



## **The Lawyers Collective Women's Rights Initiative**

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

Understanding that evaluation is at the core of effective functioning of any legislation, the Lawyers Collective Women's Rights Initiative has been conducting an annual monitoring and evaluation exercise on the manner in which PWDVA is being implemented across the country since its enactment. This is the sixth year of the law and we present to you the Sixth Monitoring and Evaluation Report, focusing on court orders.

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**Staying Alive: Evaluating Court Orders**  
**Sixth Monitoring & Evaluation Report 2013**  
**on the**  
**Protection of Women from Domestic Violence Act, 2005**

Lawyers Collective  
(Women's Rights Initiative)

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January 2013

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# Foreword

## The Search for the Perfect Victim

The *Sixth Monitoring and Evaluation Report* is qualitatively different from the earlier ones. It is confined to evaluating the functioning of the judiciary and does not address the issue of adequacy of infrastructure under the Act or the institutional capacity to implement the Act. This is not because these issues are not relevant but because the concerns in that respect, including the absence of an adequate budget must be made to the executive rather than to the judiciary. At the time of writing, there has developed a large circle of activism around the issue of providing adequate budget for the appointment of Protection Officers and for their training. These efforts have not yielded results leading to the conclusion that women don't matter and least of all, violence against women does not matter. It is true that the recent gang rape of a young 23-year-old in Delhi has led to a proactive approach by the State on the question of violence against women and we welcome it, but one cannot help asking the question, does it take a gang rape and spontaneous nationwide mobilisation around it to move the State into action? And how much of it will have a lasting impact on our institutional response?

The violence in the public sphere is no more than an extension of violence in the private sphere; this is the message of the *Protection of Women Against Domestic Violence Act, 2005*. This is a historic moment to see the connection between the public and the private and rid the system of these false distinctions. The tolerance of minimal forms of violence is the breeding ground for extreme forms of violence against women. The first lesson we must learn from evaluating this Act is that the mindset that destroys the peace of the home for a woman is the same one that leads to violence on the streets. Violence against intimate partners is no different from violence against strangers. At a recent consultation hosted by the Chief Minister of Delhi, the Commissioner of Police said 94% of all rapes take place in the home! The veracity of this figure seems suspect, but be that as it may, its implications are obvious for violence in the public domain, making cities unsafe for women. And yet we do not see the connections between domestic violence and the safety and security of women.

Lest the protest around the gang rape end up being symbolic, we need to grasp the moment and declare that zero tolerance of violence means zero tolerance of violence.

This intolerance must not be only in proportion to the brutality of the violence or its visibility but intolerance of violence as an everyday occurrence in our lives. Violence must be equally intolerant when unleashed by the State as it is when enmeshed by a husband in a home. Hence, to respond to gang rape with demands for death penalty, castration and reducing the age of juveniles for the purposes of ensuring enhanced criminal penalties, is to miss the point. These could be the escape routes, which prevent us from looking at the violence within.

The *Protection of Women Against Domestic Violence Act, 2005* was designed as an instrument for protecting the human rights of women in Domestic Relationships. The law was based on the faith that each human being counts for one; that a woman is autonomous in her being; that her hopes, her aspirations and relationships are meant to be mutually nourishing and nurturing, Yet a reading of this Report would indicate that the focus of the judges is not the individual woman but that the unit requiring protection is the family, to which the woman is subordinated. This Report also reveals that notwithstanding our Constitution and laws, which focus on human rights, property is privileged over human rights. It seems to be the primary human right. If rights are dependent on ownership of property, it is no wonder that women are disinherited and deprived from access to the Shared Household if they are not the owners of the Shared Household. Such is the thinking on which the infamous *Batra v Batra* judgment of the Supreme Court is based. To undo that judgment, will require a leap of faith from the higher judiciary; focusing away from property to focusing on human rights.

Every generation must have the right to interpret the *Constitution of India* in a contemporary context to make it its own. Only then will they have a stake in protecting it. While the generation that drafted the Constitution is long gone, those to whom it has been entrusted have not been able to see the aspirations of a new and emerging generation. While some advances have been made in reinterpreting the right to life in the public domain, this has not happened in the private domain of the family, where women spend a large part of their lives. The gang rape of a woman is not acceptable to a younger generation of citizens as the protests have shown, so is domestic violence not acceptable to women who reside in the Shared Household.

