	Chandigarh*	3	Earlier SDM's were appointed as PO's but they refused now Tehsildars are appointed as PO's.	None	None	None
32	Dadar and Nagar	1	A lady inspector has been appt as PO.	None	None	None
33	Daman N Diu	None	None	None	None	None
34	Lakshadweep	9	Advertisement out.*	None	None	None
35	Puduchery	None	None	None	None	None

Annexure VI

Chart on cases filed in Andhra Pradesh

CASES REGISTERED UNDER PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT-2005 FROM 26.10.2006 TO 26.7.07 & HARASSMENT CASES UPTO JUNE 2006 & 2007 IN A.P. (P.Os appointed vide Go.Ms.No. 22 of Women Development, Child Welfare & Disabled Welfare Dept. Dt. 9.11. 2006)										
Sl. No.	Name of the District	Total No. of petitions received under DV Act 2006	Total No. of compromised at counselling level		No. of DIRs filed	No. of interim orders issued	Total No. of final Orders issued	Total No. of cases pending in Courts	No. of 498 A IPC cases (Jan. to June 06)	No. of 498 A IPC cases (Jan. to June 07)
			Setteled	At counselling stage						
1	Srikakulam	10	1	0	9	0	3	6	92	153
2	Vizianagaram	9	0	0	9	0	0	9	80	147
3	Visakhapatnam	32	0	8	24	0	0	24	181	303
4	West Godavari	34	0	8	26	0	8	18	162	230
5	East Godavan	31	1	23	7	0	0	7	193	235
6	Krishna	346	71	212	59	3	12	44	302	384
7	Guntur	86	2	0	84	0	0	84	165	251
8	Nellore	34	0	7	27	0	10	17	75	91
9	Chittoor	14	0	6	8	0	3	5	117	213
10	Kadapa	69	4	8	57	2	10	45	76	111
11	Kurnool	123	33	34	56	20	8	28	70	84
12	Anantapur	30	19	0	11	1	2	8	90	95
13	Prakasham	52	11	0	41	0	11	30	60	119
14	Adilabad	21	2	1	18	1	0	17	189	127
15	Nizamabad	27	4	0	23	0	1	22	205	222
16	Karimnagar	42	2	21	19	0	2	17	312	335
17	Khammam	65	22	33	10	0	0	10	91	99
18	Warangal	75	0	0	75	0	16	59	208	274
19	Mahaboobnagar	19	2	0	17	15	2	0	136	110
20	Nalgonda	15	0	0	15	1	0	14	205	261
21	Medak	28	0	0	28	0	5	23	112	132
22	Hyderabad City	130	43	4	83	3	23	57	478	573
23	Ranga Reddy	250	0	90	160	15	43	102	388	498
	Total :	1542	217	455	866	61	159	646	3987	5047

Annexure VII

Copy of a model DIR

FORM-I

{see rule 5(1) and (2) and 17(3) }

Domestic incident report under section 9(b) and 37(2)(c) of the protection 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 *28 yrs*
- (3) Address of the shared household
- (4) Present Address **XYZ Address**
- (5) Phone No. if any

Details of Respondents:-

s.no.	Name	Relationship with the Aggrieved person	Address	Telephone no. If any
<i>(1)</i>		<i>husband</i>	XYZ Address	

3. Details of childrens, if any, of the aggrieved person:-

- (a) Number of childrens *2-*
- (b) Details of children

Name	Age	Sex	With whom at present residing
<i>(1)</i>	<i>12 yrs</i>	<i>M</i>	<i>father/respondent</i>
<i>(2)</i>	<i>10 yrs</i>	<i>M</i>	<i>aggrieved person</i>

4. Incidents of domestic violence:-

s.no.	Date, place and time Of violence	Person who Caused Domestic violence	Types of violence		Remarks
			Physical violence	Other	
(1)	Since 1995 till 2001	husband	<input checked="" type="checkbox"/>	Causing hurt of Any kind, plz specify	always beating, asking for dowry
(2)	yr 1996 till 2001	"		divorce case	beating brutally, filing
(3)	2001	"		Wife abducted son	"
(4)	at court house	"		Wife should beat complainant	"
(5)	residence in yr 2005 etc	"		Abuse her	"

(i) Sexual violence

Please tick mark () the column applicable

N/A	<input type="checkbox"/> forced sexual intercourse <input type="checkbox"/> forced to watch pornography or Other obscene material <input type="checkbox"/> forcibly using you to entertain others <input type="checkbox"/> any other act of sexual nature, abusing, humiliating degrading or otherwise violative of your dignity (please specify details in the space provided below)	N/A
-----	--	-----

(ii) verbal and emotional abuse

Since yr 1995 to 2006 husband	<input checked="" type="checkbox"/> Accusation/aspersion on your character or conduct, etc. <input checked="" type="checkbox"/> Insult for not bringing dowry, etc. <input type="checkbox"/> Insult for not having male child <input type="checkbox"/> Insult for not having any child <input checked="" type="checkbox"/> Demeaning, humiliating or undermining remarks/statement <input checked="" type="checkbox"/> Ridicule <input checked="" type="checkbox"/> Name calling <input type="checkbox"/> Forcing you to not attend school, College or any other educational Institution <input type="checkbox"/> Preventing you from taking up a job <input type="checkbox"/> Preventing you from leaving the House <input type="checkbox"/> Preventing you from meeting any Particular person	do not accept child as his son in the court
----------------------------------	---	---

		<input type="checkbox"/> Forcing you to get married against Your will <input type="checkbox"/> Preventing you from marrying a Person of your choice <input type="checkbox"/> Forcing you to marry a person of His/their own choice <input checked="" type="checkbox"/> Any other verbal or emotional abuse (please specify in the space provided Below)	<i>husband</i> <i>having illicit relations with aunt who would stay away from the husband home</i>
--	--	--	---

(iii) Economic violence

<i>Since Dec 2006 till date 1995, \$2000</i>	<i>husband</i>	<input checked="" type="checkbox"/> Not providing money for maintaining You or your children <input checked="" type="checkbox"/> Not providing food, clothes, medicine Etc. for you and your children <input checked="" type="checkbox"/> Forcing you to out of the house you Live in <input type="checkbox"/> Preventing you from accessing or Using any part of the house <input type="checkbox"/> Preventing or obstructing you from Carrying on your employment <input type="checkbox"/> Not allowing you to take up an Employment. <input type="checkbox"/> Non-payment of rent incase of a Rented accommodation. <input type="checkbox"/> Not allowing you to use clothes or Articles of general household use. <input checked="" type="checkbox"/> Selling or pawing your stridhan or Any other valuables without Informing you and without your Consent. <input type="checkbox"/> Forcibly taking away your salary Income or wages etc. <input type="checkbox"/> Disposing your stridhan. <input type="checkbox"/> Non-payment of other bills such as Electricity etc. <input type="checkbox"/> Any other economic violence. <p>(please specify in the space Provided below)</p>	<i>Possession of stridhan is with Inlaws</i>
--	----------------	---	--

iv) Dowry related harassment

Yr 1995 on occasion of Raksha Bandhan when pregnant	husband	<input checked="" type="checkbox"/> Demands for dowry made, please Specify	Rs 25,000/- as a dowry - left her on the way threatened to kill her if not fulfill his demand. Demand of Rs 25,000/- fulfilled by father of complainant in yr 1996.
		<input type="checkbox"/> Any other detail with regard to dowry Please specify. Whether details of dowry items, Stridhan etc. attached with form <input type="checkbox"/> Yes <input type="checkbox"/> No	

(v) any other information regarding acts of domestic violence against you or Your children

(1)	since Dec 2006	husband	not taken care of son Ravi	
(2)	Yr 1997-98		operation of son Ravi by Jeeva done by money given by father	husband did not spend or case to get the operation done

(Signature)

(Signature or thumb impression of the complainant/aggrieved person)

5. List of documents attached

name of document	Date	Any other detail
medical-legal certificate	-	-
doctor's certificate or any other description	-	-
list of stridhan	-	-
any other document	Complaint to SHO (1996) & NCP DCP	-

6. Order that you need under the Protection of women from domestic violence Act, 2005.

S.No.	Orders	Yes/No	Any other
(1)	Protection order under section 18	yes	-
(2)	Residence order under section 19	yes	-
(3)	Maintenance order under section 20	yes	-
(4)	Custody order under section 21	No	-
(5)	Compensation order under section 22	No	-
(6)	Any other order(specify)	No	-

7. Assistance that you need

S.No.	Assistance available	Yes/No	Nature of assistance
1	2	3	4
(a)	Counsellor	No	
(b)	Police assistance	yes	in case of need!
(c)	Assistance for initiating Proceedings	No	-
(d)	Shelter home	No	-
(e)	Medical facilities	No	-
(f)	Legal aid	No	-

8. Instruction for the police officer assisting in registration of a domestic Incident Report: wherever the information provided in this form disclose 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 the physical injury or pain being reported by the aggrieved person offer Immediate medical assistance and get the aggrieved person medically Examined.

Place: *New Delhi* (Counter signature of protection officer/service provider)

Date: *22/9/07*

Name: *MR. KIRAN SHARMA*

Address: *District Social Welfare office (road*

(Seal)

- Copy Forwarded to:
1. Local Police Station
 2. Service Provider/Protection Officer
 3. Aggrieved Person
 - ✓ 4. Magistrate.

Annexure VIII

Case studies prepared by the LCWRI based on the field visits conducted

ANDHRA PRADESH

Case 1

The Applicant is 45 years old. She has been married to the Respondent for the past 27 years. The couples have two children. They were married according to the Hindu rites and dowry was given at the time of marriage. The Applicant is unemployed whereas Respondent works in a government bank. They live in a nuclear family set up and the house is owned by Respondent. The Applicant was being subjected to physical, emotional, verbal and economic abuse by her husband. At present she is living with her brothers. She has applied for protection order, residence order, monetary relief and compensation order under the Act.

She approached the Protection Officer whereupon the DIR was recorded. Form I, II and III were used. The DIR along with the application was filed before the Magistrate. Notice was issued on the first date of hearing and was served through the Protection Officer. Form VII was used to serve the notice and it took 2 days for the notice to get served. The Respondent filed his reply within a week. The Application was dismissed since there was already a case under Section 498A of the IPC pending before the same Magistrate and also since the couple was living separately the Magistrate was doubtful whether the provision of the PWDVA would apply. The final order was passed within 60 days. An appeal has been filed by the Applicant within 30 days of the date of the last order. The appeal is currently pending.

Case 2

The Applicant and Respondent 1 are 35 years and 38 years of age respectively. They have been married for the past 13 years. The marriage was solemnized according to Hindu rites and dowry was given in the form of cash, jewellery and consumer goods during the time of marriage. The parties live in a joint family set up and the residence is in the name of the father-in-law (Respondent 2). The Applicant has been subjected to physical, verbal, emotional and economic abuse at the hands of her husband and in-laws. She has applied for protection order, residence order, monetary relief, compensation order and custody order under the Act.

The Applicant approached the Protection Officer. The DIR was recorded in the office of the Protection Officer. Form I and III were used. The DIR along with the application was filed before the Magistrate. Notice was issued on the first date of hearing and was served through the Protection Officer. Form VII was used for serving notice and it took 17 days to get the notice served as the Respondent refused to accept it.

The final order was passed within a month. The court also ordered for the custody of the child to be given to the applicant and also for the return of her articles/stridhan.

Case 3

The Applicant is 32 years old and the parties have been married for the past 6 years. The marriage was solemnized under Hindu rites and was registered. The parties have no children. They are employed in the private sector and live in a rented accommodation. The Applicant complained of physical, emotional, verbal and economic abuse. At present the Applicant is staying with her sister. She has applied for monetary relief and compensation order under the Act

The Applicant approached the Protection Officer whereupon a DIR was recorded. Form I (DIR) and III (Affidavit) were used and the DIR along with the application was filed before the Magistrate. A notice was issued on the first date of hearing and was served through the Protection Officer. Form VII was used to serve the notice. Counseling was directed by the courts. A paralegal volunteer of the state legal services authority conducted the counseling. The matter was settled and the Respondent agreed to pay a sum of Rs. 20 lakhs to the Applicant.

Case 4

The Applicant and the Respondent are 28 years and 35 years of age respectively. The parties have been married for more than 10 years and the marriage was solemnized according to Hindu rites. Dowry was given in the form of cash and jewellery at the time of marriage. The parties have one girl child. The Respondent works in a private firm and the Applicant though equally qualified was not allowed to work. The parties live in a joint family set up. The residence is owned by the father-in-law. The Applicant complained of physical, verbal, emotional and economic abuse at the hands of her husband, father-in-law and mother-in-law. At present the Applicant lives with her parents. She has applied for protection order, residence order and monetary relief under the Act.

The Applicant approached the Protection Officer and the DIR was recorded in the office of the Protection Officer. Form I, II and III were used. The DIR along with the application was filed before the Magistrate. Notice was issued on the first date of hearing and was served through the Protection Officer. Form VII was used to serve the notice and it was served within 2 days. The parties were jointly referred for counseling on the first date of hearing. The counsellors were members of the Hyderabad City Women's Welfare Council.

Case 5

The Applicant and Respondent are 35 years and 42 years of age respectively. The parties have been married for the past 18 years. The parties were married according to the Hindu rites and dowry had been given in the form of cash and jewellery at the time of marriage. The parties have three children and live in a nuclear family set up

which is owned by the Respondent. The Applicant is unemployed whereas the Respondent is employed in the government sector. The Applicant complained of physical, verbal, emotional and economic abuse. She has applied for protection order, residence order and monetary relief under the Act.

The Applicant approached the Protection Officer. The DIR was recorded in the office of the Protection Officer. Form I, II and III were used and the DIR was filed along with the application before the Magistrate. Notice was issued on the first date of hearing through the Protection Officer. Form VII was used to serve the notice and it took 3 days to get the notice served. The interim order was passed within 50 days. Interim protection and residence order was passed by the court. Joint Counseling was directed by the Court. The Magistrate himself carried out the counseling. Police help was sought during the course of the proceedings.

Case 6

The Applicant and Respondent are 48 years and 60 years of age respectively. The parties have been married for the past 22 years. The marriage was solemnized under the Indian Christian Marriage Act and was registered. The parties have one daughter who is already married and is currently living with her husband. The Applicant is unemployed whereas the respondent is employed in the government sector. The parties live in a nuclear family set up and the residence is owned by the Respondent. Currently she is staying in another house as a paying guest. The Applicant complained of physical, verbal, emotional and economic abuse. She has applied for protection order, residence order under the Act.

The Applicant approached the Protection Officer and the DIR was recorded at the office of the Protection Officer. Form I, II and III were used. The DIR was filed along with the application and submitted before the Magistrate. The notice was issued on the first date of hearing and was served through the Protection Officer. Form VII was used to serve the notice and it took around 3-4 days to serve the notice. Joint counseling was directed by the Court on the first date of hearing. The Metropolitan Magistrate was the counselor. Protection Order was granted. The parties were told to reside together for a month and then think about further proceedings.

Case 7

The Applicant and the Respondent are 39 years and 48 years of age respectively. The parties have been married for the past 20 years, they were married according to the Hindu rites and dowry was given in the form of cash at the time of marriage. The parties have one child (female). The applicant is unemployed whereas the husband runs a transport business. The parties live in a nuclear family set up and the residence is owned by the respondent. The parties still live in the same house but in separate portions. The applicant complained of verbal, emotional and economic abuse. She had applied for protection order, residence order, monetary relief under the Act.

The applicant approached the protection officer first and the DIR was recorded in the office of the protection officer. Form I, II and III were used and the DIR was filed along with the applicant before the Magistrate. Notice was served on the first day of hearing through the protection officer. Form VII was used to serve the notice and it took 3 days to do so. The interim order granting protection, residence and monetary relief was passed after 15 days. The final order granting the same was passed after 60 days. Appeal was filed by the respondent in the Sessions Court within 30 days of the final order. At the Appellate stage the parties were referred for joint counseling. The protection officers were the counsellors. The earlier orders were not stayed.

Case 8

The Applicant and the Respondent are 34 years and 42 years old respectively. The parties have been married for the past 18 years. The marriage was solemnized according to the Hindu rites and dowry was given in the form of cash at the time of marriage. The parties have a daughter. The Respondent is employed in the government sector whereas the Applicant is self employed. The parties live in a nuclear family set up and the residence is owned by the Respondent. Currently the Applicant is residing in another house which is also owned by the Respondent. However, the Respondent now wants to sell that house. The Applicant complained of physical, verbal, emotional and economic abuse. She has applied for protection order, residence order and monetary relief under the Act.

The Applicant approached the Protection Officer and the DIR was recorded in the office of the Protection Officer. Form I, II and III were used and the DIR along with the application was filed before the Magistrate. The notice was issued on the first date of hearing. It was served through the Protection Officer within 4 days. The orders were passed after 15 days. The court granted the Applicant Protection Order and Residence Order. Monetary Relief of Rs 4000/month was also granted. Appeal has been filed by the Respondent in the Sessions Court. The court orders have not been stayed. The appeal is pending. The Maintenance Order was breached and complaint was made to the Protection Officer. However no action has been taken as yet.

Case 9

The Applicant and the Respondent are 40 years and 45 years old respectively. The Respondent is the brother of the Applicant. The Applicant has complained of physical, emotional and economic abuse. The Applicant lives with her husband in her matrimonial home. The Applicant has applied for return of her Stridhan. The Applicant approached the office of the Protection Officer and the DIR was recorded there. Form I and II were used and the DIR was filed along with the application before the Magistrate. Notice was issued on the first date of hearing. Form VII was used to serve the notice through the Protection Officer in 2 days. The parties were referred for joint counseling on the first date of hearing. The Protection Officers were appointed counsellors.

Case 10

The Applicant is 26 years of age and has been married to the Respondent for the past 4 years. The parties have been married according to the Hindu rites. Dowry was given in the form of cash and jewellery during and after the marriage. The parties have 1 child (male). The Applicant is unemployed whereas the Respondent works in the private sector. The parties live in a joint family set up. The Residence is on rent which is paid by the Respondent. The Applicant complained of physical, verbal, emotional and economic violence against her husband and in laws. She has applied for protection order, residence order and monetary relief under the Act.

The Applicant approached the office of the Protection Officer where the DIR was recorded. Form I and II were used. The DIR along with the application was filed before the Magistrate. The notice was issued on the first date of hearing and was served within a week through the Protection Officer. Interim orders were passed by the court within a week granting the Applicant all the orders that she had applied for. Final orders were passed within 60 days. An appeal has been filed by the Respondent before the Sessions Court. The orders passed by the Magistrate were not stayed. A divorce litigation is also pending.

Case 11

The Applicant and the Respondent 1 are 26 years and 31 years old respectively. The parties have been married for the past 7 years. They were married according to the Hindu rites and dowry was given in the form of cash at the time of marriage. The Applicant is unemployed whereas the Respondent 1 is employed in the government sector. The parties live in a joint family set up and the residence is owned by the Respondent 2 (Applicant's father-in-law). The Applicant complained of physical, verbal, emotional and economic abuse at the hands of her husband, father-in-law and mother-in-law. At present the Applicant lives with her parents. She had applied for protection order, monetary relief and compensation order under the Act.

The Applicant approached the Protection Officer and the DIR was recorded in the office of the Protection Officer. Form I and II were used. The DIR was filed along with the application before the Magistrate. Notice was issued on the first date of hearing. It was served within 3 days and was done so through the Protection Officer. Form VII was used to serve the notice. Order was passed after a month and a half where the court dismissed the application because a case under Section 498A of the IPC pending.

Case 12

The Applicant and Respondent are 36 years and 62 years of age respectively. They have been living together since the past one and a half year. The Applicant has 3 children of her own and the Respondent has two children of his own. The parties live in a rented accommodation. The Applicant complained of physical, economic and sexual violence. The Applicant applied for protection order and compensation order under the Act.

The Applicant approached the Protection Officer. The DIR was recorded in the office of the Protection Officer. Form I and II were used and the DIR was filed along with the application before the Magistrate. Notice was issued on the first date of hearing and was served through the Protection Officer and served within a week. Form VII was used to serve the notice. Both the orders were granted by the Magistrate. The orders were passed within 60 days. Appeal was filed by the Respondent before the Sessions Court. The matter is still pending.

Case 13

The Applicant is 19 years of age and her husband (Respondent 1) is 25 year of age. The parties have been living together for the past 3 years. They were married according to the Hindu rites. Dowry was given at the time of marriage in the form of cash and jewellery during the time of marriage. The parties live in a joint family set up. The Applicant complained of physical, verbal, emotional and economic violence at the hands of her husband, father-in-law and brother-in-law (Respondent 2 and 3). At present the Applicant lives with her parents. She applied for protection order, monetary order and compensation order under the Act.

The Applicant approached the Protection Officer and the DIR was recorded in the office of the Protection Officer. Form I and II were used and the DIR was filed along with the application before the Magistrate. The application was dismissed since a litigation under Section 498A of the IPC is pending. The orders were passed within a week. An Appeal has been filed by the Applicant before the Sessions Court which is currently pending.

Case 14

The Applicant and the Respondent are 32 and 40 years of age respectively. The parties have been married for the past 12 years. They were married according to the Hindu rites and have two children. The Applicant is unemployed whereas the Respondent is self employed. The parties live in a nuclear family set up and the residence is owned by the Respondent's mother. The Applicant has complained of physical, verbal, emotional and sexual violence. The applicant is currently living with her brother. She has applied for protection order and monetary relief under the Act.

The Applicant approached the Protection Officer first and the DIR was recorded in the office of the Protection Officer. Form I and II were used and the DIR was filed along with the application before the Magistrate. Notice was issued on the first date of hearing. It was served through the Protection Officer within 2 days. Form VII was used to serve the notice. Joint Counseling was directed by the Court after 3 hearings. The Secretary of the Lok Adalat was the Counsellor.

Case 15

The Applicant and the Respondent have been married for the past 16 years. The parties were married according to the Hindu rites and have two children. The parties

live in a nuclear family set up, the residence is on rent and the rent is paid by the Respondent. The Applicants complained of economic, sexual and physical abuse. She has applied for protection order and monetary relief under the Act.

The Applicants approached the Protection Officer. The DIR was recorded in the office of the Protection Officer. Form I was used and the DIR was filed along with the application before the Magistrate. Notice was issued on the first date of hearing and was served through the Protection Officer within 4 days. Protection order was passed within 2 weeks. The parties were also ordered to undergo joint counseling at the time of the final order.

Case 16

The Applicant and the Respondent are 37 and 40 years of age respectively. The parties have been married for more than 20 years. They were married according to the Hindu rites and have two children. The parties live in a nuclear family set up. The residence is on rent and the rent is paid by the Respondent. Currently the Applicant is living on her own with the children. The Applicant complained of physical, emotional, verbal and sexual abuse. She has applied for monetary order and compensation order under the Act.

The Applicant approached the office of the Protection Officer where the DIR was recorded. Form I was used to record the DIR. The DIR was filed along with the application. Notice was issued on the first date of hearing through the Protection Officer. Form VII was used to serve the notice. It took around 4 days to get the notice served. Orders were passed after 2 weeks.

ASSAM AND MANIPUR

Case 1

The parties are not married but have been living together for the past 5 years. The Applicant is 27 years of age and the Respondent is in his thirties. The parties are Hindu. The Applicant is unemployed whereas the Respondent is employed in the government sector. The parties live in a joint family set up and the house is owned by the Respondent. The Applicant complained of physical, verbal, emotional and sexual violence. Violence was perpetrated by her partner and the female relatives of her partner. The Applicant is currently living with her parents. The Applicant applied for protection order, residence order, monetary relief and compensation order under the Act.

The applicant approached the lawyer first. The DIR was recorded in the lawyer's chamber. Form I and II were used. The application was filed before the Magistrate. A notice was served within a week through the Protection Officer and Form VII was used to serve the same. The proceedings were conducted in camera. The Respondents appeared before the Court and signed a bond stating that they shall not be violent towards the Applicant in future.

Case 2

The Applicant has been married for the past 8 years. The Respondents are her in-laws. The Applicant is around 35 years of age while the first Respondent (brother-in-law) is around 37yrs of age and the second Respondent is the father-in-law. The Applicant was married according to Hindu rites and no history of dowry is mentioned. The Applicant has two daughters born out of her marriage. She is unemployed whereas her husband is self employed. They live in a joint family set up and the residence is in the name of Respondent 2. The Applicant complained of verbal and emotional violence at the hands of the respondents. She applied for protection order and residence order under the Act.

The Applicant approached the lawyer. The DIR was recorded in the office of the Protection Officer. Form I, II and III was used. Notice was issued on the first date of hearing through the Police Officer. It took about a week to serve the same. The Respondent was present in court in the next date of hearing accompanied by a lawyer. An interim protection and residence order was passed. Counseling was directed by the courts after the interim order. Police assistance was sought at the time of serving notice and also at the time of getting the order enforced. There was a court order for police assistance and the proceedings were conducted in camera. The copy of the interim order was made available to the Applicant. The final order was also passed within 60 days.

Case 3

The Applicant is more than 40 years of age and the Respondent is also above 40 yrs. The parties have been married for more than 10 years. They were married according to Hindu rites. The marriage was not registered and there has been no history of dowry mentioned. They have two children, one male and the other female. The Applicant is unemployed whereas the Respondent is self employed. The parties live in a nuclear family set up and the residence is owned by the Respondent. The Applicants complained of physical, emotional and economic abuse. Currently the applicant is living by herself. The Applicant applied for protection order, residence order and monetary relief under the Act.

The Applicant approached an unregistered service provider first. The DIR was however recorded in the police station. The service provider has a lawyer hence the Applicant did not apply for legal aid. Notice was issued by the court and the Respondent was present during the first few hearings, however, now the Respondent has stopped appearing. Till date there has been no progress in the case since the Magistrate is either absent or assigns the hearing for the next date. There is litigation under Section 498A of the IPC pending between the parties.

Case 4

The Applicant is between 26-30 years of age and so is Respondent 1. The parties have been married for the past 2 years and live in a joint family set up. They were married according to the Hindu rites. Dowry in the form of cash was demanded and given before and after the marriage. The parties have no children. The Applicant is unemployed whereas the Respondent is self employed. The Applicant complained of physical, emotional and economic abuse perpetrated by her Respondent 1, the Applicant's brother-in-law (Respondent 2) and other female relatives of the Respondent. She is currently living with her parents. The Applicant applied only for monetary relief

The Applicant approached the police station first and then approached the unregistered service provider who provided her with a lawyer. However till date no order as been passed under PWDVA. A litigation under Section 498A of the IPC and Section 125 of the CrPC is pending between the parties.

Case 5

The parties are around 35 year of age and have been married for the past 8 years. The marriage was solemnized according to Hindu rites and a child was born from the wedlock. The Applicant is unemployed whereas the Respondent is employed in the government sector. The parties live in a joint family set up and the residence is in the name of the Respondent's father. The Applicant complained of being subjected to physical, verbal, emotional and economic abuse. At present she lives with her parents and has applied for protection order, residence order and monetary relief under the Act.

The first person the Applicant approached was the police and the DIR was recorded in the police station. The DIR along with the application was filed before the Magistrate. The Respondent, represented by a lawyer was present on the first date of hearing. However no orders have been passed as yet and the matter is getting adjourned repeatedly. Litigation under Section 498 of the IPC is currently pending between the parties.

Case 6

The applicant is 28 years of age and the Respondent 1 is 35 years of age. They have been married for the past 5 years. The marriage was solemnized according to Hindu rites and was not registered. Dowry was given in the form of cash and jewellery before and after the marriage. The parties have no children. Respondent 2, 3 and 4 are the applicant's father-in-law , brother-in-law and mother-in-law .The Applicant is unemployed whereas Respondent 1 works as a salesman in a pharmacy . They live in a joint family set up and the residence is in the name of the father-in-law. The Applicant complained of physical, verbal, emotional and economic abuse. At present she lives with her parents.

The first person approached by the applicant was the police. A complaint was registered in the police station and she was then referred to the service provider. At the service provider the Applicant was provided with an advocate. An application supported by an affidavit was filed before the Magistrate. The Applicant applied for monetary relief and the case is currently pending.

CHANDIGARH

Case 1

The Applicant is 33 years of age and has been married to the Respondent for the past four years. They were married according to the Hindu rites and have 2 children out of the wedlock. Both the parties work in the private sector and the Respondent earns about Rs 15,000 per month. The parties live in a nuclear family set up. The residence is a rented accommodation and the rent is jointly paid by the parties. The Applicant claims that the Respondent is a chronic alcoholic and comes home drunk every night. The Applicant complains of being subjected to physical, verbal and emotional abuse. She applied for protection order prohibiting the Respondent from committing acts of violence and from entering the Applicant's place of employment and the school of the child, residence order to restrain the abuser from the shared household, monetary relief of Rs 4000 per child and Custody orders under the Act.

The first person the Applicant approached was the lawyer. An application supported by an affidavit was filed before the Sub Divisional Magistrate. Notice was issued on the first date of hearing. None of the orders have been passed so far.

Case 2

Respondent 1 is the husband of the Applicant and Respondent 2-5 are the Applicant's in laws (father-in-law, mother-in-law and sister-in-law). Applicant and Respondent 1 have been married for the past 3 years and the marriage was solemnized according to Hindu rites. The parties live in a joint family set up and the residence is in the name of Respondent 2. The Applicant is unemployed whereas Respondent 1 is an accountant and earns about Rs 25,000 per month. The Applicant complained of being subject to physical, emotional, verbal and economic abuse. She applied for protection order restraining the respondents from being violent towards the Applicant, Residence order restraining the Respondents from dispossessing or evicting the Applicant from the shared household and compensation order under the Act.

The first person the Applicant approached was a lawyer. An application supported by an affidavit was filed in the Court of the Chief Judicial Magistrate. The Respondent 1 has filed for a divorce which is pending. No orders have been passed as yet.

Case 3

Respondent 1 and 2 are the brother-in-law and sister-in-law of the Applicant. The Applicant was married to the brother of Respondent 1 in the year 1994. They were married according to the Hindu rites and had a child from the wedlock. The parties used to live in a joint family set up along with Respondent 1 and 2. The Applicant became a widow in the year 2004 and after that the Respondents started being violent

towards her. Firstly they accused her of murdering her husband which led to a litigation however the Applicant was declared innocent. Thereafter the Applicant was not allowed to enter the shared household and the Respondents also took over the business of the Applicant's husband. The Respondents were also refusing to give the Applicant back her child who is a minor. The Applicant complained of being subject to verbal, emotional and economic abuse. She has filed for Protection order restraining the Respondents from being violent towards the Applicant, Residence order restraining the Respondents from dispossessing, evicting the Applicant from the shared household , Custody order giving the custody of the minor child to the Applicant and Monetary relief under the Act.

The first person the Applicant approached was the advocate. The Application supported by an affidavit was filed in the Court of the Chief Judicial Magistrate. No orders have been passed as yet.

Case 4

The Applicant is the wife of Respondent 1 and Respondent 2-4 are her in-laws. The Applicant and Respondent 1 have been married for the past 8 years. Their marriage was solemnized under the Sikh rites and a daughter was born to them from the wedlock. The Applicant is an eye surgeon and the Respondent 1 is self employed earning of about Rs 40,000 per month. The parties lived in a joint family set up and the residence is in the name of Respondent 2 (father of respondent 1). Respondent 2 is an alcoholic and a drug addict. The Applicant complained of being subject to emotional, verbal, physical and economic abuse. She had applied for residence order restraining the Respondents from evicting or dispossessing the Applicant from the shared household and custody order granting custody of the daughter to the Applicant.

The first person the complainant approached was the lawyer and an application is pending.

Case 5

The Applicant is 40 years of age and has been married to the Respondent for the past 19 years. Their marriage was performed according to the Sikh rites and two children (aged 18 years and 11 years) were born out of the wedlock. The Applicant works in a private hospital and the Respondent is employed in the government sector. The Respondent is having an affair with another woman who also comes and stays in the shared household sometimes. Currently the Respondent is threatening to throw the Applicant out of the house. The Applicant complained of being subjected to verbal, emotional and physical abuse. The Applicant applied for residence order restraining the Respondent from evicting or dispossessing the Applicant from the shared household and protection order restraining the Respondent from being violent towards the Applicant.

The first person the Applicant approached was the advocate. An application along with an affidavit was filed in the Court of the Chief Judicial Magistrate. The application was dismissed .The appeal is now pending.

Case 6

The Applicant 1 is the wife of Respondent 1 and Respondent 2-4 are the Applicant 1's in-laws. The parties have been married for the past 11 years and have two children (aged 9 years and 4 years). The Applicant applied for Protection order prohibiting the Respondents from being violent towards the Applicants, residence order restraining the Respondents from entering the Applicant's residence, Monetary relief ordering the respondent to pay maintenance expenses incurred by the Applicants and compensation order directing the Respondent to pay for the medical expenses incurred by the Applicant.

The first person that was approached by the Applicant was the advocate. The application was filed in the Court of the Chief Judicial Magistrate.

Case 7

Applicant and Respondent 1 have been married for the past 3 years. They were married according to the Sikh rites in Jalandhar. The Applicant, at the time of the marriage was a divorcee and the mother of a seven year old, whereas the Respondent was a widower and a father of two sons (ages 14 years and 12 years). After the marriage the parties lived in the Respondent's house and a male child was born to them after a year. The parties left for Canada where the Respondent's behavior started becoming very violent. When they returned to India Respondent 1 tried to evict the Applicant from the matrimonial home. The Applicant at present is staying in the matrimonial home itself however her in-laws are physically and verbally abusive towards her. The Applicant applied for protection order prohibiting the relatives of the Respondent from being violent towards the Applicant, residence order restraining the Respondent and his family members from evicting the Applicant from the shared household and monetary relief in terms of maintenance for herself and her two minor children.

The first person the Applicant approached was the advocate. The application along with an affidavit was filed in the Court of the Chief Judicial Magistrate after which notice was issued on the first date of hearing. The police officer of that area was directed to submit a report by the Court. The Respondents filed their reply within a week of receiving the notice.

Case 8

Applicant 1 and the Respondent have been married for the past 7 years. They were married according to the Sikh rites and two children (one 4 years of age and the other 8 months old) were born out of the wedlock. The parties live in a joint family set up and the residence is in the name of the Respondent. The Applicant has complained of being subjected to physical, economic, verbal and emotional abuse. The Respondent also further refuses to admit their daughter to school. At present the Applicant is residing with a children in her natal home. The Applicants applied for residence order, custody order and compensation order for the medical expenses incurred by her.

The first person the Applicant approached was the lawyer. An application together with the affidavit was filed in the Court of the Chief Judicial Magistrate. Notice was issued on the first date of hearing and it took 2 days to get the notice served. Order granting the Applicant the right to reside was passed in the first date of hearing itself.

Case 9

The Applicant is 79 years of age and is the legally wedded wife of the Respondent. They have been married for the past 60 years and have four children (2 sons and 2 daughters). Since the beginning of her marriage the Applicant was never treated well by the Respondent. After retirement the Respondent started receiving pension of around Rs 12,000. He also earns rent from a property owned by him and additional income of Rs 40,000 from other sources. However the Respondent did not provide any maintenance to the Applicant hence she relies on her children for her needs. At present the Applicant lives with her eldest son which the Respondent disapproves of it. The Applicant complains of being subjected to emotional, verbal and economic abuse. The Applicant has applied for protection order restraining the Respondent from being violent towards the Applicant, residence order for peaceful residence of the Applicant in the shared household and compensation order under the Act.

The first person the Applicant approached was the advocate. The DIR (Form I), the application along with an affidavit was filed by the advocate in the court of the Chief Judicial Magistrate. Notice was served. The Respondent filed his reply with 20 days of the application being filed. The order was passed after a month from the date of filing the application. The order stated that since there is no proof and no report of the Protection Officer or the service providers, the court cannot grant any relief. Parties were directed to approach the CAW Cell through which they could approach the Lok Adalat where they could arrive at an amicable settlement.

GUJARAT

Case 1

The applicant is 23 years old. She was married to the respondent in accordance with Hindu rites and ceremonies. She has completed her 9th standard while her husband has completed his SSC. She is a helper to a CDPO and earns Rs. 500/- p.m (Anganwadi) whereas the respondent has a wholesale business and earns Rs. 5,000/- p.m. They have a son from the wedlock. She was subjected to extreme physical, verbal and emotional violence. He neglected to maintain her and forced himself on her against her wish. She asked for monetary relief, custody of the son and a compensation order.

Application under PWDVA was filed on 19.7.07, notice was issued on the next date and was served through the Court. An order granting the custody of the son to her was passed. The case is still pending.

Case 2

The applicant is 24 years old. She was married to the respondent in accordance with Hindu rites and ceremonies. She has completed her 8th standard while the respondent had completed his 10th standard. They have a son and a daughter and she is also expecting another child. She is a labourer whereas the respondent has a small scale business and earns approximately Rs. 30,000/- p.a. She is currently residing with her parents. She was subjected to immense physical, verbal and emotional as well as sexual violence. She asked for monetary relief, custody order as the children are with the husband and a compensation order.

An application under the PWDVA was filed on 24.7.07. The notice was issued on 25.7.07 and served on the same date. There have been no orders yet and the Protection Officer feels that she might withdraw the case due to the Applicant's Advocate's intervention.

Case 3

The applicant is 30 years old. She was married to respondent 1 in accordance with Hindu rites and ceremonies. They have a son from the wedlock. She is a diamond cutter and earns Rs 405-500 per day and the respondent 1 too did the same work but currently he is absconding. The applicant was subjected to verbal, emotional and economic violence. She asked for monetary relief and protection order.

An application under the PWDVA was filed on 24.5.07, notice issued on the same day. Notice was served through the Court in 2-3 days only to the brother-in-law (Respondent 2) as the husband is absconding. The brother-in-law appeared on the next date of hearing and was represented by an advocate. The Magistrate has kept

the matter pending for serving the notice to the husband. She applied for free legal aid, which was given to her. There have not been any orders as yet.

Case 4

The applicant is 28 years old and is a widow. She works as a labourer and resides in the shared household along with her in laws and two children. She has received primary education. The respondent (father-in-law) is a zamindar and is financially sound. The applicant has been subjected to verbal and emotional and economic violence. The respondent despite having a sound financial background does not provide economic support to the applicant and her children. She is abused and held responsible for the death of her husband. She's been asked to vacate the shared household. She has asked for protection order, residence order and monetary relief.

An application under PWDVA was filed on 2.7.07. Notice was issued on the same day. The matter is still pending and there have been no orders as yet.

Case 5

The applicant is 22 years old. She got married to the Respondent against the wishes of his mother. They have a 2-½ year old daughter. The respondent works as a daily wage earner selling vegetables and supplying newspapers door to door. His daily income comes upto Rs. 250/ whereas the applicant is unemployed. Immediately after the marriage repeated demands for dowry were made by her husband and mother-in-law. She was subjected to extreme physical and emotional abuse. It went to such an extent that she was even asked to enter prostitution and get some money. Finally, when the demands were not fulfilled she was thrown out of the matrimonial home. She asked for Protection order, monetary relief, residence order, compensation order, and police protection.

An application was filed under the PWDVA with the Protection Officer of Rajkot district and was presented before the Magistrate the next day. Notice was served on the same day and the court instructed the police to serve the notice. On the next date of hearing an interim maintenance order of Rs. 1,300/- was awarded towards her. The case is now pending for the respondents reply. The applicant has a pending maintenance case under Section 125 of the Code of Criminal Procedure. She also has a criminal complaint at Gandhigram police station under sections 498A/323/504/114 of the Indian Penal Code. According to the police, the charge sheet will soon be filed in the said complaint

Case 6

The applicant is 30 years of age. She was married to the respondent in accordance with Hindu rites and ceremonies. She has a daughter from her previous marriage. This is a second marriage for both the parties. The applicant is a graduate and now does tailoring work while the respondent (husband) is engaged in business. The applicant and daughter have been subjected to immense physical, verbal and emotional and

economic violence. The respondent neglected to maintain them and did not take care of any of the household expenses. The parties had joint bank accounts from which the respondent constantly withdrew money without the applicant's knowledge and blocked the joint fixed deposits. The respondent even tried to rape the applicant's daughter. She has filed for protection order, maintenance and compensation.

The applicant filed an application under PWDVA on 13.8.07. Notice was issued on 17.8.07, which was served through the Court. No order has been passed yet and the matter is still pending.

Case 7

The applicant is 54 years old. She was married to respondent 1 in accordance with Hindu rites and ceremonies. She works as an *aaya* in a hospital and earns Rs. 2,000/- p.m. The respondent 1 (husband) does not work anywhere while the brother-in-law (Respondent 2) has a pan shop. The respondent 1 did not contribute at all towards household expenses. The applicant was subjected to extreme verbal, emotional and economic violence at the hands of the respondents. They also threatened to evict her from the shared household. She asked for residence order and maintenance.

She filed an application under PWDVA on 27.7.07. Notice was issued on the same day and was served through the Court. She approached the Court directly. No order has been passed yet. The case is pending.

Case 8

The applicant is 58 years old. She was married to the respondent according to the Hindu rites. The parties have invested in a lot of joint business of advertising and hoardings in Mumbai and are very sound financially. However a few years ago the Respondent overtook the entire business himself and started to neglect the applicant. Since they are equal partners in the business he tried to get rid of her by forcing her to leave Mumbai and move to Ahmedabad. He even tried to kill her on one occasion. Currently she is residing in Ahmedabad. She asked for protection order, residence order, and monetary relief and compensation orders.

She filed an application under PWDVA in May 2007, notice was issued but the Respondent did not appear. The Magistrate passed an interim order directing the PO to let her in the shared household (which is at Mumbai but the order does not mention the place where the shared household is situated) and to provide protection till she reaches the shared household. The case is still pending.

Case 9

The applicant is 27 years old. She was married to the respondent in accordance with Hindu rites and ceremonies. They have been married for the past 7 years and have two children from the wedlock. Dowry was given at the time of marriage. The applicant is unemployed while the respondent (husband) is engaged in property business and

earns approximately Rs. 2-3 lakhs p.m. The respondent never maintained the applicant and their children and also never provided proper medication in case of ill health. The respondent forced the applicant out of the shared household and did not let her take the children with her. She has asked for protection order, residence order, maintenance and custody.

An application was filed under the PWDVA on the 6.6.07. Notice was issued on 7.6.07 which was served before 16.6.07 i.e. the next date of hearing. The Respondent appeared and the parties finally reconciled on the third date of hearing. The applicant went back to the shared household and is currently residing along with the Respondent and her children. She has not withdrawn the application.

Case 10

The applicant is 38 years old. She was married to the respondent in accordance with Muslim rites and ceremonies. They have been married for the past 13 years and have a son and a daughter. The applicant is unemployed. She wanted to work in a beauty parlour and had done a course for the same but she was not allowed to do so. The respondent (husband) owns a business of weaving/handloom and earns approximately Rs. 5-7 lakhs per month. The applicant was subject to a lot of physical, economic, verbal and emotional abuse. She was not allowed to go out of the shared household on her own or to meet anyone. Later she was thrown out of the shared household. The applicant asked for residence order, maintenance order and protection order. She also applied for legal aid to be provided to her.