Yet this Report is telling us that judges have not quite understood this message. The reasons for grant and denial of relief under the Act are telling. They paint the picture of the search for a perfect victim, one worthy of relief. Only married women, helpless women, deserted women, abandoned women, are entitled to relief on “moral” grounds. Only women who can show a connection to property have a Right to Reside in the Shared Household. Widows and daughters, sisters and live-in partners have no place in the shared space. They must await new laws addressed to them. Even married women who leave the Shared Household have crossed the *lakshman rekha* and must now live in their natal home, never mind whether they are welcome there or not. It is the “moral” duty of the parents to look after a deserted daughter.

Never before have I seen the use of morality with such a vengeance to deny rights. I was always under the impression that morality is the foundation of rights, not its worst enemy.

Women who leave the Shared Household for having faced violence are not in “imminent danger” of facing violence and hence not in need of Protection Orders. Women who live in the Shared Household must not be facing violence as otherwise they would have left, and hence are not in need of Protection Orders. Women who left of “their own volition” are not worthy of relief under the law. Women who refuse to restore conjugal rights are also not worthy of relief. Women who are earning do not need maintenance, those who don’t also do not deserve relief under the law, as they ought to be earning.

While some judgments of the Supreme Court have set back the law in large measure, the good news is that there are others, which have advanced the law, both in the Supreme Court and in the High Courts. Despite the *Batra* decision, judges have been able to give flesh and meaning to the Right to Reside in the Shared Household. Judges have been able to see through mala fide attempts to defeat this right by bogus surrenders of rights by sons in favor of mothers, by insisting on removal of the woman by due process rather than by physical force, by insistence on alternative accommodation before removal. These are very welcome trends. The Supreme Court in *Bhanot* has restored a woman to the Shared Household recognising that she has a right under law to reside in the Shared Household. This is the role of the Higher Judiciary, to send a signal to the 17,000 courts in the country that the law must be implemented in its spirit not just in its letter, or rather that the law must be implemented both in letter and in spirit.



*Indira Jaising*  
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January 2013



# The Big Picture

**Dr. G. Mohan Gopal**

In the shortest period of time (some six years), the *Protection of Women from Domestic Violence Act, 2005*, (“PWDVA”) has emerged as one of the most important and influential pieces of social reform legislation ever enacted by the Indian State.

The PWDVA is no ordinary law that seeks to punish an ordinary crime or correct an ordinary civil wrong. It is an instrument of social revolution that seeks to rewrite the code of ethics of the traditional Indian family, and thereby, to bring about revolutionary change in Indian society as a whole. It is a most potent instrument that seeks to create in the Indian family a place of equality, equal dignity and freedom for the Indian woman. The social revolution that the PWDVA advances is part of the Constitutional mandate for social change arising from our freedom struggle.

Violence and abuse are the daily manifestations of inequality in the domestic space (and in the public space). By providing women the right to resist such violence and abuse in the domestic space using the power of the State, the PWDVA has forged a powerful instrument for enforcing equality inside the family in relations that were traditionally considered “private” in the past.

The extraordinary and unprecedented number of Orders received by the Lawyers Collective Women’s Rights Initiative, (a total of 22,255 of which about 9,500 were analysed for this Report), shows, beyond any shadow of doubt, that the women of India have begun turning up in their tens of thousands to invoke the provisions of the PWDVA as a shield against abuse and violence in their homes.

Married women are the largest users of this law, seeking protection, residence, monetary reliefs, maintenance, custody and compensation. Other women, including divorced women, widows, daughters and sisters (women filing against members of their natal family) and women in relationships in the nature of marriage are also using this law.

More than anything else, the PWDVA has unleashed a massive national debate on domestic violence, and on the position of women within the traditional family. There is hardly a judge or an advocate in India who does not have a strong view on this Act. Large sections of the public have also joined in this debate. There has been a huge increase in public consciousness of the issue of domestic violence.