An application under the PWDVA was filed on the 2.6.07 and notice was issued on 15.6.07. The Respondent appeared on 27.6.07 and submitted before the Court that he has already pronounced talaq upon her. He contended that the talaqnama had been couriered to her between the period 25.6.07 and 27.6.07. The said submission is in dispute now. The case is still pending.

Case 11

The applicant is 31 years old. She was married to the respondent in accordance with Hindu rites and ceremonies. It was a love marriage. The applicant is unemployed while the respondent (husband) is engaged in transport business and earns approximately Rs. 40-50,000/- per month. The parties do not have any children. The respondent is an alcoholic, stays out of the house and eats out too most of the time. The respondent also constantly demanded that the applicant gets Rs. 5 lakh from her parents. She has been subjected to extreme physical and economic abuse. She asked for protection order, residence order, maintenance and medical expenses.

She filed an application under PWDVA on 5.9.07 and notice was issued on the same day. No order has been passed as yet and the matter is pending for the appearance of the Respondents.

Case 12

The applicant is 30 years of age. She has completed her 6th standard and does not work anywhere. The respondent (husband) has a private job and earns approximately Rs. 5,000/- per month. The parties have a son from the wedlock. The applicant was constantly taunted for her dark complexion and is harassed to get more money from her parents. The applicant was subjected to extreme physical and economic abuse and also several attempts were made to throw her out of the shared household. The respondent hardly comes home to stay with the applicant and their son. She is currently residing in the shared household, her in laws reside in the adjoining house. She asked for protection order, expenses for food, clothes and other basic necessities and medical expenses.

She filed an application under PWDVA on 6.9.07 and notice was issued on the same date. The matter is now pending for the appearance of the Respondents.

Case 13

The applicant is 45 years of age. She was married to the respondent in accordance with Muslim rites and ceremonies. The applicant is unemployed whereas the respondent is a labourer and does some menial jobs. His income is not known. The respondent would constantly harass the applicant and would also never give her any money for the household expenses. The respondent is financially dependent on his father for most of the expenses. At present the applicant is residing with her parents. She has filed for protection order, residence order, maintenance, custody and compensation.

She filed an application under PWDVA on 8.8.07. Notice was issued to the Respondents and now the case is pending for the appearance of the Respondents. The notice was served through the Protection Officer to Mehsana district (served through the PO of another district).

Case 14

The applicant is 25 years old and works as a labourer in Kumbhasan village (nearby village). The respondent (husband) too is a labourer in the same village. They have a daughter from the wedlock. The applicant has been subjected to economic, verbal and emotional violence. She was abused for no reason and cursed for giving birth to a daughter. The respondent always neglected to maintain her and would never contribute money for the household expenses. He would also be without work a lot of times and during those days would be dependant on his parents for the expenses. At present the applicant is residing with her parents She has filed for protection order, residence order, compensation order and custody order.

She filed an application under PWDVA on 9.7.07. Notice was issued and served through the Protection Officer. An interim order was passed granting the custody of the child to her and a residence order entitling her to reside in the shared household. Now the case is pending for the reply of the Respondents.

Case 15

The applicant is 21 years old. She and the respondent (husband) both work as labourers. They do not have children. She was subject to economic, verbal and emotional violence. The respondent never contributed to the household expenses and was always violent towards the applicant. The applicant is also constantly harassed to get more money from her parents so that the respondent can start a small business of his own. She is currently residing with her parents. She had filed for protection order, residence order, maintenance and compensation.

She filed an application under PWDVA on 17.8.07. Notice was issued on the same day and served through the bailiff. The case is pending for the appearance of the Respondents.

Case 16

The applicant is 40 years old. She and the respondent (husband) both work as laborers. They were married in accordance with Hindu rites and ceremonies. Dowry was given at the time of the marriage. The parties have three children from the wedlock. The applicant and the children were beaten brutally by the respondent. The respondent also never helped the applicant to run the household and constantly harassed her to get more dowry. She is currently residing with her parents along with the children. She has filed for protection order, residence order, maintenance, custody and compensation.

She filed an application under PWDVA on 23.7.07 and notice was issued on the same day. The notice was served through the Protection Officer of Patan district (Respondents were in another district). The case is now pending and there have been no orders yet.

Case 17

The applicant is 52 years old. She was married to the respondent in accordance with Hindu rites and ceremonies. The applicant has a Master's Degree in Social Work and works as a Professor in Lok Niketan College at Palanpur. The respondent (husband) too is a Professor in the same college. The applicant was subjected to emotional, verbal and economic abuse. The respondent would not contribute to the household expenses due to the reason that she too earns and that she should manage the household expenses. He would even taunt and abuse her for having male friends in the college and for talking to them. She asked for protection order, residence order, maintenance and compensation.

She filed an Application under PWDVA on 31.7.07 and notice was issued on the same day. Notice was served by the Protection Officer. The case is pending for the appearance of the Respondents, no order has been given yet.

KERALA

Case 1

The Applicant is the mother of the two Respondents. She has been living with the Respondents since 1983. The residence is owned by her. However now the Respondents have started threatening to set her house on fire if they are not given their shares in the house within one week. They have also threatened to sell her furniture and utensils. She has applied for protection order prohibiting acts of domestic violence, residence order restraining the Respondent from dispossessing or throwing her out of the shared household and also entitling her to have continued access to her shared effects.

An Application (Form II) along with an affidavit (Form III) was submitted before the Magistrate. Notice was issued on the first date of hearing through the Protection Officer. The notice was served within a day and the Respondents represented by a lawyer appeared before the Magistrate. Interim orders were passed in the nature of protection order and residence order after hearing the parties. The court directed the police to assist in the enforcement of orders. Copy of the interim order was provided to the Applicant.

Case 2

The Respondent is the husband of the Applicant. The parties had married on the 11.12.1994 and from the wedlock they had two children. In the year 2004 they had bought 9 ½ cents of land at Chelavour by selling the Applicant's gold ornaments, 10 sovereign and also by utilizing the amount received by her father from the insurance company. In July 2005 the Respondent assaulted the Applicant and she sustained a fracture in her hand. On 23.08.2006 due to torture inflicted upon them by the Respondent, the Applicant and the children sought shelter at a short stay home in Anweshi. The Applicant is maintaining the children and they are studying at Kunnamangalam School. She has applied for protection order prohibiting acts of domestic violence by granting an injunction against the respondent from entering into the shared household.

The application (Form II) and an affidavit (form III) were filed before the Judicial First Class Magistrate, Kunnamangalam. Notice was issued on the first date of hearing and was served through the Protection Officer. It took a day for the notice to get served and the Respondent represented by a lawyer was present on the first date of hearing. An interim protection order was passed after hearing the Respondent. The Police were directed by the court to assist in the enforcement of orders and a copy of the order was provided to the Applicant within a day. Litigation under Section 125 of the CrPC is already pending between the parties.

Case 3

The Applicant and Respondent have been married for the past thirty years. They have had three children. The Respondent works at the Calicut Corporation. He bore the marriage expenses of the eldest daughter and thereafter deserted the Applicant and their two children. The Respondent had constructed a house by availing a loan from the housing boards and also by mortgaging the title deed of the sister of the Applicant in a private bank. Now the Respondent is trying to sell the house. Earlier the Applicant had approached the family court for maintenance. The Respondent was directed to pay the Applicant a sum of Rs 1500 per month which would be deducted from the salary. She had applied for residence order restraining the Respondent from dispossessing or throwing the Applicant from the shared household, from alienating / disposing/encumbering the shared household and an order entitling her to have continued access to her personal effects.

An Application (Form II) was filed under the PWDVA. Notice was issued on the first date of hearing and was served through the Protection Officer. The Respondent represented by a lawyer was present on the first date of hearing. Interim residence orders were passed after hearing the Respondent.

Case 4

The Applicant is 22 years of age and the Respondent is 30 years of age. The parties have been married for the past one year. The marriage was solemnized according to the Hindu rites and was registered as well. Dowry was demanded and given in the form of cash and jewellery both before and after the marriage. Currently the Applicant is living with her parents. The Applicant complained of economic and sexual violence. She applied for protection order and monetary order under the Act.

The Applicant first approached the lawyer. The DIR was recorded in the office of the Protection Officer. While Form I was not used to record the DIR, Form II and III have been used for the Application and Affidavit. Notice was issued on the first date of hearing through the Protection Officer using Form VII. It took more than a week to serve the notice. Both the reliefs in the form of interim orders have been granted. It took the Applicant more than a week to get a copy of the interim order. A final order has also been passed after 60 days. However an appeal has been filed against the final order within 30 days of it being passed. The appeal was filed in the Session's Court and the earlier orders were stayed during the pending of the appeal. The appeal is still pending. A litigation under Section 498A of the IPC is pending as well.

Case 5

The parties have been married for the past 8 years. The Applicant and the Respondent are 32 and 39 years of age respectively. The parties were married according to the Hindu rites and their marriage has been registered. Dowry was given in the form of cash, jewellery and immovable property before and after the marriage. The Applicant is unemployed whereas the Respondent is working in a private company. They live in

a nuclear family set up and the residence is owned by the Respondent. The parties have two children (one male and one female). The Applicant complained of physical and economic violence in the hands of the Respondent and is currently living with her parents. She applied for Interim protection order, monetary relief and custody order under the Act.

The DIR was recorded by the lawyer. Form I, II and III have been used. Notice was not issued on the first date of hearing and was later served through the Protection Officer. Interim protection order and custody order were passed. It took more than a week to pass the interim orders. Copies of the interim orders were provided to the Applicant.

Case 6

The Applicant is 34 years old and the Respondent is 42 years old. The parties have been married of the past 4 years. The marriage was solemnized under the Indian Christian Marriage Act. Dowry was given by the Applicant in the form of cash, jewellery and immovable property before and after the marriage. The parties have one male child from the marriage. The Applicant is unemployed whereas the Respondent is self employed and earns about Rs 20,000 per month. The parties live in a joint family setting and the residence is owned by the Respondent. The Applicant has complained of economic and sexual violence. She applied for interim protection order, custody and monetary relief under the Act.

The person first approached by the Applicant was the lawyer and the DIR was recorded before the Magistrate. However Form I and II were not used. Notice was issued on the first date of hearing and was served through the Protection Officer. Form VII was not used for serving the notice and it took more than a week to serve the notice. The court took more than a week to pass the interim order as well. Copies of the interim order was made available to the woman within a week. Only interim protection and custody order in the form of interim order was passed by the Magistrate. The Magistrate stated that the monetary relief shall be passed only after evidence is recorded by the court. The police officer was instructed by the court to assist in the enforcement of the interim orders. A case under Section 125 of the Code of Criminal Procedure is already pending.

Case 7

The Applicant is 24 years of age and the Respondent is 32 years of age. The parties have been married since the past 1 year. The marriage was solemnised according to the Hindu rites and was registered. Dowry was given before and during the marriage in the form of cash, jewellery and vehicle. Both the parties are post graduates and are employed. The parties live in a joint family set up and the residence is owned by the Respondent's parents. The parties have no children. The Applicant complained of physical and economic violence by the Respondent. The Applicant is still living with the Respondent and her in-laws and filed for Protection order under the Act.

The Applicant first approached the lawyer and the DIR was recorded before the Magistrate. Form I was not used as DIR but Form II and III were used. Notice was not issued on the first date of hearing however after a week it was issued through the Protection Officer. Form VII was not used to serve the notice. The Protection Order was granted by the Magistrate after a week in the form of an interim order.

Case 8

The parties have been married for the past 8 years. The applicant is 35 years of age and the respondent's age is not known. They have two children from the wedlock. The parties were married under the Hindu rites and the marriage was registered. There was no exchange in the form of dowry during and after the marriage. The applicant long with her two children were thrown out of the matrimonial home. The applicant complained of being subjected to physical, economic and verbal abuse. She applied for protection order, residence order, maintenance order and custody order.

The first person the applicant approached was the service provider. Form I and III were used. The DIR along with the application was filed before the Magistrate. Notice was issued on the first date of hearing and was served through the protection officer. The respondent was present in Court after receiving the notice . He denied all allegations and has sought time to file reply.

Case 9

The parties have been married for the past 8 years. The Applicant is 38 years of age and the Respondent is 42 years of age. The parties are Muslims, their marriage was not registered and dowry was given at the time of marriage in the form of cash, jewellery and property. The parties have two children (one male and one female). The Applicant is unemployed and the Respondent was working abroad. The parties were living in a joint family set up and the residence is in the name of the Respondent. The Applicant has complained of economic violence. She has applied for protection order, residence order and monetary relief under the Act.

The Applicant had approached the Protection Officer first. When the Protection Officer refused, she had approached a lawyer. The DIR was recorded before the Magistrate. Form I and II were not used however Form III was used. The DIR was filed along with the application. The Applicant asked for legal aid but was not given any. Notice was issued on the first date of hearing and was served through the Protection Officer. Form VII was not used for serving of notices and it took more than a week to serve the notice. The Respondent did not file any reply. An order was passed after a week. The Magistrate granted the Applicant protection order stating that the Respondent should not commit any further act of domestic violence. A residence order directing the Respondent to arrange an alternate accommodation and monetary relief for an amount greater than Rs 50,000 were also granted. The order was in the form of a final order and no interim order was passed. The Protection Officer was entrusted with the enforcement of the orders passed by the court.

Case 10

The parties have been married for the past 5 years. The Applicant is 34 years of age and the Respondent 1 is 42 years of age. The parties are Christians and have been married under the Indian Christian Marriage Act. Dowry was demanded and given during the time of marriage in the form of cash, jewellery, vehicle and immovable property. The parties have no children. The Applicant is self employed whereas the Respondent is a professional. The parties lived in a joint family set up and the shared household was in the name of the Respondent (Father-in-law).

The Applicant has complained of economic and emotional violence by her husband and father-in-law. The Applicant is currently residing with her parents. She has applied for protection order, residence order and monetary relief under the Act.

The Applicant approached the lawyer first however the DIR was recorded in the office of the Protection Officer. Form I and II were not used however Form III was used. The DIR was not filed along with the Application. The notice was not issued on the first date however it was served after a week through the Protection Officer and Form VII was used for serving notices. All the orders claimed were granted by the Magistrate within a week. The Protection Officer was instructed to enforce the orders.

Case 11

The Applicant is 28 years of age and the Respondent is 36 years old. The parties have been married according to the Hindu rites. There has been a history of dowry being demanded regularly after the marriage. The parties have been married for the past 8 years and have 2 daughters. The Respondent lives abroad and has married another woman after deserting the Applicant and the children. A case under Section 498A of the IPC is pending. The Applicant has applied for monetary relief and custody order.

The Applicant approached a lawyer first and a DIR was subsequently recorded in the office of the Protection Officer. Form I has been used as the DIR and Form II has been used as the application. The notice was not issued on the first date of hearing. However it was served a month later through the Protection Officer. The court stated that the monetary relief can be passed only after evidence has been taken. The custody order was passed after a week in favour of the Applicant since the respondent is living abroad.

Case 12

The Applicant and Respondent have been married since the past 8 years. The Applicant is 33 years of age and Respondent is 34 years of age. The parties were married according to the Hindu rites. Their marriage was not registered. Both the parties are professionals and are employed. There has been no mention of any exchange of dowry. The parties lived in a nuclear family setting and the residence was owned by the Respondent. The Applicant has complained of verbal and emotional violence and is currently living with her parents. The violence was mostly perpetrated by her in laws. She has applied for protection order, monetary relief, compensation order and custody order under the Act.

The person first approached by the Applicant was the lawyer and the DIR was recorded before the family court. Notice was served through process server and it took more than a week to serve the notice. The Respondent was present on the first date of hearing. The Respondent took a week to file his reply. Only interim protection and custody orders were passed by the magistrate because a case under Section 498A of the IPC is already pending. The court stated that maintenance and compensation orders can be granted only after carrying out enquiry.

Case 13

The parties have been married for more than 10 years. The Applicant is 33 years of age and the Respondent is 37 years of age. The parties were married under the Hindu rites and the marriage was registered. Dowry was given in the form of cash and jewellery at the time of marriage. The parties have two children (both male). Both the parties are employed and they live in a nuclear family set up. The Applicant complained of physical and economic violence. She applied for protection order, residence order and monetary relief

The applicant approached the office of the protection officer. Form I and III were used. The DIR was filed along with the application. Notice was served after a week through the Protection Officer. After a month the protection order and residence order were granted. The Respondent filed his reply after a week. The Applicant was given a copy of the order within 2 days. Police help was sought during the course of the proceedings. Litigation under Section 498A of the IPC is already pending.

Case 14

The parties have been married for more than 10 years. The Applicant is 34 years of age and the Respondent is around 40 years of age. The parties have been married according to Hindu rites and the marriage was registered. Dowry was demanded in the form of cash and jewellery before the marriage. Both the parties are employed in the private sector. The parties live in a joint family setting and the residence is owned by the Respondent. The parties have two children (one male and one female). The Applicant complained of economic violence. She applied for monetary relief under the Act.

The first person approached by the Applicant was the lawyer. The DIR was subsequently recorded in the office of the Protection Officer. Form I and II were not used whereas Form III was used as an affidavit. The Applicant did not apply for legal aid. Notice was issued on the first date of hearing and was served through the Protection Officer. It however took more than a week to serve the notice. The Respondent was present in court after receiving the notice and was represented by a lawyer. The Respondent filed his reply within a week. The order granting the Applicant monetary relief was passed after a week.

MAHARASHTRA

Case 1

The applicant is 27 years old. She was married to the respondent 2 in accordance with Hindu rites and ceremonies. It was an arranged marriage and was registered. Dowry was given at the time of the marriage. The parties have no children. Respondent 2 works with the National Bank of Dubai at Abu Dhabi as sales representative. The applicant is unemployed. The applicant was subjected to immense physical, verbal and emotional violence by her in laws (respondent 1) after her husband left for Abu Dhabi for his work. There were continuous demands for more dowry. When she joined her husband in Abu Dhabi a month later he also subjected her to physical, verbal and emotional and economic violence. After the return to India she was thrown out of the shared household for being unable to fulfill the ever-growing demand for dowry.

She asked for protection order, compensation order, monetary relief, and order for restoration / alternate accommodation, return of the stridhan. She filed a complaint under Section 498A IPC against her husband and in laws. She filed the Application in November 2006 through a lawyer before the Magistrate. Notice was issued to the Respondents and served by the police. The Respondents filed a reply on 11.12.06 denying all the allegations against them. The case is pending, no interim orders have been granted as yet.

Case 2

The applicant is 24 years old. She was married to respondent 1 in accordance with Hindu rites and ceremonies, it was an arranged marriage. There were demands for dowry before and after the marriage. Dowry was given in the form of cash Rs. 1 lakh and 70 tolas of gold. The parties have no children. Respondent 1 works as a clerk in the Western Railways. The applicant is unemployed. The applicant has complained of physical, economic and emotional abuse. She asked for protection order, compensation order, monetary relief and residence order.

She filed a complaint u/s 498A IPC against her husband and in laws on 5.1.07. She filed the Application in February 2007 through a lawyer before the Magistrate. Notice was issued to the Respondents and served by police. The case is still pending. No orders have been passed as yet.

Case 3

The applicant is 44 years old. She was married to respondent I in accordance with Hindu rites and ceremonies .It was an arranged marriage and was registered. There were demands for dowry and it fulfilled at the time of the marriage. They have a daughter from the wedlock. The applicant was subjected to extreme physical, emotional,

sexual and verbal abuse in the hands of respondent I, respondent II and III (brother in law and mother in law of the applicant) . The applicant has asked for protection order and residence order.

The applicant filed an Application under the PWDVA on 9.1.07 through a lawyer. Notice was issued to the Respondents and served by police. None of the respondents appeared on the next date of hearing .On the same date the applicant filed for interim orders. The application for interim order was rejected by the Court as according to the Court it was not a fit case where it should exercise the powers u/s 23 of PWDVA and case was adjourned for recording evidence. The applicant filed a revision application in the High Court in February against the dismissal of her application, which is pending.

Case 4

The applicant is 48 years old. The parties got married in accordance with Hindu rites and ceremonies, it was an arranged marriage. They have been married for the past 23 years. There were demands for dowry which were fulfilled at the time of marriage. The parties have two sons from the wedlock. The respondent is in the Merchant Navy and earns approximately Rs. 8-10 lakhs per month. The applicant is a lecturer in an Institute of Management and Research and earns approximately Rs. 30,000/- per month. She was subjected to physical, emotional, economic and verbal abuse. She asked for protection order, residence order, monetary relief and compensation order.

She filed the Application on 10.8.07 before the Magistrate. The Court granted an ex parte order on the first day itself. A copy of the ex parte order and the application filed was served to the Respondents through post by her advocate as the Magistrate did not give directions to issue notice. A reply was filed by the Respondent on 28.8.07. The Magistrate gave directions to the police to submit the DIR and delay has been caused due to this. Later he gave directions to the police to serve notice.

Case 5

The applicant is 42 years old. She was married to the respondent 1 in accordance with Muslim rites and ceremonies. They have been married for the past 30 years. There were demands for dowry which was fulfilled at the time of the marriage. They have two daughters and one son. The respondent works as a driver and also delivers goods to a general stores .He owns 12 acres of agricultural land, 3 storeyed house in his village in UP. The applicant is unemployed. She has been subjected to extreme physical and emotional violence at the hands of the respondent I and II (mother in law) .She asked for protection order, residence order, monetary relief and compensation order.

The applicant filed an application under PWDVA on 8.5.07 before the Magistrate. Notice was issued to the Respondent, however, since he did not come to the Court the Court issued a non bailable warrant against him on 21.5.07. He was also ordered to deposit Rs. 30,000/- which the applicant could withdraw if he did not appear in the Court. The notice was served upon him late as he was in U.P. On 29.5.07 he appeared

before the Court and the order was altered to an amount of Rs. 25,000/- to be deposited as PR Bond instead of Rs. 30,000/- and cash security of equal amount and direction that she may move for confiscation of the amount or returning of it to her by way of relief if he does not appear before the Court.

Case 6

The applicant is 25 years old. She was married to the respondent I in accordance with Muslim rites and ceremonies. They have been married for the past 7 years. There were demands for dowry and it was given at the time of the marriage of amount Rs. 10,000/- and household articles. They have no children. The respondent owns property of 1-2 acres in Mangalore, has 2 flats in Jogeshwari, 1 room in Wadala, 1 flat in Mira Road. Also has the family business of Textile Designing at Wadala from which receives income of approximately Rs. 30,000/- in which he has a share too. The applicant is unemployed. The respondent suffers from epilepsy and seizure disorder since childhood. This was not disclosed to the applicant and her parents before the marriage. The applicant has been subjected to physical and economic violence in the hands of the respondent I and respondent II (applicant's sister in law). She asked for protection order, residence order, monetary relief and compensation order.

She filed the and Application on 8.6.07 through a lawyer before the Magistrate. Notice was issued to the Respondents through the police. On 12.6.07 the Respondent appeared and sought time to file reply. The Respondents filed a reply on 20.6.07 and his sister (respondent II) also filed an application for discharge. The matter was adjourned a couple of times. The case is pending for order on the same. The judge however said that he would first decide on the issue of discharge and whether a complaint can be filed against a woman and only then would decide on maintenance.

Case 7

The applicant is 32 years old. She was married to the respondent in accordance with Muslim rites and ceremonies, it was an arranged marriage. There were demands for dowry which was fulfilled at the time of the marriage. They have been married for the past 19 years. They have a son and a daughter. The respondent and his brothers are partners in a construction company. The applicant is unemployed. She was subjected to immense physical and mental violence and was also forced to undergo sex determination test where she was threatened that she would have to undergo abortion if it was a female child. She has applied for protection order, residence order and monetary relief. The applicant is currently residing in the house along with her brother and his family occupying one room.

She filed an application on 16.5.07 under the PWDVA. Notice was issued and the Respondent filed reply on 21.5.07. In the reply he said that he had already given her divorce. An interim order was passed on 22.5.07 restraining him from dispossessing her and the children from the shared household till further orders and also prohibited from transferring the premises to third party till the next date on 12.6.07. However she got an extension of the said order. Judge tried for settlement in his chamber

where the husband offered to buy a house in her name and give her monthly maintenance. She has not decided on what she wants to do. The case is still pending.

Case 8

The applicant is 50 years old. She was married to the respondent in accordance with Muslim rites and ceremonies, it was an arranged marriage. There were demands for dowry which was fulfilled at the time of the marriage. The respondent was initially working at an arms repairs company but now has his own business and earns approximately Rs. 20,000/- every month. The applicant is unemployed. She has a daughter from her previous marriage residing with them. The respondent is very aggressive, dominating and has illicit relationship with another woman. He repeatedly asks the applicant to vacate the shared household in order to bring the other woman in to the house. The applicant has been subjected to physical and economic violence. She applied for protection order, residence order and monetary relief

She filed an application on 30.8.07. No ex parte order granted. Notice was issued and served. Respondent is yet to appear, case pending for the same.

Case 9

The applicant met the respondent in the year 1999 while her petition for Restitution of Conjugal Rights was pending in the Court. He offered her a job as his during the course of the ROCR proceedings, though he never paid her any salary. He is an advocate and the applicant started working for him as his assistant. They also have a 3 ½ years old daughter. After she started working for him as his assistant he made sexual overtures towards her and demanded sexual favors. On one occasion he forced himself upon her and forcefully had sexual intercourse without her consent. He forced her to sign a paper saying that they are marriage papers which he would submit at the Registrar's office. He later convinced her that they are married, all the paperwork done and that she is his legally wedded wife. After this she started residing with him in a rented accommodation as husband and wife. He even forced her to get 2 abortions done. There was extreme mental, physical and sexual violence, he took her money, jewellery, neglected to maintain her. She filed for protection order, residence order and monetary relief.

She filed a petition u/s 125 CrPC and also an application for disciplinary proceedings against him in the High Court as he is an advocate. Her complaint u/s 498A was registered under which she received her jewellery, articles etc. She filed an application under PWDVA on 27.4.07. Notice was issued and served by the police on the Court's directions. Respondents filed reply on 4.6.07. An interim order was passed on 25.6.07 granting Rs. 2,500/- as maintenance for her and Rs. 2,000/- as rent. The case is now at the trial stage.

Case 10

The parties were married in accordance with Christian rites and ceremonies. There were no demand for dowry at the time of the marriage but later the respondent started demanding that she gets money from her parents. They have three children from the wedlock. The applicant is unemployed and is not sure exactly where the respondent works. The respondent is an alcoholic and would also beat her and children after consuming alcohol. He would not take care of the household expenses, would not maintain them or provide for food, clothes and medicines. The respondent disrupted the applicant from carrying on with her work and has also forced her and the children out of the shared household. She asked for protection order, custody order and maintenance order.

She filed an application under PWDVA on 12.7.07 along with a safety plan. Notice was issued and interim order granted to her for protection and visitation rights to her on 30.7.07. Directions to let her meet her children every Saturday in the office of of a Service Provider between 2 p.m. to 6 p.m were granted. Now the Magistrate will hear on the issue of the custody of the children.

Case 11

The parties got married in accordance with Hindu rites and ceremonies and have been married for the past 14 years. They have 2 sons and a daughter. There were demands for dowry which were fulfilled at the time of the marriage. The applicant has complained of being subjected to constant mental and physical harassment, beatings under the influence of alcohol and demands for dowry. The respondent has also had forced sexual intercourse with her and made her watch pornographic material. She asked for protection order, maintenance and right to reside.

The applicant filed an application before the Magistrate on 14.12.06. No action was taken, as the POs were not appointed then in the State of Maharashtra. The said application was not admitted on the same ground. (She also filed police complaint for the acts of violence against her husband on 1.12.98). Thereafter she with the help of a Service Provider filed a Public Interest Litigation in the High Court at Mumbai seeking a writ of Mandamus directing the Government of Maharashtra to provide for the statutory machinery mandated by the PWDVA, 2005 in January 2007. On 5.3.07 the Hon'ble High Court gave a judgment directing all the Magistrates before whom the applications are filed u/s 12 of PWDVA to entertain such applications and considering the power conferred u/s 23 of the Act, to exercise such powers according to law. That meanwhile the Applicant also filed a petition u/s 125 CrPC before the Family Court, Poona. After the judgment she filed an application under PWDVA before the same Magistrate who admitted the same and issued notice.

Case 12

The applicant is 24 years old. She was married to respondent I in accordance with Hindu rites and ceremonies. They have been married for only 6 months. The applicant's

parents spent Rs. 1.5 lakhs on the marriage expenses. She does not work anywhere while the respondent has his own business. The applicant has stayed only for 18 days in the shared household after which she was thrown out. The respondent I, II and III (father in law and sister in law) refused to allow her to return to the shared household when she tried to re-enter. There were demands for dowry and the applicant has also been subjected to physical, verbal and emotional violence. Currently she is residing with her parents. She has asked for protection order, residence order and monetary relief.

An application under PWDVA was filed on 6.9.07. Notice issued on the same date. It was to be served by the court bailiff. The matter was adjourned for appearance of the Respondents on 14.9.07. There is an application for compromise before the Social Security Cell at Poona Police Commissioner's office, which was disposed off. There are also pending proceedings for maintenance.

Case 13

The applicant is 31 years old. She was married in 1994 to a person who was a welder by profession. In 1996 they came to know that both of them are HIV positive. They have a son who is HIV negative. Due to harassment by husband and in laws she was forced to leave the matrimonial home. The applicant then met respondent, who is a retired Electronic Engineer and is now living on a pension of approximately Rs. 7,000/- p.m. They then got married in a temple in 2006 where he put sindoor on her head and made her wear mangalsutra. The respondent led her to believe that they were married but it was not a legally valid marriage as he was already married. The respondent never revealed to the applicant .She applied for residence, protection and compensation order.

The applicant filed an application under PWDVA filed on 11.4.07. On 11.6.07 the matter was listed for arguments for passing protection order. On 18.6.07 residence order and maintenance of Rs. 1,000/- was awarded and notice was also issued. The respondent did not appear on the next date of hearing. The Court issued summons and ordered the concerned police station to serve the same upon the Respondent. On 25.7.07 the respondent he did not appear again as police couldn't find him. However on the next date the respondent appeared and sought time from Court and to requested to release him on a personal bond of Rs. 5,000/-. The matter is pending.

Case 14

The applicant is 42 years old. She is a widow. She has 2 daughters and a son. She and her children are residing in one room in the shared household along with her in laws (respondents). She has been residing in the shared household for the past 17 years. Her husband was working as a peon sub-staff in an insurance company. On 11.2.97 he was tested positive for HIV. Unfortunately the disease was transmitted to her too. Her husband passed away on 31.7.98 due to HIV related complications. Her husband was the sole bread earner in the entire family and she got employment on compassionate

grounds only after she initiated legal proceedings against the company. She earns Rs. 3,500/- p.m. approximately. After the death of her husband the Respondents (in laws) have always tried to evict her and her 3 children from the shared household. She and her children have been subjected to severe emotional, verbal and physical abuse at the hands of the respondents. She has applied for protection order, residence order and monetary relief.

An application was filed under PWDVA. On 17.5.07 an ex parte interim order of protection was passed. On 21.5.07 respondents appeared and requested for time to file reply. The reply was filed and also interim orders were passed directing Respondents to restore electricity. Arguments on procedural evidence was supposed to commence , however a rejoinder was filed which was not accepted by the Magistrate and written arguments had to be filed. Both the parties were heard and final orders granting the applicant protection order, residence order and Rs. 5,000/- as compensation was passed.

DELHI

Case 1

The applicant is 25 years of age and the respondent is around 28 years of age. The parties have been married for the past 4 years. The marriage was performed according to Hindu rites. Dowry was given before and after the marriage in the form of cash. The parties have no children. The applicant complained of physical, emotional, verbal and economic violence and is currently living with her parents. She has filed for monetary relief

The applicant had approached the Mahila commission and also the Police prior to seeking action under the PWDVA. The application under the PWDVA was filed by a lawyer. Form I and II were used and the DIR was filed along with the application. The application was filed in the Magistrate's Court on the 16th April 2007 and she applied for legal aid. Notice was served in the form of a Dasti notice through the protection officer. It took 2 days for the notice to get served and the respondent appeared in court after receiving the notice.

Case 2

The applicant is about 36 years of age. The parties were married according to the Hindu rites and have been married for the past 10 years. They lived in a nuclear family set up and had one child from the wedlock. The parties are Hindus. The applicant is a professional and so is the respondent. The residence is in the name of the respondent. The applicant complained of physical, verbal, emotional and economic violence. She has filed for protection order, residence order, compensation order, monetary relief and custody order

The first person the applicant approached was the lawyer. Form I, II and III were used. The DIR was filed along with the application in the Magistrate's Court on the 19th of April 2007. She also filed for interim order. Notice was not issued on the first date of hearing. It was later served on the 30th April 2007 through the Protection Officer.

Case 3

The applicant is 49 years of age and the parties have been married for the past 27 years. They were married under the Indian Christian Marriage Act and their marriage had been registered. The parties lived in a nuclear family set up and the residence is in the name of the applicant. The parties have three children out of their wedlock. The applicant is unemployed whereas the respondent is self employed. The applicant complained of physical, verbal, emotional and economic abuse. She claimed for protection order to direct the respondent to restrain from committing any further acts of domestic violence, residence order in the nature of evicting the respondent from the shared household and compensation order.

The first person the applicant approached was the police where she filed a complaint against her husband. However since the violence did not stop she approached the service provider. The DIR was recorded in the office of the service provider. Form I, II and III were used. The DIR along with the applicant was filed before the Magistrate's Court (On the 28.5.007). Notice was issued on the first date of hearing (30.5.2007) through the Protection Officer and the court also directed the protection officer to file a report. It took 6 days for the notice to get served since there had been a clerical error while recording the date of service of notice. The respondent appeared after receiving the notice.

Case 4

The parties have been married for the past 6 years and have one child from the wedlock. The parties live in a joint family set up and the residence is in the name of the in – laws. The applicant complained of physical and economic violence. She applied for residence order and monetary relief

The first person the applicant approached was the protection officer. The DIR was filed by the protection officer before the Magistrate. Form I was used and the DIR was filed along with the applicant before the Magistrate. Notice was issued on the first date of hearing and was served through the protection officer. It took 6 days for the notice to get served. The respondent was present on the first date of hearing. Interim order in the form of Monetary order was passed by the Magistrate. Residence order was not passed since the respondent stated that the house belonged to the in laws. The orders were passed within a week of filing. The respondent filed his reply after 2 days.

Case 5

The applicant is 24 years of age and is a widow. The respondent is the father in law of the applicant. The applicant was married according to the Hindu rites. Dowry was given at the time of marriage in the form of jewellery and gifts to the in laws. The applicant has one child out of the wedlock. The applicant is employed in a private sector. The parties were living in a joint family set up till the time the husband of the applicant expired. The applicant complained of physical and verbal. The perpetrators of violence were the father in law and the female relatives of the husband. She filed for protection order and custody order. At present she lives in her natal home

The first person the applicant approached was the Police .She wanted to register an FIR against the respondents for kidnapping her child also. However, the police did not register the same. She then approached the service provider who recorded the DIR. Form I, II and III were used. The DIR was filed along with the application in the Court of the Magistrate (2.4.2007) .The notice was issued on the first date of hearing (3.4.2007) and was served through the protection officer. The respondent was present in court after receiving the notice. Interim orders were passed by the Court directing the respondent not to take forceful custody of the child and not to engage in any

further act of domestic violence against the applicant and her child. The respondent filed his reply on the 18.4.2007 and thereafter the parties arrived at an amicable settlement / agreement (dated 23.4.2007) which was also filed in the court. It stated that the respondents shall have visitation rights though the custody shall remain with the applicant .After the above mentioned agreement was entered the case was withdrawn by the applicant on the 26.4.2007. Police (SHO) help was sought at the time of the proceedings. There was a court order for the same and their assistance was relied upon in getting the orders enforced.

Case 6

The applicant is 30 years of age. The parties have been married for the past 10 years. However they have been living separately since the past two years. The parties were married according to the Hindu rites. Dowry was given before and after the marriage in the form of cash and jewellery. The parties have one child from the wedlock. The parties lived in a joint family set up and the residence is in the name of the respondent. The applicant complained of physical, economic, emotional and verbal violence. The perpetrators of violence were her husband, father in law and the female relatives of her husband .At present she lives with her mother. A litigation under Section 498A of the IPC is also pending. She had filed for protection order, residence order, monetary relief, compensation order and custody order.

The first person she approached was the service provider. The DIR was recorded by the lawyer. Form I, II and III were used. DIR was filed along with the application in the Magistrate's Court. The court granted Protection order prohibiting the respondent from repeating any further acts of domestic violence and prohibiting alienation of any assets, residence order was also granted directing the respondent to renounce his rights in the shared household, and prohibiting the respondent from alienating /disposing/ encumbering the shared household.

Case 7

The parties are more than 40 years of age and have been married for the past 30 years. The parties have been living separately since the past 14 years. They have two children .They were married under the Special Marriage Act and their marriage was registered. The parties are self employed and fall in the upper income category. Currently the applicant is living on her own and the residence is in joint ownership of the parties. The applicant complained of economic violence. She had applied for protection order, residence order, monetary relief and compensation order.

The first person the applicant approached was the lawyer. The DIR was recorded before the Magistrate. Form III was used and the DIR along with the application was filed in the Magistrate's Court. Notice was issued through process server. The respondent was present on the first date of hearing. The Respondent filed his reply within a week .Interim orders in the nature of protection and residence order were granted. A Writ petition has been filed by the respondent stating that since the parties

do not live together hence the applicant cannot file for reliefs under this Act. The respondent also challenged the constitutionality of the PWDVA. The case is pending.

Case 8

The parties were married in the year 1977. Both the parties are above 40 years of age and have two children from the wedlock. The applicant has been running the household since 1978 because the respondent has been unemployed since then. The respondent has a history of mental illness which causes him maniac phases due to which the applicant and her deceased daughter were forced to move to a separate part of the house. The respondent is also having an adulteress relationship with the domestic help from who he now has a son. The domestic servant has moved into the shared household now which causes the applicant great mental and emotional harassment. The applicant complained of physical, verbal, emotional and economic abuse. She has filed for protection order and residence order.

The first person the applicant approached was the lawyer. The DIR was recorded in the office of the lawyer. Forms I and II were used. Notice was issued on the second date of hearing. The notice was served in the form of a Dasti notice. It took around 4 days for the notice to get served. The respondent filed his reply within 2 weeks. The applicant was granted an ex parte interim order for protection and residence order on the first date of hearing. Litigation under Section 498A of the IPC is already pending between the parties.

Case 9

The marriage between the applicant and respondent 1 was solemnised on 14.2.1994 according to Hindu rites. They had two children from the wedlock. Dowry was given before and after the marriage in the form of cash, jewellery. The applicant complained of physical, emotional, economic and verbal abuse. The perpetrators of violence were the applicant's husband, mother-in-law, father-in-law and sister in law. She has filed for protection order, residence order, monetary relief, compensation order and custody order.

The first person the applicant approached was the Lawyer. None of the forms were used and the application was accompanied with an affidavit providing a detailed report on the incidents of domestic violence. Notice was issued on the first date of hearing and was served through the protection officer within the prescribed time. A DIR has been filed separately by the protection officer after the issuance of notice.

Case 10

The applicant was married to respondent 1 in the year 1989 according to the Hindu rites. The parties had three children from the wedlock. Dowry was given at the time of marriage in the form of cash and jewellery. At the time of marriage the applicant was working in a show room and the respondent was working as a tailor earning about Rs. 8000.

The parties lived together till the year 2003. However after that the respondent took the children and left them with his father at his native village. He then himself left for Mumbai. Since the past 4 years the applicant has been living with her parents and earns enough to support her children. However Respondent 2 (her father-in-law) is refusing to give her back her children. The applicant complained of physical, verbal, mental abuse. She had applied for an interim ex parte protection order, maintenance order, custody order and compensation order

The first person the applicant approached was the lawyer. None of the forms were used. An application along with an affidavit was filed directly in the court in the months of April 2007. On the first date of hearing notice was issued to the protection officer for filing a DIR.

Case 11

The parties were married in the year 2002 as per Hindu rites. The parties have one child out of the wedlock. Dowry was given in the form of cash before and after the marriage. The applicant complained of physical, verbal, mental and economic abuse. A divorce petition filed by the respondent and a criminal proceeding against the applicant is currently pending. The applicant had applied for Interim ex parte protection order, Ex parte residence order for restoration of possession in her matrimonial home and pass an injunction restraining the respondent from forcibly dispossessing the applicant from the shared household, compensation order for to Rs. 5, 00, 000 and maintenance order for to Rs 30,000 per month for her and the child was also claimed.

The first person the applicant approached was the lawyer. Only form 1 was used. An application with an affidavit was filed before the Magistrate on the April 2007. The respondent filed his reply on the 6th June 2007.

Case 12

The applicant is 36 years of age and the parties have been married for the past 20 years. They have two children out of the wedlock. They live in a nuclear family set up and the residence is in the name of the respondent. The applicant complained of physical, mental, verbal, economic and sexual abuse. At present she still lives with her husband and children in the shared household. She asked for protection order, residence order, maintenance order, custody order and compensation order

The first person the applicant approached was the lawyer. The DIR was recorded in the lawyer's chamber and was filed before the Magistrate on the 8th April 2007. Notice was issued on the next day and was served through the protection officer. After three days ex parte protection and residence orders were passed and copies of the same were forwarded to the station house officer and the protection officer. A complaint regarding the breach of the orders was made to the SHO on the 19th April 2007. However no action was taken by the Police. Copy of the complaint of the breach was filed in the Magistrates Court on the 21st April 2007. The complainant's statement was recorded on the 23rd April 2007. The court directed the SHO to register

an FIR and investigate into the same. Accordingly an FIR was registered on the 7th May 2007 under Section 31 of the PWDVA.

Case 13

The parties were married in the year 2000 but have been residing separately since 2004. The applicant brought lots of jewellery and cash in the form of dowry at the time of marriage. After the marriage she invested a substantial portion of her money in shares and mutual funds. These shares and mutual funds are however in the possession of the respondent. The respondent has appropriated the same and has used a lot of the applicant's money in either setting up small businesses of his own and has put the remaining in his personal bank accounts. The applicant complained of physical, economic and verbal abuse. She filed for Protection order, Residence order, Compensation order and Maintenance Order

The first person the applicant approached was the lawyer. The DIR was filed on the 16th January 2007. Forms I, II and III were used. She also requested police assistance, shelter home, medical facility and legal aid. Reply was filed by the respondent on the 13th February 2007. On the 17th February 2007 interim relief in the nature of protection order, residence order and monetary relief was passed by the learned Metropolitan Magistrate. On March 2007 the matter was disposed confirming the interim orders as final orders.