The extent of change of mindset brought about by the PWDVA is evident, for example, from the statement by the Law Commission of India in the year 2000, in the course of its review of India’s rape law, that it would not question the legally sanctioned rape of a wife by her husband on the basis that it would amount to an interference in marital relations! The impact of the public discourse on violence within the domestic space, made possible by the PWDVA, has been such that 13 years on, an important State body such as the Law Commission would not easily make such a statement.

There is another dimension of historical significance to the PWDVA.

India's most inspiring and unique achievement is gaining its independence from colonial rulers through a *non-violent* struggle. Along with truth, non-violence was the most cherished value in the name of which this Republic was created. Yet, after independence, non-violence found no place whatsoever in the governance or development of India. India completely forsook the principle of non-violence. Indeed, independent India has emerged as one of the most violent societies in the world, with one of the highest rates for murder and for violent crime in general.

It took nearly six decades for independent India to enact its first ever law against violence in the form of the PWDVA. The impetus for the enactment of this law came from international human rights law arising mainly from the Convention on Elimination of All Forms of Discrimination Against Women ("CEDAW") starting around 1992. It did not come from India's concerns about being faithful to the values of the freedom struggle. However, its special significance and potential for India should not be lost sight of. The law was of historical importance for India because for the first time, violence was legislatively defined and prohibited.

This was of special significance for India because of the historic centrality of India's commitment to non-violence. Almost simultaneously with the adoption of PWDVA, India initiated a move at the United Nations ("UN") to declare the birthday of Mahatma Gandhi as the International Day of Non-Violence. Accepting this proposal, the UN General Assembly passed a unanimous Resolution in 2007 reaffirming "*the universal relevance of the principle of non-violence,*" and expressing its desire "*to secure a culture of peace, tolerance, understanding and non-violence.*"

There is a seamless continuum between rape and sexual assault on the one hand and domestic violence against women on the other. Those who come from violent homes continue their violence on the outside, contributing in a very important way to rising violent criminality. Children and women are the most common victims of violence in the home. The successful reduction and elimination of violence against women and children inside the home is the most potent method by which to increase peace and goodwill in society.

Combining the seminal ideas of equality and non-violence, the PWDVA has become an enormously powerful and effective threat to the existing social order. There is, therefore, today fierce resistance from traditional forces to a law that has already begun to change the dynamics within the family space.

A change of such mammoth revolutionary proportions cannot be brought about without a great struggle and without the highest commitment on the part of State institutions and civil society.

The big picture that emerges from the analysis contained in this Report is that the State is failing to adequately support this unprecedented and revolutionary attempt to bring about essential social change and realise the vision of the Constitution through peaceful, legal means.

The implementation of the law has been compromised and diluted by the negative bias and prejudice of an important section of advocates, government officials and judges who share the concern of

traditional forces about the type of social change sought to be advanced by the law. Instead of interpreting and applying the law broadly and expansively, the law has been curtailed through interpretation. Instead of proactively providing women the protection of the law, excuses are being found to deny them the remedies provided in the law. The denial of remedies to which women are entitled is on grounds that are not based in the law but that are derived from patriarchal ideas about the status of women.

Nor has there been anywhere near the kind of investment in institutional capacity and infrastructure essential for the success of this historical effort. The relative neglect of this law points to a conservative social consensus of dominant groups to delay, if not prevent, the social change the law seeks to bring.

Going forward, there is need for greater recognition that India's future depends, in large part, on our ability to end domestic violence. The culture of the country can and must be changed through this law from a culture of gender inequality to a culture of gender equality; from a culture of pervasive violence to a culture of non-violence.

There is a need for massively scaling up the commitment of all branches of the State to ensure the effective implementation of the PWDVA. There is a need for significantly scaling up investment in the PWDVA. New and imaginative institutional arrangements are required in which women must play a leading role. The continuing crisis of "missing women judges" and "missing women prosecutors" must be resolved to ensure that there is an adequate number of women in key positions in the judicial system. Personnel implementing the Act – women and men – must be selected and trained for being fully committed to the ideology of the Constitution.