Case 14

The parties were married in the year 2000 according to Hindu rites. Two children were born from the wedlock. The applicant has been treated badly by the in-laws ever since the marriage and she was also never informed that the respondent had been suffering from cancer. She was forced to live in a rented accommodation and now she along with her to children left that accommodation. The applicant applied for protection order, residence order, custody order, monetary relief and compensation order

The first person the applicant approached was the lawyer. The application was filed on the 17.11.06. Notice was issued on the 6.12.06 through Dasti and the same was served by the protection officer. The protection officer informed the court that the respondent are refusing to accept the notice hence the Court stated that it would proceed ex parte. None of the orders except the custody order was passed by the Magistrate. He stated that since the applicant is living on her own there is no apprehension of immediate violence. The applicant could not prove that the residence where the parties were living is either owned or on rent by the respondent. A litigation to determine the maintenance is already pending. A Writ petition under Article 226 of the constitution was filed by the application requesting the Court to direct the respondent to produce the two minor children before the Court and give the custody to the applicant. A complaint under Section 498A of the IPC has been filed by the applicant.

Case 15

The parties are married and have been living together. Their marriage was solemnised according to the Hindu rites and dowry was given at the time of marriage. However recently the respondent tried to throw the applicant out of the house. The applicant filed for residence order, protection order and monetary relief to the amount of Rs 1,50,000.

The complaint was filed on the 6.11.06. Since the Po was on DLSA duty the matter was adjourned. Notice was issued through process server. The applicant had applied for ex parte interim order but the Court declined the application. Thus the matter was listed for hearing. The Court after hearing the parties passed an interim maintenance order to the amount of Rs 5000 on 4-12-06 though efforts were made to draw out a settlement between the parties. Also protection order, maintenance order and Residence order were passed.

Case 16

The parties were married on the 8.8.1994 according to Hindu rites and had been living together since then till December 2006. Two children were born from the wedlock. Throughout the marriage the respondent has never been steady with his job and this has made the parties face a lot of hardship. The respondent is a habitual smoker and drinker and creates a lot of problem when drunk. The applicant complained of physical, emotional and economic abuse. The applicant filed for protection order, residence order, compensation order and maintenance order.

The first person the applicant approached was the lawyer. None of the forms were used and the application along with an affidavit was filed.

Case 17

The parties were married in the year 2004. They were married in the church. This marriage was the second marriage for both parties. The applicant has complained that the respondent's son from the first marriage behaves very badly with her. She has also complained of physical, emotional, economic and sexual abuse. The applicant applied for interim ex parte order for protection order, residence order and compensation order.

Earlier she had approached the chief of the army staff and also the Army's wife welfare association. An application along with an affidavit was filed before the Magistrate. She also filed for an interim protection order and also an interim relief for restraining the husband from entering her residential premises. Notice was issued on the second date of hearing and the relevant orders were granted. The husband has filed for divorce for which the proceedings are pending

RAJASTHAN

Case 1

The Applicant is 32 years old while Respondent 3 is her husband. They have been married for the past 4 yrs. The marriage was solemnized in accordance with Hindu rites and ceremonies and was registered. Cash, jewellery and consumer goods were given during the time of the marriage. Respondents 1, 2, 4 & 5 are father-in-law, mother-in-law and two brothers-in-law of the applicant. The Applicant is an MBA degree holder while Respondent 3 is a post graduate employed as a Production Manager earning Rs. 62 lakhs per month. The couple have a daughter. Currently the Applicant is staying separately from her husband in New Jersey. She was subject to a lot of verbal and emotional violence for giving birth to a girl child. There were continuous demands for dowry. She was not allowed to have the custody of her own daughter. The Applicant has asked for protection and residence orders, order for monetary relief of Rs. 1 lakh per month; an order for impounding of the passport of Respondents 1 and 2 to restrain them from traveling to New Jersey and harassing her further. She has also prayed for a Protection order against her husband and in laws and residence order for the right to reside in the house at Delhi which is in the name of the Respondent 1, whenever she comes to India.

She already has a case pending under Section 498A IPC. The Applicant's father in Jaipur approached a lawyer on her behalf first as she was living in New Jersey. No DIR was recorded. An application was filed before the Magistrate in December 2006. This objection was raised by the Respondents due to the absence of a DIR, also on issues of jurisdiction since the parties were not within the Magistrate's jurisdiction and because the acts of violence had occurred outside the jurisdiction of Indian courts. On 15.01.07 an interim protection order was passed by the Court against the Respondents 1 & 2 not to commit any kind of harassment by way of e-mail, telephone etc. Before passing any further orders, the Court directed the concerned police station to submit a report on the same. An appeal was filed by the Respondents but the appellate court upheld the order of the Magistrate's Court.

Case 2

The Applicant is 24 years old while Respondent 2, her husband is 30 yrs of age. They have been married for the past 6 years. The marriage was solemnized in accordance with Hindu rites and ceremonies and was not registered. Dowry was given at the time of the marriage that included jewellery, consumer goods, utensils, clothes. The couple has a son and a daughter. Respondents 1 & 3 are the Applicant's father-in-law and brother-in-law. The Applicant has completed her primary education and is unemployed while the Respondent has completed secondary education and is currently working as a private driver earning Rs. 5,000/- per month. The nature of the shared household is

joint and is owned by the, father-in-law (Respondent 1). The Applicant was subjected to a lot of physical abuse throughout her marriage and was also beaten during her pregnancy. She was refused medical care. Respondent 3, her brother-in-law, even tried to assault her sexually. She was thrown out of the shared household for not being able to fulfill the dowry demands. She was asked to undergo an abortion and was not taken back in the house on the birth of a girl child. Currently she is residing with her parents. The Applicant has asked for protection, residence, compensation, custody orders and monetary relief of Rs. 1,500/- per month.

The Applicant had approached a lawyer first. No DIR was filed. An application was filed before the Magistrate in December 2006. On 02.01.07 the Magistrate awarded protection order, a maintenance of Rs. 1,500/- for the Applicant and her two children and also ordered for restoration in the shared household along with the children.

Case 3

The Applicant is 30 years old and has been married to the Respondent for the past 16 years. They were married in accordance with Hindu rites and ceremonies, and the marriage was not registered. Dowry was given in cash Rs. 25,000/-, jewellery, consumer goods, household articles and clothes. They have 2 sons and a daughter. The Applicant is illiterate and works as a maid servant earning approximately Rs. 3,000/- per month, while the Respondent is unemployed. The nature of the shared household is nuclear and is in the name of the Respondent. The Respondent would beat her brutally and would take the Applicant's wages forcefully and spend it. He also used her wages to buy the house in his own name. The Respondent is an alcoholic. The Applicant was thrown out of the house and not allowed to interact with the children. She asked for protection, residence, compensation, custody orders and monetary relief of Rs. 10,000 as maintenance and Rs. 3,000/- for children. Also Rs. 1 lakh for loss to property.

The Applicant approached a local NGO in the first instance. No DIR was recorded. An application was filed before the Magistrate with the help of the NGO on 30.11.06. She asked for legal aid and was provided the same by the Court. Notice was issued on the first date of hearing and served through the police officer within a week's time. On 9.12.06 an interim order was passed granting protection order, Rs. 5,000/- towards maintenance and right to live in the shared household along with the children. Direction was also given to the concerned police station to assist in the implementation of the order and thereafter submit a report of compliance. Copy of the interim order was made available within a week's period. Thereafter the Respondent husband filed a petition for revision in the District Court which was dismissed on 05.02.07 as the judge stated that no revision lies against an interim order. Copy of the order was provided in 2 days. She also filed a complaint under Section 31 PWDVA for violation of the order which was not considered by the Court. On the order being violated for the second time (on being beaten) by the Respondent, the Applicant lodged an FIR at the police station. Action is awaited on the same.

Case 4

The Applicant is 48 years old and has been married to Respondent 1 for the past 17 yrs. The marriage was solemnized in accordance with Hindu rites and ceremonies, and was not registered. There were dowry demands which were fulfilled at the time of the marriage. Dowry was given in the form of cash Rs. 25,000/-, jewellery and household goods. The couple has a daughter from the marriage. Respondent 2 is the Applicant's brother-in-law. The Applicant has completed her secondary education and is unemployed. Respondent 1 is unemployed as well. The nature of the shared household is joint and is in the name of the father-in-law (not a party to the case). Respondent 1 is epileptic which was not disclosed before the marriage. He had also lied about his work prior to the marriage claiming to run a shop and earning Rs. 10,000 per month. He is also an alcoholic. The Respondent sold his family's ancestral property for his expenses. The respondent 1 constantly abused the applicant and ultimately threw her out of the shared household. Hence the applicant is currently residing in a rented accommodation.

The Applicant had applied for protection order, residence order granting her rent to the amount of Rs. 2,500/- per month, Rs. 1 lakh towards loss of property as the Respondent had sold two houses, Rs. 5,000/- p.m. towards maintenance, Rs. 2,500/- for educational expenses, compensation of Rs. 5 lakhs and custody of their daughter to her. She approached a lawyer with the help of a local NGO. No DIR was filled. An application was filed before the Magistrate. Notice was issued on the first date of hearing and served through the police officer within a week. However, the Magistrate denied any interim order stating a lack of urgency as she has been residing separately from the Respondent for the past 3 ½ years. The matter was adjourned for further proceedings.

Case 5

The Applicant is 26 years old. She has been married to Respondent 1 for the past 5 years. The marriage was solemnized in accordance with Hindu rites and ceremonies, and was not registered. Dowry demands were made and fulfilled at the time of engagement and the marriage. Dowry was given in the form of Rs. 5,000/-, jewellery, consumer goods, household goods and furniture. The couple has one daughter out of the marriage. Respondents 2, 3 & 4 are the Applicant's brothers-in-law. The Applicant has completed her secondary education and is unemployed. The nature of the shared household is joint. The Respondent is an alcoholic and has subjected the Applicant to physical violence and verbal abuses for giving birth to a female child. She was thrown out of the house for not being able to fulfill the dowry demands. Currently the Applicant is residing with her parents. The Applicant has filed for protection order, rent for alternative accommodation and maintenance for herself and her daughter.

She approached a local NGO and a lawyer and with their help filed an application before the Magistrate on 9.11.06. No DIR was filled. Notice was issued on the first date of hearing and served through the police officer in 3 days. An ex-parte protection

order not to commit violence was passed on the first hearing. On the second date of hearing an order for maintenance, rent and medical expenses of Rs. 1,500/- was granted. There was no written reply filed by the Respondent, however he orally replied stating the application to be completely false. Copy of the interim and ex-parte order was made available to her in 2 days. An Appeal was filed by the Respondent before the Sessions Court against the interim maintenance order within 3 days of passing of the order. The interim maintenance order was stayed by the Sessions Court and the appeal was kept pending for further proceedings as judge was on medical leave.

Case 6

The Applicant is the daughter-in-law of the Respondent (mother-in-law). Both the parties are widows. The Applicant is a graduate and is working with the State Govt. Services as a Teacher. The nature of the shared household is joint and is in the name of the Respondent. Both the parties resided on the ground floor while the first floor is let out. Currently the Applicant is living in a rented accommodation. There was lot of verbal and emotional violence. The Applicant was forced out of the shared household by the Respondent along with her minor son.

The Applicant has asked for residence order. She approached the Service Provider and then was directed to a lawyer. She also went to the police station for assistance. No DIR was recorded. The Applicant filed an application in January 2007 before the Magistrate. Notice was issued on the first date of hearing and served through the police within a week's time. The Magistrate passed an interim residence order on 17.1.07 granting the Applicant the right to reside in the shared household. The Respondent filed an Appeal on 18.2.07 (within 30 days) against the before the Sessions Court. The Appellate court disposed the Appeal immediately on 20.2.07 (in 2 days) vacating the lower Court's order. Thereafter the Applicant approached the High Court of Jaipur in a Writ petition challenging the Session court's decision. At the High Court the judge suggested the matter be resolved by counselling. Time was given to the parties by the High Court so that some kind of agreement can be reached between the parties.

Case 7

Applicant is 81 years old. Respondent 1 and 2 are the Applicant's son and daughter-in-law. Respondent 1 is a graduate and earns approximately Rs. 10,000. The nature of the shared household was joint and is also the ancestral home of the respondent. Currently the applicant is residing in the shared household along with the Respondents and her mentally challenged daughter. There was physical, verbal and emotional abuse by the Respondents on the Applicant and her mentally challenged daughter. They have also denied residence to her and her daughter. She has prayed for protection order, residence order and order for monetary relief.

The Applicant approached a local NGO and with their help filed an application before the Magistrate in December. No DIR was filed. She asked for legal aid which was provided. Notice was issued on the first date of hearing and served through the police

within a week. An interim order granting protection and Rs. 7,000/- as maintenance was past. A direction restraining the eviction of the Applicant from the shared household or disconnection of electricity, water was issued. The Respondent was also directed not to commit violence, or enter the portion of the house where the Applicant resides. The same was passed on 3.1.07. Copy of the interim order was given in one day. An Appeal was filed by the Respondents against the interim order and no stay was granted. The Appellate Court only reduced the amount of maintenance to Rs. 3,000/- on 24.1.07. However the protection order was breached and reported to the police who in turn reported it to the Magistrate. Simultaneously, the daughter-in-law filed a case against the applicant.

Case 8

The Applicant is 40 years old. The Respondent's are her husband and in-law. The Applicant was married in accordance with Hindu rites and ceremonies and the marriage was not registered. Dowry was given in the form of jewellery, consumer goods, clothes and household goods. They have a daughter who is 10 years old. The Applicant is a graduate and is working as a Kabaddi coach. Her husband too is a graduate and is a School teacher. The nature of the shared household was joint and is in the name of her father-in-law. She has 2 other flats in her own name given to her by her parents. Currently she is residing in one of these two flats. The violence was mostly dowry related. Her Stridhan was taken away, her salary was also taken away by her in-laws. She was abused for giving birth to a girl child. There was also verbal and emotional abuse of the 10 year old daughter. Her husband even filed a divorce case on grounds of unchastity, cruelty and that she refused conjugal relations. She was ultimately thrown out of the shared household. She asked for right to residence, prevention of disturbance at the workplace, maintenance for the daughter, payment of bills of the house, custody orders and return of Stridhan. She asked for Rs. 10,000/- as maintenance for her, Rs. 5,000/- maintenance for her daughter, Rs. 50,000/- for her daughter's education.

She approached the local NGO and lawyers and filed an application before the Magistrate on 14.2.07. Notice was issued on the first date and served through the police within a week. No DIR was filed. An interim order of restoration was granted. No maintenance was granted as the husband's income was considered inadequate. An appeal was filed by her for not being granted maintenance. The residence order was breached, husband came to the room where she was residing after the court's order, rampaged and put a lock in her portion.

Case 9

The Applicant is 22 years old. The Respondents are her husband, Father-in-law and 2 brothers-in-law. The Applicant was married in accordance with Hindu rites and ceremonies. The marriage was not registered. Dowry demanded was fulfilled at the time of the marriage in the nature of cash 31,000/-, jewellery, consumer goods, household goods. The couple do not have any children. They have been married for

the last 2 years. Both have completed their secondary education. The Applicant is not working anywhere while her husband runs 2 general stores and earns approximately Rs. 40,000/-. The nature of the shared household is joint. She is currently residing with her parents. She was beaten brutally and was not given food nor maintainance. Her husband was sexually abusive towards her. She was forced out of the shared household. She asked for protection order, Rs. 2,000/- p.m. as rent for an alternate accommodation, Rs. 4,000/- p.m. as maintenance and Rs. 1 lakh as compensation.

The Applicant approached a lawyer and filed an application before the Magistrate in December 2006. Notice was issued on the first date of hearing and served through the police within a week. An order was passed on 10.1.07 granting protection order-restraining the Respondents from committing further domestic violence, granting the Applicant rent and maintenance of Rs. 2,000/-. The Court ordered an investigation by police in the matter and to submit a report. The Applicant's husband alleged in his reply that she did not try and reconcile despite several attempts made by him. He's the only earning member in the family hence unable to pay any maintenance. He filed an appeal on 20.01.07. No stay was granted and the appeal is pending.

Case 10

The Applicant is 50 years old and has been married to the Respondent for the past 30 yrs. She got married in accordance with Hindu rites and ceremonies. The marriage was registered. There were no dowry demands. They have 2 sons and a daughter. She is a graduate and her husband is a post graduate. Her husband works for a company and earns approximately Rs. 35,000-40,000/- p.m. The nature of the shared household is nuclear and is in the name of the Respondent. The Applicant was beaten brutally. There were threats, abuses, allegations. She was thrown out of the share household. Currently she is living on her own. She asked for protection order, residence order, Rs. 10,000/- p.m. for clothes, medicines, basic necessities, Rs. 2 lakhs for the daughter's marriage, Rs. 3 lakhs as compensation, Rs. 10,000/- as maintenance.

The Applicant filed an application with the help of a lawyer. Notice was issued on the first date of hearing and served through the police in 3 days. An interim order was passed in 4 days directing the Respondent not to dispose the shared household till the disposal of the application, not to throw her and the children out of the shared household, to let her and the children use the shared household. No order for monetary relief granted. Copy of the order given in 2 days. An appeal was filed within 30 days by the Applicant before the Sessions Court against not being awarded the maintenance. A false complaint was filed by her husband against her for cheating and fraud that she along with the children misused all his ATM/Debit cards etc.

Case 11

The Applicant is 25 years old. The Respondents are her husband and brother-in-law. The couple was married according to Hindu rites and ceremonies and have continued to be married for the past 6 yrs. They don't have children. The Applicant was teaching in a private school before marriage and is not working currently. Her husband is self-

employed and earns approximately Rs. 1 lakh p.m. The nature of the shared household is joint and in the name of the Respondent. Currently she is residing with her uncle and aunt. She was subjected to severe physical violence. She was made to undergo an abortion against her wishes. Her husband was abusive, alcoholic and threatened to kill her. There were continuous demands for dowry.

The Applicant asked for protection order, Rs. 6,000/- for rent, Rs. 10,000/- for maintenance, Rs. 15,000/- towards medical expenses and compensation orders. She approached the police, lawyer and the local NGO. She filed an application on 12.12.06 before the Magistrate. Notice was issued on the first date of hearing and served through the police. An interim order of Rs. 5,000/- as and Rs. 3,000/- maintenance for her and Rs. 2,000/- for her daughter was passed. An Appeal was filed by the Respondent within 30 days before the Sessions Court. No stay was granted and is pending.

Case 12

The Applicant is 30 years old. The Respondents are her husband and brother-in-law. The couple was married in accordance with Hindu rites and ceremonies and the marriage was not registered. Dowry demands were fulfilled at the time of the marriage to the extent of cash Rs. 1 lakh and jewellery. They do not have children. Both have completed graduation. The Applicant is working in the government sector and her husband works in a jewellery shop and earns Rs. 10,000/- p.m. The nature of the shared household is joint and in the name of the Respondent. Currently she is residing with her parents. She was beaten, abused, there were dowry demands and she was not maintained.

She asked for protection order, residence order, Rs. 3,000/- as maintenance, Rs. 1 lakh as compensation. She approached a lawyer and filed an application before the Magistrate in January 2007. Notice was issued on the first date of hearing and served through the police within a week. Interim order granting protection, arrangement of a rented accommodation and Rs. 1,000/- p.m as rent. Court also gave direction to the police to investigate and submit a report. No appeal was filed. Both the parties are currently living in the shared household after the order.

Case 13

The Applicant is 26 years old and the Respondent is her husband. They were married in accordance with Hindu rites and ceremonies, and the marriage was not registered. Dowry was given in the form of cash (Rs. 30,000/-), jewellery, consumer goods, motorcycle at the time of the marriage. They have a son from the marriage. The Applicant is not employed while the husband is a data operator in a Govt. office and earns approximately Rs. 9,000/- p.m. The nature of the shared household is nuclear and in the name of the Respondent. Currently the Applicant is residing with her parents. She was beaten brutally. The Respondent is an alcoholic, and would abuse her for everything, refused to maintain her and would forcefully have sexual intercourse with her.

The Applicant has asked for protection order, Rs. 2,000/- p.m. as rent, Rs. 4,000/- p.m. as maintenance, compensation of Rs. 2 lakhs and custody order. She filed an application through a lawyer. Notice was issued on the 2nd date of hearing and served through the police within a week. An interim protection order (not to subject her to domestic violence of any kind) and maintenance of Rs. 1,000/- per month was granted by the court. The court also directed the parties to sit together and try to resolve the problem within a month's time.

Case 14

The Applicant is 32 years old. The Respondents are her husband, parents-in-law and brother-in-law. The Applicant and Respondent 1 were married in accordance with Hindu rites and ceremonies and the marriage was not registered. Dowry was given in the nature of cash Rs. 1, 71, 000/-, jewellery, consumer goods, motorcycle. They have a daughter from the marriage. The Applicant is not working anywhere while the Respondent is a clerk in the railways. The nature of the shared household is joint and in the name of the Respondent. Currently she is residing with her parents. She was subjected to verbal and physical abuse for giving birth to a girl child. There were constant dowry demands. The Respondent was also an alcoholic. The Applicant was finally thrown out of the shared household.

The Applicant asked for protection order and residence orders by either restoration in the shared household, or Rs. 3,000/- as rent, Rs. 25,000/- for medical expenses, Rs. 7,500/- for maintenance, compensation of Rs. 50,000 and a custody order. The Applicant has also filed a petition u/s 125 CrPC and a complaint u/s 498A IPC. The Respondent in turn filed for divorce. The Applicant approached a local NGO and filed an application on 14.2.07 under PWDVA. Notice was issued on the first date of hearing and served through the police within one week. An interim order was passed granting protection order, Rs. 1,500/- as rent, Rs. 2,700/- as maintenance and custody of the child. No appeal filed.

Case 15

The Applicant is 41 years old. The Respondents are her husband and brother-in-law. The couple were married in accordance with Hindu rites and ceremonies and the marriage was not registered. Dowry demanded was fulfilled in the nature of cash, jewellery consumer goods at the time of the marriage. They have two sons from the marriage. The Applicant completed her MBA from London. The Respondent is a post graduate (MBA) and is a Captain in Merchant Navy earning approximately Rs. 2 lakhs p.m. The nature of the shared household is joint and in the name of the father-in-law. Currently the Applicant is residing with her parents. The Applicant was subjected to a physical violence. She was not allowed to be in the company of her husband when he was home and not allowed to accompany him on the ship. She and the children received no maintenance from her husband. She asked for protection order, residence order and order for monetary relief under the Act.

The Applicant had filed a petition u/s 125 CrPC 7 years ago but no relief has been granted. The case u/s 498A is pending. She filed an application before the Magistrate in December 2006 through a lawyer. Notice was served through the police but not issued on the first date of hearing. It was served within a week. An interim order was passed on 15.1.07 granting Rs. 4,000/- (Rs. 2000/- for her and Rs.1000/- each for children) as maintenance for herself and her sons. Residence order to let her reside in the shared household along with children was also granted. She filed an appeal against the low maintenance order before the Sessions Court which was dismissed and police directed to make inquiries and submit report.

UTTAR PRADESH

Case 1

The Respondent is the brother-in-law of the Applicant. The parties live in a joint family set up and have been living in a shared household for the past 15 years. The residence is in the name of the Respondent's late father. The parties are Muslims. The Applicant and her husband were married according to the Muslim law and no dowry was given. They have two children, one son and a daughter. The son suffers from a heart disease. The Applicant is unemployed whereas her husband works in a private company. The Applicant has complained of physical, verbal and emotional abuse by the Respondent. She continues to live in the same shared household. She had applied for protection order and residence order under the Act.

The first person the Applicant had approached was the lawyer. The application was filed before the Additional Civil Judge Junior Division. The notice was not served on the first date of hearing. However it was recently served through the process server. The Applicant's husband has filed a partition suit before the Civil Judge for the shared household. The mother-in-law of the Applicant filed a suit for joint ownership of the same. The proceedings under the PWDVA are pending.

Case 2

The Applicant is 35 years of age, the Respondent 1 is 35 years of age and Respondent 2 is 65 years of age. Respondent 1 is the Applicant's husband and Respondent 2 is the Applicant's father-in-law. The Applicant and Respondent 1 are both in the medical profession. The parties live in a joint family set up. The Applicant complained of physical, verbal, emotional and economic abuse. At present she is living with her parents. She had applied for protection order, monetary relief and compensation order under the Act.

The first person the Applicant approached was the Protection Officer. The DIR was recorded in the form of a report in the office of the Protection Officer and was filed before the Additional Civil Judge. The notice was issued on the first date of hearing. No reliefs have been granted as yet and the matter is still pending. Litigation under Section 125 of the IPC is also pending between the parties.

Case 3

The Applicant is the step-sister of the Respondent. Applicant had been living with the Respondents before her marriage. However after being deserted by her husband she came back to her natal home and started living with the Respondents again. The parties live in a joint family set up and the residence is ancestral in nature. The Applicant complained of being subject to physical, verbal and emotional abuse. She has applied for residence order under the Act.

The first person the Applicant approached was the lawyer. The application was filed before the magistrate. Notice has not been served as yet.

Case 4

The parties have been married for the past 16 years. They were married according to the Hindu rites and have three children (one son and two daughters). The Applicant is unemployed whereas the Respondent works in the government sector. The parties live in a joint family set up and the residence is in the name of the father-in-law. The applicant complained of physical, verbal, emotional and economic abuse. At present she lives with her parents. She has applied for protection order abstaining the respondent from communicating with any of the parties, residence order restraining the Respondent from selling off the plot of land, monetary relief of an amount of Rs 15,000.

The first person the Applicant approached was the lawyer. An application was filed before the Additional Civil Judge. Notice was issued on the first date of hearing through the process server. No order has been passed as yet. The Respondent has filed for divorce under Section 13(b) of the Hindu Marriage Act which is pending at present.

Case 5

The Applicant and Respondent 2 have been married for the past 8 years. They were married according to the Hindu rites and have one child from the wedlock. Respondent 1 is the mother-in-law of the Applicant. The parties live in a joint family set up and the residence is in the name of the Respondent 1. The Applicant complained of being subject to physical, verbal and emotional abuse in the hands of her husband and the mother-in-law. At present she lives with her parents. The Applicant applied for monetary order and custody order

The first person the Applicant approached was the lawyer. The application was filed before the magistrate. The notice was issued on the first date of hearing. The magistrate asked for a report from the Protection Officer and after that the case has been adjourned seven times. No reliefs have been provided as yet and the matter is still pending.

Case 6

The Applicant is the mother of the Respondent. The parties are Christians and live in a nuclear family set up. The Applicant has complained of being subject to verbal and emotional abuse. The Applicant applied for Protection order and Residence order. The first person the Applicant approached was the lawyer. Form I was used as the DIR was recorded before the Family Court. The DIR was filed along with the application. No progress so far.

Case 7

Applicant 1 is the wife of Respondent 1. Applicant 2, 3 and 4 are their children whereas Respondent 2 and 3 are the mother-in-law and sister-in-law of Applicant 1. Applicant

1 is 35 years of age and respondent 1 is 40 years of age. The parties have been married for the past 15 years. They were married according to the Muslim law and have three children out of the wedlock (all below the age of 18). The parties live in a joint family set up. The Applicants complained of being subject to verbal, emotional and economic abuse. At present they are living in Applicant 1's natal home. She has filed for protection order, residence order, monetary relief and custody order under the Act.

The first person the Applicants approached was the lawyer. Notice was issued on the first date of hearing and was served through the Protection Officer. Ex-parte orders were granted to the applicants. The court ordered the Respondents to restrain from subjecting the Applicants to any kind of violence, allowing the Applicants to live in the shared household, not to take the custody of the children. Police help was sought at the time of the proceedings. A court order was passed for the same and the police assisted in getting the order enforced.

Case 8

The Applicant is 68 years of age and is the mother of the Respondent. The Respondent is 25 years old. The parties are Hindus. The Applicant is unemployed whereas the Respondent is employed as a motor mechanics and earns about Rs 6000/month. The parties live in a nuclear family set up and the residence is in the name of the Applicant's late husband. The Applicant complained of being subject to verbal and emotional violence and at present she is living with her relatives. She has applied for residence order, monetary relief under the Act.

The first person the Applicant approached was the lawyer. An application supported by an affidavit was submitted before the Magistrate. Notice was issued through the Protection Officer. An ex-parte order was passed. The court ordered the Respondent to restore the Applicant in the shared household and execute a bond of Rs 10,000. Police assistance was sought for the enforcement of the residence order. An appeal has been filed by the Respondent in the Sessions Court. Procedures under the Code of Criminal Procedure was followed.

Case 9

The Applicant 1 is the wife is the Respondent and Applicants 2-5 are their children. The parties have been married for the last 10 years. They were married according to the Hindu rites and have three children (2 male and 1 female) from the wedlock. The parties live in a nuclear family set up and the residence is in the name of the Respondent's late father. The Applicants have complained of being subject to physical, economic, emotional and verbal abuse. At present they live in their natal home. She applied for protection order, residence order, monetary relief, compensation order and custody order

The first person the Applicant approached was the lawyer. An application supported by an affidavit was filed before the Magistrate. Ex-parte orders were granted within

two days of the application. The court granted the Protection order stating that the Respondent should not abuse or beat or threaten any of the Applicants, residence order stating that the Respondent should arrange an alternate accommodation for the Applicants. The court ordered the Respondent to return Stridhan and also to pay a sum of Rs 3000 per month as maintenance to the Applicants. Directions were given to the Protection Officers by the court to get the orders enforced.

Case 10

The Applicant is 55 years of age and has been living with the Respondent for the past 22 years. The parties had been married under the Hindu rites and have three children (2 sons and a daughter) from the wedlock. The Applicant is self employed and the Respondent works in the government sector. The parties live in a joint family set up and the residence is in the name of the Respondent. She has complained of being subject to physical, verbal, emotional and economic abuse and at present she lives in a rented accommodation along with her son. She had applied for protection order, residence order, monetary order and compensation order under the Act.

The first person the Applicant approached was an NGO. The DIR was recorded in the office of the service provider. Forms I and III were used and the DIR was filed along with the application before the Magistrate. Notice was issued on the first date of hearing. It was served through the Protection Officer within one week of filing the application. The matter came up after three and a half months wherein the court granted the Applicant protection order, maintenance of Rs 4000 and also ordered the Respondent to pay the rent for the house where the Applicant is residing. Police help was sought at the time of getting the orders enforced.

Case 11

The Applicant 1 is the wife of Respondent 1. Applicant 2 is their daughter and Respondent 2 is the father of Respondent 1. Applicant 1 and Respondent 1 have been married for the past 5 years. The parties were married under the Hindu law and dowry was exchanged at the time of marriage. They have one girl child out of the wedlock. Applicant 1 is unemployed whereas the Respondent 1 is self employed and earns around Rs 20,000 per month. The parties live in a joint family set up. The Applicants complained that they have been subject to physical, verbal, economic and emotional violence. She applied for protection order, residence order and monetary relief under the Act.

The DIR was recorded before the Magistrate. Form II was used and the DIR was filed along with the application before the Civil Judge. No notices were issued and ex-parte orders were passed within 2 days of the filing of the application. Police help was sought before the service of notice and after the passing of the interim ex-parte order. There was a court order for police assistance. The court ordered the Respondents to restrain from committing any further acts of violence and dispossessing the Applicants. The court also granted a Monetary relief of Rs 5000. Procedures under the Code of Civil Procedure were followed.

Case 12

Applicant 1 is the wife of Respondent. Applicant 2, 3 and 4 are their children. Applicant 1 is 28 years of age and all the children are minors. Respondent 1 is around 35 years of age. The parties were married according to the Hindu rites. Dowry was exchanged in the form of cash at the time of marriage. The Applicant is unemployed whereas the Respondent is self employed and earns around Rs 10,000 to 20,000 per month. The parties live in a nuclear family set up. The Applicants claim that they have been subject to physical, verbal, emotional and economic violence. She applied for protection order and monetary relief.

The first person the Applicant approached was the lawyer. The DIR along with an application and an affidavit was filed before the magistrate. The notice was issued on the first date of hearing and was served through the police. The Respondent appeared before the court on the first date of hearing and later filed a reply denying all the allegations. The court has granted interim protection and maintenance to the amount of Rs 4000. The matter is still pending.

WEST BENGAL

Case 1

The Applicant is 38 years old and has a 13 year old son. She married the respondent in an informal ceremony and a son was born out of this relationship. They lived in the shared household that is owned by the Respondent. She has complained of physical abuse, emotional and verbal abuse, economic abuse and dowry harassment during the course of her marriage. Earlier this year the respondent left the shared household without informing the Applicant of his whereabouts. Later he returned and took their son away. The Applicant has received no maintenance from the Respondent. He has made abusive calls to her threatening to sell off the shared household and refusing to return their son to her custody. The Applicant has applied for protection order restraining the Respondent from alienating the shared household and making abusive calls, custody order to return her son and order for monetary relief for maintenance and loss incurred due to his illegal activities.

The application along with a Domestic Incident Report was filed and notice was issued. PO was directed to serve notice and make enquiries and to file her report within six days. However the PO asked for time to file report due to the lack of infrastructure. The PO filed an enquiry report which clearly stated that Applicant is unable to produce proof of marriage and that a son was born from the wedlock. The report further stated that the neighbors were interviewed but was unable to provide much information as the couple kept to themselves. That the Respondent's official address had changed and that he worked there on a temporary basis thus, is no longer attending work and no one knows of his whereabouts. That to his colleagues the Respondent had denied paternity of the child. Notice to the Respondent was thus not served. On the first date of hearing the Applicant was not present in court. Show cause notice was issued to her. The court ordered that police help to be sought to serve notice.

Case 2

The Applicant was teaching in a University in Delhi since the year 1998. She was given accommodation within the university premises. She got married to the Respondent on 16.01.00 in accordance with Islamic rites. At the time the Respondent falsely stated that he was working in a corporate office with a travel company. The Applicant later discovered that he was a tour operator. After their marriage, the couple lived in the university accommodation in Delhi. A daughter was born to them and was 6 years old at the time the proceedings were initiated. The Applicant faced constant harassment for money for the Respondent who she was supporting financially. She was also subjected to mental abuse. In November 2002, the Applicant was awarded a 1 year fellowship to go to the US. She left her daughter with the Respondent and proceeded

on the fellowship. The Applicant regularly sent money from the US to support her family. The Respondent was also in the habit of taking out money from their joint account without any intimation to her. After the Applicant's return from the US the harassment escalated. She also came to know that the Respondent had sexually assaulted the child. Unable to put up with the violence she returned to Calcutta which is her home town in the year 2006. Prior to her leaving, she filed a complaint under Section 498A and 406 of the IPC. These complaints were not satisfactorily being proceeded with in Delhi. She filed for Protection order to restrain Respondent from entering her place of employment, attempting to communicate with the Applicant, alienating assets and causing violence to the Applicant and her child.

An application under the PWDVA was filed and notice was issued on the first date of hearing. The notice was served through the police as Protection Officers had not been appointed. The Applicant was not present on the second date however an interim protection order was passed. After six days the Respondent apprehending arrest filed a bail application which was granted. On the second date of hearing the Respondent represented by a lawyer filed his reply denying all allegations. Almost a month after the first date of hearing the judgment was passed granting a protection order in accordance with the application. The Judgment records that the Applicant was compelled to leave a stable job as a result of the violence faced.

Case 3

The Applicant married the Respondent on 5.7.89 under the HMA. The Respondent has retired from the post of wireless operator in the Indian Army. He is now employed as a security guard. After their marriage, the couple lived with the Respondent's parents in Nandigram. The Respondent bought a property in Calcutta and they shifted there in the year 1999. They have 2 sons aged 17 and 12 yrs. The Applicant faced violence from the beginning of her marriage from the Respondent. This included physical abuse, verbal and emotional abuse as well as severe sexual abuse. In May 2007, there was an episode of severe physical violence perpetrated on the Applicant by the Respondent. As a result of the neighbors' intervention, the Respondent was made to leave the house. Following this episode a complaint under Section 498A IPC was filed. The Respondent filed a petition for the Restitution of Conjugal Rights in April 2007 which is pending. He also took the younger son away from the Applicant's custody to Nandigram. After leaving the Respondent has been threatening to alienate the shared household. The Applicant filed for Protection order, Residence order, Order for the custody of the younger son and monetary order under the Act.

The first person the Applicant approached was the Protection Officer. The DIR was recorded and an application accompanied with the DIR was filed before the Magistrate. The Applicant was asked to show proof of ownership of the shared household. Notice was then issued at the workplace of the Respondent. After 20 days the reply was filed by the Respondents accusing the Applicant of being quarrelsome and desertion as well as attempting to usurp the shared household property. However interim order was passed restraining the Respondent from dispossessing the Applicant from the

shared household, alienating or dispossessing the shared household and was also ordered to maintain peace and desist from committing any further acts of violence. The Protection Officer was asked to file a report. Both the parties were then heard and the interim orders were extended.

Case 4

The Applicant got married to the Respondent in 1963 in accordance with Hindu rites. The Applicant and Respondent are 57 and 67 years of age respectively. The Applicant faced various forms of violence from the initiation of the marriage including physical abuse and mental and verbal abuse. The Respondent was employed with a public company. He retired in the year 2001 and was receiving pension. He also started a car rental service. The shared household is a rented premise. In 1991 a suit for divorce was filed by the Respondent. The Applicant was given an order for interim maintenance on 20.07.92. The Respondent stopped paying maintenance from October 1992 and started colluding with the landlady to harass the Applicant intending to dispossess her from the shared household. On 14.11.03, the Applicant obtained an injunction from the civil judge to prevent any acts to disturb her possession. This injunction is still in force. On 17.8.06 a muscleman hired by the landlady assaulted the Applicant and her daughter, entered the flat and caused damage to it. The Applicant tried to register a complaint in the police station, however the police refused to register the same. A private complaint was filed by the Applicant pursuant to which she obtained an order for the Respondent to adhere to the injunction of the civil court. Thereafter the Respondent took a flat opposite her and continued various forms of harassment including cutting off water, electricity, etc. The Applicant filed for Protection order, Residence order, monetary relief, Compensation order, interim maintenance order for Rs 20,000/- per month and for the Execution of bonds to maintain peace.

The Application was filed in the Court of the Chief Judicial Magistrate. Notice was issued on the first date of hearing however for the next 3 dates the notice was returned unserved. Almost after a month of the application being filed the Respondent filed his reply alleging that the Applicant is trying to grab property. The PO was ordered to file DIR. After 20 days the PO filed the DIR and the application was listed for evidence.

Case 5

The Applicant in this case is the daughter of Respondent 1. Respondent 2 is Respondent 1's sister. The Applicant and her husband lived in the shared household with Respondents 1 and 2. The household is owned by Respondent 1. Respondent 1 had taken a loan of Rs 1.25 lakhs from the Applicant and her husband. The due date for payment was 25.05.05. According to the loan agreement entered into, the property of the shared household was to be handed over to the Applicant in the event of non-payment. An undertaking to this effect was given by Respondent 1. Respondent 1 was not able to make the payment on the appointed date. A title suit was filed and an injunction was obtained to restrain Respondent 1 from transferring the premises. On 4.11.06, Respondent 1, in the absence of the Applicant and her husband, broke into

the premises and handed over possession to Respondent 2. The Applicant had gone to visit her husband who works out of Calcutta. On her return, the Applicant was restrained from entering the premises. The Applicant then informed the police of this event on 12.11.06 but the police took no action. The Applicant filed for Protection order under Section 18 prohibiting the Respondents from entering the premises, Residence order under Section 19 to restrain the Respondent from dispossessing the Applicant and Order for monetary relief to make good the loss suffered due to removal from property.

The application was filed before the Chief Judicial Magistrate. Notice was issued and the case is transferred to the Court of the Judicial Magistrate. Notice was issued on the first date of hearing but could not be served for the next two months. The court then directed the Police station to serve the notice. After the notice was served the Respondent appeared and sought for time from the court to file his reply. Thereafter the Protection Officer was directed to file the DIR. The Respondent then filed his reply denying all the allegations. The matter is pending. No reliefs have been granted as yet.

Case 6

The Applicant got married to the Respondent on 30.07.1997 in accordance with Hindu rites. She lived in the shared household with the Respondent and his family. The Respondent was in Govt. service. Within 3 months of the marriage the Applicant was driven out of the house. She was pregnant at the time and delivered a baby boy in 1998. The Applicant was willing to stay with the Respondent hence went back to the shared household but was unable to live there due to torture inflicted upon her. Even the mother-in-law and brother-in-law asked her to leave. She tried to re-enter the shared household on 28.9.07 but was not allowed to do so. The Applicant has been staying with her natal family in village Rampur and has applied for Residence order to restrain the respondent and his relatives from disturbing the right to reside and order for monetary relief for her and her minor son.

An application was filed before the Magistrate and notice was issued on the first date of hearing. The respondent surrendered and prayed for bail. Bail was granted with surety and bail bond. After a month the Respondent filed his reply. The issue of DIR was raised but no report of the Protection officer was called for since the evidence is in the process of being taken. For the next four months evidence was taken and after that the cross examination of the parties started.

Case 7

The Applicant is the 34 year old unmarried sister of the Respondents (1, 2) residing in the shared household. She has been subjected to violence after her father's death in 2006 including physical violence, threats to kill her, verbal and emotional abuse as well as sexual violence. She was raped by the Respondent 1 on one occasion. The Applicant tried to file a police complaint but failed. There was a particularly severe bout of violence faced by her on 05.11.07. It appears that the Applicant has been dispossessed

from the shared household. It is not clear where she is living at the moment. The Applicant filed for Protection order under Section 18 restraining the Respondents from assaulting her, Residence order to prohibit the Respondents from entering into her part of the house.

The application was filed before the Chief Judicial Magistrate and was transferred to the Court of the Judicial Magistrate. The Applicant was present on the first date of hearing and the notice was issued. However for the next one month the notice could not be served (no particular reason was mentioned). After the notice was served the Respondents appeared in Court. The Court ordered for counseling which was carried out by the Judicial Magistrate himself. The process of counseling went on over a period of one month. However after a month Court recorded that prima facie case is maintainable. The PO's had been appointed by that time and hence was ordered to furnish a DIR. The DIR was filed by the PO after two months. The evidence of the Applicant was taken and the process of cross examination started.

Case 8

The Applicant was married to the Respondent in 1996. They have 2 daughters. The application was filed by the Applicant for herself and on behalf of her daughters. The Applicant and her daughters were living in the shared household at the time of initiating the proceedings. The Respondent is employed as a pilot with a private airline. The Applicant faced violence from the Respondent from the very beginning of her marriage. She was thrown out of her house on 2 separate occasions. On one occasion she was thrown out of their home in Delhi, due to which she had to return to her natal home in Calcutta. She faced violence even while she was pregnant. The Applicant was also subjected to sexual abuse by the Respondent as well as verbal, emotional and economic abuse. The Respondent used to beat up the daughters as well. In December 2007, the Respondent sexually abused the elder daughter aged 7. Following the incident the Applicant left the shared household in March 2007 in the Respondent's absence. She is now living with her natal family. The Applicant filed for Protection order to restrain the Respondent from committing any further acts of violence and Protection order to restrain the Respondent's access to the children.

The application along with DIR was filed by the Applicant. An affidavit was filed for interim relief and the notice was issued. The Respondent appeared in Court and filed his reply after twenty days denying all the allegations. The interim petition was rejected as the Court had to take evidence. The Respondent stated that he is willing to let her stay in the shared household and leave the same as well as pay her maintenance. After twenty days the parties filed a compromise petition which was accepted by the court.