Going forward, it is also important to forge better linkages between the struggle against domestic violence with other struggles for equality in society, such as the struggles of the dalits against caste atrocities, the struggle of minorities against discrimination, and the struggle of sexual minorities for equal rights. In most cases, the women who belong to these other disempowered identities are the worst sufferers of multiple types of discrimination.

Such linkages will also strengthen these other social movements by forcing them to confront gender inequalities and violence against women in their own domestic space. By cleansing themselves of domestic violence and fully empowering their women in their own domestic spaces, those who are struggling for equality in other domains will find a new strength flowing to them from the equitable domestic spaces they will create. A narrow approach to social change in distinct silos must give way to a broader struggle animated by the values of the freedom struggle and the ideals of the Constitution.

If the PWDVA fails, India will fail. Without eliminating domestic violence, India has no future. All who care about the future of our country must reflect on how to make the PWDVA work effectively.

*Dr. Mohan Gopal is currently the Director of the Rajiv Gandhi Institute for Contemporary Studies in New Delhi. He was the Director of National Judicial Academy between 2006 and 2011.*



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



# List of Abbreviations

A.P	Aggrieved Person
ASJ	Additional Sessions Judge
C.C No	Civil Case Number
CEDAW	Convention on the Elimination of all forms of Discrimination against Women, 1979
CMP No	Civil Miscellaneous Petition Number
CPC	Civil Procedure Code, 1908
Cri LJ	Criminal Law Journal
CrI Misc No	Criminal Miscellaneous Number
Cr.P.C	Code of Criminal Procedure, 1973
CrI. R.C No	Criminal Revision Case Number
DIR	Domestic Incident Report
D.V	Domestic Violence
DVC No	Domestic Violence Case Number
D/o	Daughter of
E.S.I.	Employee's State Insurance
FIR	First Information Report
I.A No	Interlocutory Application Number
ID	Identity
IPC	Indian Penal Code, 1860
KCCR	Karnataka Civil and Criminal Reporter
Ld. MM	Learned Metropolitan Magistrate
LIC	Life Insurance Corporation of India
M.A	Master of Arts
M.A No.	Miscellaneous Application Number
M & E	Monitoring and Evaluation
MLC Report	Medico Legal Case Report
MOU	Memorandum of Understanding
NCR	National Capital Region
NCT	National Capital Territory of Delhi
NGO	Non-Governmental Organisation
NRI	Non-Resident Indian
PO	Protection Officer
PUCL	Peoples Union for Civil Liberties
PWDVA	Protection of Women from Domestic Violence Act, 2005
PWDVR	Protection of Women from Domestic Violence Rules, 2006
R1	Respondent 1
S.C	Supreme Court
SCC	Supreme Court Cases
SH	Shared Household
SHO	Station House Officer
SLP	Special Leave Petition
S.P.	Service Provider
U.K.	United Kingdom
U/s	Under Section
U.S.A	United States of America



Section A

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# Setting the Context





# Introduction and Objective of the Report

## 1. Introduction to the Protection of Women from Domestic Violence Act, 2005

Laws relating to women within the sphere of the family operate within a defined legal universe. Often this is an inherited universe, which has been modified or altered by Statute. Women in India are governed by their personal laws in matters relating to the family. These include laws relating to marriage, adoption, inheritance and divorce. Many of the laws relating to marriage result in a loss of identity of the woman as an individual citizen and make her status dependent on that of her husband. Often judicial attitudes further affirm the subordinate position of women in relation to their husbands. For example, a recent Gujarat High Court judgment held that when a Zoroastrian Parsi woman marries a non-Parsi man under the *Special Marriages Act, 1954*, she is deemed to have lost her religion and acquires the religion of her husband,<sup>1</sup> thereby diminishing her status and denying her equal rights within the marriage.