Case 9

The Applicant is married to the Respondent. They have 2 children, a girl aged 20 and a boy aged 13. The Respondent is in Govt. Service. The Applicant was faced with

physical abuse, verbal / emotional abuse, sexual abuse and economic abuse. She had filed complaints with the police on 4 previous occasions, though nothing came out of these complaints (complaint receipts were appended to the DIR). The Applicant was dispossessed from the shared household in the year 2000 and is now living with her natal family. She has a pending suit under Section 125 CrPC seeking maintenance, filed in 2002, under which she had been given an interim relief of Rs 800/- per month and Rs 500/- for her children. The Applicant filed for residence order under Sec. 19 (she has asked for alternate residence), order to pay monetary relief and compensation order under Section 22 of the PWDVA.

The application was filed before the Magistrate and the notice was issued on the first date of hearing. For the next three months notice could not be served. Later when the notice was served the Respondent appeared in court and sought time to file his reply. The interim reliefs were granted by the Court and the Respondent is yet to file his reply.

Case 10

The Applicant is a 23 year old girl living with her parents in her natal home. The Respondent is the Applicant's father. On 3 occasions the Respondent sexually assaulted the Applicant in her mother's absence. She filed an FIR under Section 375. The Respondent was in police custody at the time an application under the PWDVA was filed. The Applicant filed for Protection order prohibiting acts of domestic violence and communicating with the mother, sister or the Applicant and Residence order restraining the Respondent from entering the shared household.

The application was filed before the Magistrate and interim orders were granted ex parte. The Respondent is in Police custody. The Applicant's lawyer was compelled to take time as the Applicant did not appear.

Case 11

The Applicant was married to the Respondent in accordance with Hindu rites. The Respondent is employed with the railways. They have a daughter aged 20 yrs. The Applicant was dispossessed from the shared household in the year 1991. She faced physical violence, sexual violence (resulting in hospitalization), consistent verbal/emotional abuse, and economic violence. The application was filed along with the DIR and approximately 20 petitions complaining of domestic violence submitted to various authorities including the police and the Respondent's employers. An MLC was also filed. Her pending legal proceedings include a 498A IPC case, Section 125 CrPC case (in which she has received an order for maintenance which is pending in the execution stage since August 2006), divorce proceedings as well as a ROCR proceedings (the latter being filed by the Respondent to coerce as a counter to the divorce proceedings). The Applicant filed for Residence order seeking alternative accommodation, monetary relief and Compensation order under Section 22.

The application along with a DIR was filed in the Court of the Magistrate and the notice was issued on the first date of hearing. The notice was not served for the next three months (reasons not mentioned). Later the Protection Officer was directed to serve the notice. The Respondent appeared and sought time to file his reply. No reliefs granted so far.

Annexure IX

Judgments under the PWDVA

Equivalent Citation: 2007(2)ALD66(SC), 2007(1)AWC664(SC), 2007(3)CTC219, 136(2007)DLT1(SC), I(2007)DMC1SC, (2007)146PLR425, (2007)3SCC169, 2007(1)UJ0007(SC)

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 5837 of 2006 (Arising out of Special Leave Petition (Civil) Nos. 6651-6652/2005) and Contempt Petition(C) No. 38 of 2006

Decided On : 15.12.2006

Appellants : **S.R. Batra and Anr.**

Vs.

Respondent : **Smt. Taruna Batra**

Hon'ble Judges:

S.B. Sinha and Markandey Katju, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Uday Umesh Lalit, Sr. Adv., Meera Agarwal and R.C. Mishra, Advs.

For Respondents/Defendant: L.N. Rao, Sr. Adv. and Sudhir Nandrajog, Adv.

Subject : Family

Catch Words

Acts/Rules/Orders:

Protection of Women from Domestic Violence Act, 2005 - Sections 2, 12(1), 17, 17(1) and 19(1); Indian Penal Code - Sections 34, 406, 498A and 506; Constitution of India - Articles 226 and 227

Cases Referred:

B.R. Mehta v. Atma Devi and Ors. MANU/SC/0740/1987

Prior History / High Court Status:

From the final Judgment and Order dated 17.1.2005 of the High Court of Delhi at New Delhi in C.M.M. Nos. 1367/2004 and 1420/2004 (MANU/DE/0002/2005)

Citing Reference:

** Relied On

B.R. Mehta v. Atma Devi and Ors.

**

Case Note:

Family — Entry into Matrimonial Home — Right to reside in — Section 17 (1) of the Protection of Women from Domestic Violence Act, 2005 — Respondent was married to son of Appellants — After their marriage, Respondent and her husband were staying in house owned by husband's mother — Husband filed a divorce petition against the Respondent — Respondent shifted to her parents place — She was prohibited to enter house of Appellant No.2 — She filed a Suit for a mandatory injunction to enable her to enter house — Trial Court held that, granted temporary injunction restraining Appellants from interfering with right of Respondent to reside — On appeal, Senior Civil Judge dismissed temporary injunction application — Respondent filed a petition under Article 227 of the Constitution — Single Judge held that Respondent was entitled to reside in house as that was her matrimonial home — Hence, present appeal — Held, wife is only entitled to claim a right to residence in a shared household, a 'shared household' would only mean house belonging to or taken on rent by the husband, or house which belongs to joint family of which husband is a member — House in question belonged to mother in law of Respondent and not to Respondent's husband — Respondent could not claim any right in said house — Appeal allowed

Family — Alternative accommodation — Section 19 (1)(f) of the Protection of Women from Domestic Violence Act, 2005 — Held, claim for alternative accommodation can only be made against husband and not against in-laws or other relatives **Facts**

Ratio Decidendi:

“Wife is only entitled to claim a right to residence in a shared household, and a 'shared household' would only mean house belonging to or taken on rent by husband, or house which belongs to joint family of which husband is a member.”

JUDGMENT

Markandey Katju, J.

1. Leave granted.
2. This appeal has been filed against the impugned judgment of the Delhi High Court dated 17.1.2005 in C.M.M. No. 1367 of 2004 and C.M.M. No. 1420 of 2004.
3. Heard learned Counsel for the parties and perused the record.
4. The facts of the case are that respondent Smt. Taruna Batra was married to Amit Batra, son of the appellants, on 14.4.2000.

After the marriage respondent Taruna Batra started living with her husband Amit Batra in the house of the appellant No. 2 in the second floor. It is not disputed that the

said house which is at B-135, Ashok Vihar, Phase-I, Delhi belongs to the appellant No. 2 and not to her son Amit Batra.

5. Amit Batra filed a divorce petition against his wife Taruna Batra, and it is alleged that as a counter blast to the divorce petition Smt. Taruna Batra filed an F.I.R. under Sections 406/498A/506 and 34 of the Indian Penal Code and got her father-in-law, mother-in-law, her husband and married sister-in-law arrested by the police and they were granted bail only after three days.
6. It is admitted that Smt. Taruna Batra had shifted to her parent's residence because of the dispute with her husband. She alleged that later on when she tried to enter the house of the appellant No. 2 which is at property No. B-135, Ashok Vihar, Phase-I, Delhi she found the main entrance locked and hence she filed Suit No. 87/2003 for a mandatory injunction to enable her to enter the house. The case of the appellants was that before any order could be passed by the trial Judge on the suit filed by their daughter-in-law, Smt. Taruna Batra, along with her parents forcibly broke open the locks of the house at Ashok Vihar belonging to appellant No. 2, the mother-in-law of Smt. Taruna Batra. The appellants alleged that they have been terrorized by their daughter-in-law and for some time they had to stay in their office. It is stated by the appellants that their son Amit Batra, husband of the respondent, had shifted to his own flat at Mohan Nagar, Ghaziabad before the above litigation between the parties had started.
7. The learned trial Judge decided both the applications for temporary injunction filed in suit No. 87/2003 by the parties by his order on 4.3.2003. He held that the petitioner was in possession of the second floor of the property and he granted a temporary injunction restraining the appellants from interfering with the possession of Smt. Taruna Batra, respondent herein.
8. Against the aforesaid order the appellants filed an appeal before the Senior Civil Judge, Delhi who by his order dated 17.9.2004 held that Page 0010 Smt. Taruna Batra was not residing in the second floor of the premises in question. He also held that her husband Amit Batra was not living in the suit property and the matrimonial home could not be said to be a place where only wife was residing. He also held that Smt. Taruna Batra had no right to the properties other than that of her husband. Hence, he allowed the appeal and dismissed the temporary injunction application.
9. Aggrieved, Smt. Taruna Batra filed a petition under Article 227 of the Constitution which was disposed of by the impugned judgment. Hence, these appeals.
10. The learned Single Judge of the High Court in the impugned judgment held that the second floor of the property in question was the matrimonial home of Smt. Taruna Batra. He further held that even if her husband Amit Batra had shifted to Ghaziabad that would not make Ghaziabad the matrimonial home of

Smt. Taruna Batra. The Learned Judge was of the view that mere change of the residence by the husband would not shift the matrimonial home from Ashok Vihar, particularly when the husband had filed a divorce petition against his wife. On this reasoning, the learned Judge of the High Court held that Smt. Taruna Batra was entitled to continue to reside in the second floor of B-135, Ashok Vihar, Phase-I, Delhi as that is her matrimonial home.

11. With respect, we are unable to agree with the view taken by the High Court. As held by this Court in **B.R. Mehta v. Atma Devi and Ors.** MANU/SC/0740/1987, whereas in England the rights of the spouses to the matrimonial home are governed by the Matrimonial Homes Act, 1967, no such right exists in India.

In the same decision it was observed “it may be that with change of situation and complex problems arising it is high time to give the wife or the husband a right of occupation in a truly matrimonial home, in case of the marriage breaking up or in case of strained relationship between the husband and the wife.”

12. In our opinion, the above observation is merely an expression of hope and it does not lay down any law. It is only the legislature which can create a law and not the Court. The courts do not legislate, and whatever may be the personal view of a Judge, he cannot create or amend the law, and must maintain judicial restraint.
13. There is no such law in India, like the British Matrimonial Homes Act, 1967, and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law.
14. Here, the house in question belongs to the mother-in-law of Smt. Taruna Batra and it does not belong to her husband Amit Batra. Hence, Smt. Taruna Batra cannot claim any right to live in the said house. Appellant No. 2, the mother-in-law of Smt. Taruna Batra has stated that she had taken a loan for acquiring the house and it is not a joint family property. We see no reason to disbelieve this statement.
15. Learned Counsel for the respondent then relied upon the **Protection of Women from Domestic Violence Act, 2005**. He stated that in view of the said Act respondent Smt. Taruna Batra cannot be dispossessed from the second floor of the property in question.
16. It may be noticed that the finding of the learned Senior Civil Judge that in fact Smt. Taruna Batra was not residing in the premises in question is a finding of fact which cannot be interfered with either under Article 226 or 227 of the Constitution. Hence, Smt. Taruna Batra cannot claim any injunction restraining the appellants from dispossessing her from the property in question for the simple reason that she was not in possession at all of the said property and hence the question of dispossession does not arise.

17. Apart from the above, we are of the opinion that the house in question cannot be said to be a 'shared household' within the meaning of Section 2(s) of the **Protection of Women from Domestic Violence Act, 2005** (hereinafter referred to as the 'Act').

Section 2(s) states:

Shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

18. Learned Counsel for the respondent Smt. Taruna Batra has relied upon Sections 17 and 19(1) of the aforesaid Act, which state:
17. (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.
- (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.
19. (1) While disposing of an application under Sub-section (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order-
- (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
- (b) directing the respondent to remove himself from the shared household;
- (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;
- (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

- (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

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

19. Learned Counsel for the respondent Smt. Taruna Batra stated that the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in question in the past, hence the said property is her shared household

We cannot agree with this submission

20. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grand parents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces etc. If the interpretation canvassed by the learned Counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in the all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

It is well settled that any interpretation which leads to absurdity should not be accepted.

21. Learned Counsel for the respondent Smt. Taruna Batra has relied upon Section 19(1)(f) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband's in-laws or other relatives.
22. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a 'shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member, it is the exclusive property of appellant No. 2, mother of Amit Batra. Hence it cannot be called a 'shared household'.
23. No doubt, the definition of 'shared household' in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society.

24. In view of the above, the appeal is allowed. The impugned judgment of the High Court is set aside and the order of Senior Civil Judge dismissing the injunction application of Smt. Taruna Batra is upheld. No costs.

Contempt Petition (C) No. 38/2006

25. In view of the judgment given above, the contempt petition stands dismissed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

O.A.No. 764 of 2007

In

C.S.No. 548 of 2007

Vandana

Vs.

Mrs.Jayanthi Krishnamachari

V.RAMASUBRAMANIAN.J.

Pending suit for a permanent injunction restraining the defendants from disturbing or interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property, the plaintiff has come up with the present application for an interim order of injunction of similar nature.

2. I have heard Mr.V.Lakshmi Narayanan, learned counsel appearing for the applicant/plaintiff and Mr. S.M.Loganathan, learned counsel appearing for the respondents/defendants.
3. A marriage purportedly solemnised at the Venugopala Swamy Temple, Kakinada, East Godavari on 7.2.2007 between the applicant/plaintiff and the first respondent/ first defendant, was registered in the Office of the Marriage Registrar, Kakinada, Andhrapradesh, under The Hindu Marriage Act. It appears that the members of the families of the applicant/plaintiff and the first respondent/first defendant also decided to have a formal ceremonial social wedding on 18.6.2007. But on 14.6.2007, the respondents/defendants lodged a police complaint against the applicant and her parents before the Commissioner of Police, Chennai and later before R.8, All Women Police Station, Vadapalani, claiming that the applicant/plaintiff and her parents trespassed into the house of the respondents/defendants on 13.06.2007 with rowdy elements. Similarly, the applicant/plaintiff also appears to have lodged a criminal complaint against the respondents/defendants herein.
4. In the meantime, the applicant/plaintiff has come up with the present suit, seeking the relief stated in paragraph-I above and also seeking an interim order of injunction to the same effect in the present application.
5. Mr.V.Lakshmi Narayanan, learned counsel appearing for the applicant/plaintiff contended that in view of the provisions of Section 2(f), 2(s) and 17 of The Protection of Women from Domestic Violence Act, 2005 the applicant/plaintiff has a right to reside in the "shared household" with the first respondent/first defendant. Learned counsel also contended that a legally wedded wife cannot so easily be thrown out

from her matrimonial home and relied upon the decisions of the Supreme Court in **B.P.Achala Anand Vs. S.Appi Reddy and Another { (2005) 3 SCC 313 }** and **Ruma Chakroborty vs. Sudha Rani Banerjee and Another {(2005) 8SCC 140}**).

6. Per contra. Mr.S.M.Loganathan, learned counsel appearing for the respondents/defendants contended-
 - (a) that the status of the applicant/plaintiff as the wife of the first respondent/first defendant is itself in dispute in proceedings initiated before the Family Court and that therefore, the applicant/plaintiff may not be entitled to any protection;
 - (b) that there is absolutely no pleading or evidence to show that the applicant/plaintiff came into possession along with the first respondent, of the suit schedule property after the marriage on 07.02.2007;
 - (c) that in order to invoke the protection granted under Central Act 43 of 2005, the applicant/plaintiff should have lived in the suit schedule property along with the first respondent, without which, the suit property would not become a “shared household”;
 - (d) that so long as her possession is not established to have been legally gained and her right to occupation not established, the applicant/plaintiff cannot seek an injunction against a true owner, and
 - (e) that a case of trespass had actually been registered against the applicant/plaintiff in R.8, All Women Police Station, Vadapalni under orders of this Court and the respondents/defendants, who are the true owners of the property, are now prevented from enjoying their own property.
7. Mr.S.M.Loganathan learned counsel for the respondents/defendants relief upon the decision of this Court in **Alagi Alamelu Achi Vs. Ponniah Mudaliar (1962 MLJ 383)** for the proposition that a trespasser cannot be favoured with an injunction against the true owner. The learned counsel also relied upon the decision of the Supreme Court in **S.B.Batra and Another Vs. Taruna Batra { (2007) 3 SCC 169 }** in support of his contention that the suit schedule property would not come within the meaning of the term “shared household”.
8. Since the rival contentions revolve around the provisions of the recently enacted The Protection of Women from Domestic Violence Act, 2005, hereinafter referred to as “the Act”, it is necessary to examine the historical background of the said Act, the objects and reasons for the said enactment and the provisions contained therein. This Act was

actually enacted with a view to implement the General Recommendation No.XII (1989) of The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). India is a signatory to CEDAW having accepted and ratified it in June 1993.

- 9 Article 16 of the said Convention, which deals with measures to eliminate discrimination against women in matters relating to marriage and family relations, reads as follows:

“Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family reasons and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choosing a family name, a profession and an occupation;
 - (h) *The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.”*
10. Singapore, enacted the “Women’s Charter” under Ordinance No.18 of 1961, much ahead of CEDAW. The preamble to the said Act, “Women’s Charter” crystallized its objects as follows:-

“An Act to provide for monogamous marriages and for the solemnization and registration of such marriages; to amend and consolidate the law relating to divorce, the rights and duties of married persons, the protection of family, the maintenance of wives and children and the punishment of offences against women and girls; and to provide for matters incidental thereto.”

11. Part VII of the Women’s Charter of the Statutes of the Republic of Singapore, deals with **“Protection of Family”**. Section 64, which provides the definition of various terms, used in Part VII of the said statute, defines the term “shared residence” as follows:

“Shared residence” means the premises at which the parties are, or have been, living together as members of the same household”.

Section 65, which empowers the Court, to pass a Protection Order, against the commission of a family violence, includes within its ambit, the protection of the right of occupation. Section 65 reads as follows:-

“Protection Order

65. — (1) The Court may, upon satisfaction on a balance of probabilities that family violence has been committed or is likely to be committed against a family member and that it is necessary for the protection of the family member, make a protection order restraining the person against whom the order is made from using family violence against the family member.
- (2) An application for a protection order may be made by the family member concerned or any person referred to in sub section (10).
- (3) A protection order may be made subject to such exceptions or conditions as may be specified in the order and for such term as may be specified.
- (4) The Court, in making a protection order, may include a provision that the person against whom the order is made may not incite or assist any other person to commit family violence against the protected person.
- (5) A protection order may, where the Court is satisfied on a balance of probabilities that it is necessary for the protection or personal safety of the applicant, provide for such orders as the Court thinks fit having regard to all the circumstances of the case, including any one or more of the following orders:

- (a) *the granting of the right of exclusive occupation to any protected person of the shared residence on a specified part of the shared residence by excluding the person against whom the order is made from the shared residence or specified part thereof, regardless of whether the shared residence is solely owned or leased by the person against whom the order is made or jointly owned or leased by the parties;*
 - (b) referring the person against whom the order is made or the protected person or both or their children to attend counselling provided by such body as the Minister may approve or as the Court may direct; and
 - (c) the giving of any such direction as is necessary for and incidental to the proper carrying into effect of any order made under this section.
- (6) Except so far as the exercise by the person against whom a protection order is made of a right to the shared residence is suspended or restricted, or prohibited or restrained, by virtue of an order made under subsection(5), such order shall not affect any title or interest that the person against whom the order is made or any other person might have in the residence”.
12. The concept of “shared residence” and the power of Courts to issue “Protection Orders”, appears to have been introduced into the “Women’s Charter” (Chapter 353) of the Statutes of the Republic of Singapore under Amendment No.30 of 1996, taking cue from CEDAW. Keeping in mind these developments, the Protection of Women from Domestic Violence Act, 2005 was enacted as “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.”
13. In the statement of objects and reasons, it is stated that the Bill seeks to provide among other things for the rights of women to secure housing. Para-4(iii) of the statement of objects and reasons reads as follows:-
 “ It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, Whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate”.
14. Thus, Central Act 43 of 2005 appears to be in tune with the Singapore Model in so far as the issue of “shared residence” and the protection

of the right of occupation of the same are concerned. Section 17 of the Act which confers a right upon the women to reside in a shared household read as follows:-

“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”.
15. Since Section 17 confers a right upon every woman in a “domestic relationship” to reside in the “shared household”, a woman seeking protection under Section 17 has to establish that she was or is in a “domestic relationship” and that the right sought to be enforced is against the “shared household”. *In other words, 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”.*
16. These two terms “domestic relationship” and “shared household” are defined in Sections 2(f) and 2(s) of the Act. Section 2(f) of the Act, defines “domestic relationship” as follows:-
- “(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”

Section 2(s) of the Act defines a “shared household” as follows:

“(s) “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household”.

17. Though the definition of the term “shared household” appearing in Section 2(s) of our Act, is more elaborate than the corresponding definition of the term “shared residence” under Section 64 of the “Women’s Charter” of the Statutes of the Republic of Singapore, the definition of the term “domestic relationship” to which a shared household is correlated appears to impose a condition viz. that the two persons in relationship must live or have at any point of time lived together in a shared household. Therefore “the present act of living” or “the past act of having lived together” in the shared household, appears to be a necessary concomitant, inbuilt in the definition of the term “domestic relationship” under Section 2(f). But Section 2(s) makes a place a “shared household”, if the aggrieved person lives or at any stage has lived there in a “domestic relationship” either singly or along with the respondent. Therefore, the apparent circumscription found in Section 2(f) is actually removed from its fetters under Section 2(s) of the Act, in the sense that the word “together” appearing in Section 2(f) is replaced by the word “singly or along with” in Section 2(s). Consequently, there appears to be a little contradiction between Sections 2(f) and 2(s) of the Act.
18. A clinical dissection of the definitions of the terms “domestic relationship” and “shared household” has become necessary in view of a very peculiar dispute that has arisen in this case. The dispute is that though the applicant/plaintiff and the first respondent/ first defendant got married on 7.2.2007, they did not either “live” or “at any point of time lived together” in the shared household of the first respondent/first defendant. The case of the respondents/defendants is that after the marriage on 7.2.2007, the applicant/plaintiff trespassed into their house on 13.6.2007 resulting in the respondents/defendants walking out of the house and lodging a criminal complaint on 14.6.2007. Therefore, it was contended by Mr.S.M.Loganathan, learned counsel for the respondents/defendants that to be entitled to the protection guaranteed under Section 17 of the Act, the applicant/plaintiff should satisfy the requirements of the definition of the terms “domestic relationship” and “shared household”. In other words, if the applicant/plaintiff cannot show that she lives or at any point of time lived together with the first respondent/ first defendant in the “shared household” she would not be entitled to invoke Section 17.
19. But such a construction of Sections 2(f) and 2(s) of the Act, in my considered view, will not be in tune with the object sought to be achieved by the Act. As seen from the historical background of the Act, the Act was enacted with a view to implement the United Nations Convention, ratified by India way back in 1993. As observed by the Supreme Court in **Githa Hariharan and Another Vs. Reserve Bank of India and**

another (1999 (1) CTC 481), any interpretation to a statutory provision should be in conformity with the International Conventions. In paragraph-14 of the said judgement, the Supreme Court held as follows:

“14. 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 on Section 6(a) (supra) 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”.