In addition to prevalent discriminatory practices, very few laws address the economic rights of women within marriage. To date, there is still no law giving a woman a share in the matrimonial property or any other economic rights during marriage or divorce. Hindu Law inherited the concept of *Stridhan*, which was intended to be gifts made to a daughter by her parents at the time of her marriage. However, since Hindu Law remained un-codified, there was much confusion on the subject of *stridhan*. Over time, *stridhan* trans-mutated into dowry and went into the custody of the husband or the in-laws. Today there is little distinction between *stridhan* and dowry. The making of “gifts” has become cohesive, and laws passed in 1961 to prohibit the giving and taking of dowry have had no impact on the institution of dowry.<sup>2</sup> Although the institution of dowry may not exist among Muslims or Christians, it has been adopted as a commercial transaction, which takes place at the time of marriage.

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<sup>1</sup> SCA No 449/2010

<sup>2</sup> The Dowry Prohibition Act, 1961

The association of violence with the giving and taking of dowry is well documented. It has resulted in the formulation of criminal laws, more particularly Section 304B and Section 498-A of the *Indian Penal Code, 1860* (“IPC”). However, these two provisions have had very little impact on this customary practice. While Section 304-B addresses the issue of culpable homicide after the death of the woman, it has done little to prevent such deaths from occurring. Section 498-A, despite its much-maligned “misused” status, is hardly ever invoked by the majority of women who still hope to make their marriages work and is often only coupled as an additional charge with Section 304-B after the death of the woman.

There is an unspoken assumption that the husband has ‘a moral obligation to support his wife and children.’ This is premised on the assumption that the wife is not an earning or productive economic unit of the family and the obligation is “moral” rather than legal. Section 125 of the *Criminal Procedure Code, 1973* (“Cr. P.C.”) has been interpreted to mean that it is intended to address destitution and prevent vagrancy of woman. The application of Section 125 of the Cr.P.C. to Muslim women through the judgment of the Supreme Court in *Mohd. Ahmad Khan v. Shah Bano Begum and Ors.*<sup>3</sup>, led to a major controversy over the question of the jurisdiction of Courts to interpret Muslim Personal Laws. This judgment which held that divorced Muslim women were entitled to maintenance under Section 125 of the Cr.P.C. led to nationwide protests demanding the exclusion of Muslim women from the operation of this provision. This in turn led to the passing of the *Muslim Women (Protection of Rights on Divorce) Act, 1986* which sought to deny the application of Section 125 of the Cr.P.C. to Muslim women. It was not until the law was interpreted in *Danial Latifi and Anr. v. Union of India*<sup>4</sup> that the Supreme Court held that the denial of access to Section 125 of the Cr.P.C. would be discriminatory against Muslim women and would violate Articles 14 and 15 of the *Constitution* unless it was coupled with an equally efficacious alternative remedy. It was this judgment that made it possible for Muslim women, including divorced Muslim women to claim maintenance as ‘reasonable and fair provision’ for life even after divorce.

Along with the absence of laws that grant women the right to matrimonial property, succession laws in India are inherently unequal. In Hindu Law, women are not recognised as coparceners and are excluded from a share in the ancestral property. It was only after the law was amended in 2005, that daughters were recognised as coparceners and entitled to a share in the ancestral property<sup>5</sup>. However, mothers and wives are still not recognised as coparceners considerably reducing their share in the property. Similarly, inheritance rights under Muslim Law favour sons as against daughters. There is very little, if any, recognition of

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<sup>3</sup> 1985 AIR 945

<sup>4</sup> 2001 (7) SCC 740

<sup>5</sup> Section 6, Hindu Succession (Amendment) Act, 2005

the rights of a single woman, whether they are unmarried daughters, widows, separated or deserted women.

It is in this context that the *Protection of Women from Domestic Violence Act, 2005* (“PWDVA” or “the Act”) was visualised as a law of universal application to all religions, castes and classes. The Act recognises domestic violence as a civil wrong. As is well known, the law is gendered and protects women in the Shared Household. A major breakthrough in the law was to define domestic violence in the broadest possible terms to include physical, emotional, psychological, verbal and sexual violence. It addresses violence within the Shared Household, which is defined as a household in which the parties are living or have lived together regardless of the ownership of the household. It confers, for the first time, a Right to Reside in the Shared Household to all women who have or had a Domestic Relationship with the Respondent. However, it is unfortunate that the Supreme Court in *S.R. Batra and Anr. v. Smt. Taruna Batra*<sup>6</sup> restricted the right of residence only to property belonging to the husband.