20. In a society like ours, there are very many situations, in which a woman may not enter into her matrimonial home immediately after marriage. A couple leaving for honeymoon immediately after the marriage and whose relationship gets strained even during honeymoon, resulting in the wife returning to her parental home straight away, may not stand the test of the definition of domestic relationship under Section 2(f) of the Act, if it is strictly construed. A woman in such a case, may not live or at any point of time lived either singly or together with the husband in the “shared household”, despite a legally valid marriage followed even by its consummation. It is not uncommon in our society, for a woman in marriage to be sent to her parental home even before consummation of marriage, on account of certain traditional beliefs, say for example, the intervention of the month of Aadi. If such a woman is held to be not entitled to the benefit of Section 17 of the Act, on account of a strict interpretation to Section 2(f) of the Act that she did not either live or at any point of time lived together in the shared household, such a woman will be left remediless despite a valid marriage. One can think of innumerable instances of the same aforesaid nature, where the woman might not live at the time of institution of the proceedings or might not have lived together with the husband even for a single day in the shared household. A narrow interpretation to Sections 2(f), 2(s) and 17 of the Act, would leave many a woman in distress, without a remedy. ***Therefore, in my considered view a healthy and correct interpretation to Sections 2(f) and 2(s) would be that the words “live” or “have at any point of time lived” would include within their purview “the right to live”.*** In other words, 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. She is definitely in “domestic relationship” within the meaning of Section 2(f) of the Act and her bodily presence or absence from the shared household cannot belittle her relationship as anything other than a domestic relationship.*** Therefore, irrespective of the fact whether the applicant/ plaintiff in this case ever lived in the house of the first respondent/ first defendant after 7.2.2007 or not, her marriage to the first respondent/ first defendant on 7.2.2007 has conferred a right upon her to live in the shared household. Therefore, the question as to whether the applicant/ plaintiff ever lived in the shared household at any point of time during the period from 7.2.2007 to 13.6.2007 or not, is of little significance.

21. As a matter of fact, the applicant/ plaintiff has taken a definite stand that after the marriage on 7.2.2007, both of them went out to several places and that she lived with the first respondent/ first defendant. Though this fact was disputed by the first respondent/ first defendant, it becomes a question of fact to be gone into at the time of trial. But as I have held already, ***even if the contention of the respondents/ defendants is accepted that the applicant/ plaintiff never lived with the first respondent/ first defendant in the shared household from 7.2.2007 till 13.6.2007, it did not make the relationship any less than “a domestic relationship” nor did it make the shared household not one within the meaning of Section 2(s) of the Act.*** Hence, I am unable to accept the contention of the learned counsel for the Respondents/defendants with regard to the interpretation to Sections 2(f), 2(s) and 17 of the Act.
22. The decision relied upon by Mr. S.M. Loganathan in **S.B. Batra and Another vs. Taruna Batra ((2007) 3 SCC 169)**, related to a case where the property belonged to the mother-in-law. Therefore, the Supreme Court held in paragraph-22 of its judgment that the house in question cannot be said to be a “shared household” within the meaning of Section 2(s) of the Act. But in the present case, the applicant/

plaintiff has filed a copy of the Sale Deed dated 31.3.2004 registered as document No.2051 of 2004 as document No.5. The said Sale Deed discloses that the suit schedule property was purchased jointly in the names of the first and third defendants. Therefore, the decision of the Supreme Court in **S.B. Batra's case** may not be applicable.

23. The contention of Mr. S.M. Loganathan, learned counsel for the Respondents/defendants that the status of the applicant/plaintiff as the wife of the first Respondent/ first defendant is itself in dispute and that the possession gained by her on 13.6.2007 was unlawful and amounted to trespass, cannot be accepted. The first respondent/ first defendant has not disputed the factum of marriage solemnised at the Venugopala Swamy Temple, Kakinada and the registration of the same under the Hindu Marriage Act. Though the respondent/defendants contend that the marriage took place under dubious circumstances, the first respondent/ first defendant has not filed a petition for declaring the marriage to be a nullity. On the other hand, the first respondent/first defendant has filed only a petition for divorce. *While a petition to declare a marriage as a nullity, would make the very validity of a marriage shake in its foundation, a petition for divorce pre-supposes the existence of a valid and subsisting marriage as on date.* Therefore, the marriage between the applicant/plaintiff and the first respondent/first defendant is valid and subsisting as on date, as otherwise, the first respondent/first defendant could not have filed a petition for divorce. *Under such circumstances, the status of the applicant/plaintiff, as the wife of the first respondent/first defendant cannot be in doubt, at least for the present. It is this status which has given her a right to live in the shared household. Hence, her entry into the household is as a matter of right, whether the exercise of such right happened on 13.6.2007 or on any other date, forcibly or otherwise.* Therefore, I am unable to accept any of the contentions of the learned counsel for the respondents/ defendants.
24. At last, Mr.S.M.Loganathan, learned counsel for the respondents/ defendants contended that the first respondent/ first defendant is even prepared to pay a reasonable amount towards rent for any decent accommodation that the applicant/ plaintiff may take, by way of an interim arrangement, without prejudice to the rights of the respondents/ defendants. This contention stems from the fact that the right of a woman to live in the shared household was always considered to be a part of her right to maintenance.
25. It is pertinent to see that even before the advent of the Act, the right of a wife to reside in the matrimonial home, was recognised as part of her right to maintenance, in so far as Hindus are concerned. In para-12 of its judgment in **B.P. Achala Anand vs. S. Appi Reddy and Another**

{(2005) 3 SCC 313}}, the Supreme Court laid down the law on the point as follows:-

“ 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. (See Mulla: Principles of Hindu Law, Vol. I, 18th Edn. 2001, paras 554 and 555). The right has come to be statutorily recognised with the enactment of the Hindu Adoptions and Maintenance Act, 1956. Section 18 of the Act provides for maintenance of wife. Maintenance has been so defined in clause (b) of Section 3 of the Hindu Adoptions and Maintenance Act, 1956 as to include therein provision for residence amongst other things. For the purpose of maintenance the term “wife” includes a divorced wife”

26. After referring to various English decisions, on the right of a wife to stay in the premises taken on rent by her husband, even after he deserts her, the Supreme Court held in paragraph- 23 as follows:

“23. It has been held in India that right to maintenance arises out of the status as a wife and not by way of a contract or otherwise. In **Sri Raja Bommadevara Raja Lakshmi Devi Amma Garu vs Sri Raja B. Naganna Naidu Bahadur Zamindar Garu (AIR 1925 Mad 757), Spencer, Officiating C.J.,** stated: (AIR P.757)

“The obligation of a husband to maintain his wife is one arising out of the status of marriage. It is a liability created by the Hindu Law, in respect of the jural relations of a Hindu family. When there is no contract between the parties to a marriage, as among Hindus, a suit for maintenance is not a suit based upon contract, but it is a suit arising out of a civil relation resembling that of a contract, which is specially provided for in Article 128 of the Limitation Act”. (Headnote)”.

27. In paragraph-25 of the same judgment, the Supreme Court also invited a reference to a judgment of the Division Bench of the Bombay High Court, which may be of interest, to decide the dispute on hand. Paragraph-25 of the aforesaid judgment of the Supreme Court reads as follows:-

“25. Abdul Rahim Undre (Dr) vs. Padma Abdul Rahim Undre (AIR 1982 Bomb 341) is a Division Bench decision of the Bombay High Court, dealing with right to residence of a wife in the matrimonial home. The marriage between the parties was subsisting in law but had broken down beyond repair. The husband filed a suit inter alia for injunction, restraining the wife from entering the matrimonial house. The Court held that an injunction subject to certain terms and conditions could be granted. The parties, on account of seriously estranged relationship between them could not be forced to live together. The flat was big enough to allow the parties to live there separately. The Court earmarked separate portions for the husband and the wife to live separately and restrained the wife from entering the portion in occupation of the husband, who was an eminent surgeon, so that he could have peace of mind to enable him to discharge his duties as a surgeon more efficiently. In addition, the husband was directed to pay a certain amount of money by way of maintenance to the wife”.

28. **In Ruma Chakraborty vs Sudha Rani Banerjee and Another (2005) 8 SCC 140**, a divorced wife sought to fight an order of eviction passed against her divorced husband at the instance of the landlord of the premises. The Supreme Court held that she had no right to contest the pending eviction proceedings.
29. Therefore, the applicant/plaintiff certainly has a right to live in the shared household of the first respondent/first defendant, till the marriage is dissolved in a manner known to law. Though the offer made by the learned counsel for the respondents/defendants to pay a reasonable amount towards rent appears to be fair and reasonable, the right guaranteed under the Protection of Women from Domestic Violence Act, 2005, cannot be negated by such offers, however, reasonable they may be. From the development of the law on the point over the years culminating in the aforesaid enactment, it appears that the right of a woman to live in the shared household, originally conceived as a part of her right to maintenance, has enlarged with the advent of the Act. Such a statutory right cannot be rendered nugatory by asking the applicant/ plaintiff to look for a rental accommodation and demand payment of the rent from the first respondent/ first defendant.
30. Therefore, I enquired with the learned counsel appearing on either side as to whether the suit property is capable of being segregated into two portions, so that the applicant/plaintiff as well as the respondents/defendants can live in separate portions, till the disputes are resolved between themselves. As a matter of fact, such a solution was prescribed by the Division Bench of the Bombay High Court in **Abdur Rahim Undre (Dr) vs. Padma Abdul Rahim Undre (AIR 1982 Bomb 341)** and the same has been quoted with approval by the Supreme Court in

B.P. Achala Anand vs. S. Appi Reddy and Another ((2005) 3 SCC 313)). But the learned counsel appearing on either side represented that as on date, the entire building is of a single unit of accommodation, though with a ground floor and a first floor. Under such circumstances, the suit property cannot be divided into separate portions as on date, to enable the parties to live in different portions of the shared household, till the legal proceedings conclude.

31. In view of the above, I am satisfied that the applicant/plaintiff has a statutory right and the same is to be protected by this Court. Therefore, the applicant/plaintiff has a prima facie case. The balance of convenience is also in favour of the applicant/plaintiff. The applicant/plaintiff would suffer irreparable loss and injury if the interim relief prayed for is not granted, leading to her forcible eviction from the shared household. Hence the applicant/plaintiff is entitled an order of injunction as prayed for. Consequently, O.A.No. 764 of 2007 is allowed.

03.07.2007

Annexure X

Copy of a complaint under Section 31 filed in Andhra Pradesh

GOVERNMENT OF ANDHRA PRADESH
(Police Department)

Police Station, Asifnagar, Hyd.
Dated: 6-9-2007.

ASIFNAGAR PS AN/2007

Command Director General of Police,
T. A. P. Hyderabad

Through proper channel

Subj:- Asifnagar PS -FIR No. 137/2007 U/S. 31 of Protection of Women from Domestic Violence Act-2005 registered on 20-4-2007 against Saif-ul-Islam, Habeeb Ali Report – Submission of – Regarding.

Ref - 1) No.Addl.DGP CID CNo.2358/C14/WPC/CID/06.,dt.14-8-2007.
2) No. HW-6/3454/2007, dt. 4-7-2007 of DCP West Zone, Hyd.
No 402/ACP/AN/07 dt.5-8-2007. of ACP Asifnagar. Divn)

**

With reference to above subject, I, submit that on 20-4-2007 at 1600 hours received complaint from [REDACTED]

[REDACTED] forwarded by Chairman permanent Lok Adalat Public Utility Services, Hyderabad that she filed an application under section 12 of Protection of women from Domestic violence Act 2005 through protection officer to pass order under section 21 of the Act, for the custody of child under section 21 of the Protection Act an 13-12-06 . She prima facie satisfied the Honourable VI ADDL.CMM court passed protection order in favour of her. prohibited the respondent 1 & 2 . On 12-4-2007 when she was attending court her husband abused her in filthy language, assaulted and threatened her that he would kidnap her daughter from residence and he would file another two cases against her . She requested the Hon'ble court to take action for violation, of the interim orders passed by the Hon'ble court.

On the strength of the above complaint registered a case in 137 / 2007 U/S. 31 of protection of women from domestic violence act - 2005 on 20-4-2007 and took up investigation

PTO

During the course of investigation examined the complainant and other witnesses and revealed that on 15-6-2003 the petitioner [REDACTED] got married with the [REDACTED] and gone to his house on 19-7-2003 after one month of the marriage after fulfilling of his demands. After some time her husband started harassment physically and mentally and demanded more dowry. Later the complainant lodged a complaint at Women Police Station South Zone where he was arrested and Court ordered maintenance of Rs. 2,500/- per month. Then he (accused) approached High Court and made it reduced to Rs. 1500/- and since 3 years he is not paid above amount and paid Rs. 20,000/- instead of Rs. 54,000/- When the complainant filed divorce petition, the accused threatened to kidnap his child and will sold away to some body. In the month of December-2006 she approached before the Hon'ble VI Addl.CMM Court for the protection orders in favour of her, restraining her husband his father. Even after the orders of the court, the accused is threatening the complainant in the Court also and violated the Section. 31 of the Protection of Women from Domestic Violence Act, 2005. In this case the accused is married since commission of offence. As per the instructions of Dy.Commissioner of the West Zone I took up further investigation and examined the remaining witnesses and charge sheet i.e.1-9-2007 after obtaining opinion of PP. The original reference along with Charge Sheet and memo. of evidence is enclosed herewith.

Submitted for favour of information.

Yours faithfully,

Inspector of Police,
PS-Asifnagar, Hyderabad.

7/9/07
Asst. District Police Officer
HYDERABAD-500 020

Encls: (01) Papers.

CHARGE SHEET

CRIME NO. IN CRIME NO. 137 / 2007 U/S 31 OF PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT - 2005 OF ASIFNAGAR POLICE STATION

District	HYDERABAD CITY
Police Station	ASIFNAGAR
Year	2007
First Information Report No:	137/2007
Date	20-04-2007
Final Report Charge Sheet No:	No: 103 / 2007
Dated	1-9-2007.
Act - Indian Penal Code	31 of protection of women from domestic violence act - 2005
Kind of Final Result: Charge Sheet / Untraced/Not charge sheeted for want of evidence/offence abated/Un-occurred	CHARGE SHEET
FR un-occurred: False/Mistake of Fact /Mistake of Law/Non-cognizable / Civil Nature	===
If Charge Sheet: Original/Supplementary	ORIGINAL
Name of the IO / Rank & Number	Sri. Mohd. Jameeluddin, Inspector of Police, Asifnagar P.S.
a) Name of the Complainant/Informant	[REDACTED]
Details of Properties/Articles/ Documents / Recovered seized during investigation and relied upon (Separate list can be attached if necessary)	===
Particulars of accused persons, charge sheeted (Use separate sheet) for each accused	[REDACTED]
Particulars of accused persons - not charge sheeted (suspect: separate sheet for each accused)	===
Particulars of witnesses to be examined	As per separate list enclosed
If FIR is false, indicate action taken or proposed to be taken U/s: 182/211 IPC	===
Result of Laboratory Analysis	===
Brief facts of the case	As follows

IN THE COURT OF HON'BLE VI ADDL. CHIEF METROPOLITAN MAGISTRATE

AT HYDERABAD

Respected Sir,

Brief facts of the case are that on 20-4-2007 at 1600 hours a complaint was received from [REDACTED] forwarded by the Chairman Permanent Labour Board for Public Utility Services, Hyderabad, stating that she filed an application under section 18 of Protection of Women from Domestic violence Act 2005 through the protection officer Hyderabad to pass, an order of protection, custody of the child, under section 21 of the Protection Act on 19-4-2007. Being prima facie satisfied, the Honourable VI th ADDL CMM passed a protection order U/s 18 of the Act in favour of her on 13-12-2006 which prohibited the respondent 1 & 2 but. On 12-4-2007 when she went to attend Honourable Court, her husband abused her in a filthy language, assaulted and threatened her that he would kidnap her daughter from residence and that he would file two more cases against her. She requested the Honourable court to take action for violation, of the interim orders passed by the Honourable court.

On the strength of the above complaint, LW 7 registered a case in Crime No 137 / 2007 U/s 31 of Protection of Women from Domestic Violence Act - 2005 and took up investigation.

During the course of investigation, LW 7 examined and recorded the statements of LW-1 to 6 in part II case diary. They stated that LW-1 is the complainant and victim [REDACTED] and she stated about harassment and violation of the interim orders passed by the Hon'ble Court.

LW-2 [REDACTED] is the father of the complainant. He too, speaks about harassment to her daughter LW-1.

LW-3 [REDACTED] is the mother of the complainant. She also speaks about the harassment made by the accused to her daughter [REDACTED]

LW-4 [REDACTED] is the maternal uncle of LW-1 [REDACTED] who attended the marriage and later he came to know about harassment to LW-1 by her husband.

LW-5 & 6 are the neighbors of the LWs 2 & 3 who attended the marriage of LW-1 and they came to know that the husband of LW-1 was harassing and also locked her out of

On the facts and evidence collected during the course of investigation, it is noted that on 15-6-2003 LW-1 [REDACTED] got married to the accused Saif-ul-Jabbar Ali and gone to his house on 19-7-2003. One month after the marriage, she started her harassment physically and mentally and demanded more dowry. She conceived with one female child. Later LW-1 lodged a complaint into Women PS, [REDACTED] where a case was registered and he was arrested in that case. When the court Hyderabad granted maintenance @ Rs. 2,500/- per month, then accused approached the High Court and got it reduced to Rs. 1500/- p.m. but for 3 years he paid Rs. 20,000/- and the balance maintenance is not paid to her. When LW-1 filed a petition, the accused threatened to kidnap his child and to sell her away to some one. In the month of December-2006, LW-1 approached the Hon'ble VI Addl.CMM Court, [REDACTED] for protection orders in her favour, restraining her husband, and his father. Even the court, passed protection orders U/s 18 of the Act on 13-12-2006 the accused has disobeyed the orders by threatening the complainant in the Court and also outside. On 12-12-2006 in spite of the court orders, when LW-1 attended the court, her husband abused her in vulgar language, insulted and threatened her that he would kidnap her daughter from her possession (the child has been in her custody as per interim order of the court) and threatened that he would file two more cases against her. Hence as per the evidence on record, the accused has committed an offence punishable U/s 31 of the Protection of Women from Domestic Violence Act 2005.

As the accused is absconded since long time, he is not arrested, hence request to issue NBW against the accused.

Therefore the accused committed an offence punishable U/S. 31 of the Protection of Women from Domestic Violence of 2005.

~~Hence the charge sheet.~~


Inspector of Police
[REDACTED] Hyderabad

EVIDENCE IN CRIME NO. 137 / 2007 U/S 31 OF PROTECTION OF WOMEN
FROM DOMESTIC VIOLENCE ACT – 2005

[Redacted]

Complainant / Victim.

[Redacted]

*Speaks about facts of the
case Complainant's father*

[Redacted]

*Speaks about facts of the
case Complainants Mother*

[Redacted]

*Cir. Witness
Maternal un Id of the
complainant*

[Redacted]

*Cir. witness.
Neighbour of the
complainant*

[Redacted]

*Cir. witness.
Neighbour of the complainant*

[Redacted]

*Issued FIR and
1st I.O*

I.O and filed charge sheet.

[Signature]
**Inspector of Police,
Police Station, Asifnagar
Asif Nagar Police Station
MYDERABAD-500 028**

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27-7-07
C.No. 2358/C14/WPC/CID/06

Office of the
Addl. Director General of Police,
C.I.D. A.P. Hyderabad
Dt.22.7.07

MEMO

Sub:- Cr.No.137/07 u/s 31 of Protection of Women from
Domestic Violence Act 2005 of Asif Nagar PS. Hyderabad-
Reg.

On the complaint of [REDACTED]

[REDACTED] a case in Cr.No.137/07 u/s 31
of Protection of Women from Domestic Violence Act 2005 of Asif Nagar PS
was registered against her husband on 20.4.07 for violation of interim orders
passed by the VIth Addl.CMM Court, Hyderabad. It is requested to inform
the further action taken in this regard.

HW-5

[Signature]
Addl. Director General of Police,
C.I.D. A.P. Hyderabad

To
The Dy. Commissioner of Police, West Zone, Hyderabad.
Copy to the Superintendent of Police, WPC, CID Hyderabad.

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Cr.No. HW-6/3454/07 Df 14 8/07

Most urgent and important

ACP/AN (by name)

This is first case under Domestic Violence
Act 2005. please follow Supervise Investigative
process and send up a report for sending
more cases to addl DGP (WZ). ~~Cr.No.~~

[Signature]
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