A victim or survivor of domestic violence can claim the following reliefs under the PWDVA:

- Protection Orders in the form of civil injunctive reliefs to stop and prevent acts of domestic violence, as well as acts adversely affecting the legitimate rights and interests of victim/survivors.
- Residence Orders to prevent victim/survivors’ illegal dispossession and prevent any acts that impact on her peaceful occupation of the Shared Household.
- Orders for Monetary Reliefs to reimburse actual expenses incurred due to domestic violence (e.g., medical expenses, loss of earnings) as well as Maintenance in the form of an appropriate lump sum payment or monthly payments for the woman as well as for her children.
- Orders granting Temporary Custody of children.
- Compensation Orders for mental trauma and emotional distress caused to the victim/survivors as a result of acts of domestic violence.

By empowering Courts to grant these Orders, the PWDVA has made an attempt to build more equal relationships within the home. The Act is specifically designed to operate in conjunction with other civil laws (e.g., family laws) and criminal laws (e.g., Section 498A of the IPC), thus reducing the multiplicity of forums, while simultaneously providing multiple avenues for victim/survivors to seek legal redress.

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<sup>6</sup> 2007 (3) SCC 169

The passing of the PWDVA for the first time recognised that no law is self-activating and that access to justice must be facilitated by the State. This was done by the appointment of Protection Officers and Service Providers as well as the designation of Medical Facilities and Shelter Homes. The provision for the appointment of Protection Officers was a deliberate attempt to depart from the adversarial system by facilitating evidence collection at the behest of the Court so that no woman is denied relief for want of evidence and the burden of bringing her case is not entirely upon her. Service Providers, who are primarily non-governmental organisations (“NGOs”), doing casework for the last few decades were given recognition and the status of being able to record Domestic Incident Reports and facilitating access to justice. Medical Facilities were charged with the duty of also recording Domestic Incident Reports thereby introducing them to the issue of domestic violence so that it can be effectively addressed. The police had the duty to inform women of their right to approach a Court for Protection Orders and for the enforcement of Court Orders. The power to grant civil injunctions was vested with the Magistrates.

## 2. Monitoring and Evaluation Reports from 2007 to 2012

The PWDVA was designed and passed to address the gap between the guarantee of the Constitution of equal rights and the problems faced in existing laws. The true spirit of any legislation, however, is recognised only through its effective implementation. The Lawyers Collective Women’s Rights Initiative which was instrumental in the enactment of the PWDVA, has taken a step further through the annual monitoring and evaluation (“M&E”) of the implementation of the Act since 2007.

The first to the fifth M&E reports were based on three sources of data: (1) Infrastructure data received from the various State government departments on the implementation of the PWDVA; (2) State visits conducted by the Lawyers Collective Women’s Rights Initiative; and (3) Analysis of Orders on PWDVA delivered by the Courts. The data received from all three sources was examined together in order to present an emerging picture of the implementation of PWDVA.

This year, three separate publications have emerged from the data collected. Being the sixth year of monitoring and evaluation, the Lawyers Collective Women’s Rights Initiative decided to publish a monitoring tool to reflect the learning since 2007. Accordingly the *Resource Tool for Monitoring and Evaluation of PWDVA* provides guidance for different stakeholders under the Act on conducting Monitoring and Evaluation of the implementation of the Act. The *Manual on Best Practices on PWDVA* compiles best practices emerging from information received from State visits and the State Governments since 2007 when the annual M&E exercise commenced. And finally, *Staying Alive: Evaluating Court Orders* is the

present Report focusing solely on the Orders of the Higher Judiciary and the Subordinate Courts for the current evaluation period. All three reports have different roles and can be used independently of each other though all three ultimately enhance our understanding of how the Act is being implemented.

While previous reports recorded certain trends in the Order Analysis, no detailed analysis of these trends was undertaken. For example, it has been noted that married women are the largest users of the Act or that maintenance is the most common relief claimed and granted by the Courts. This year's Report analyses these trends in-depth and accordingly includes the maximum number of Orders for analysis of any of the previous M&E Reports. The Sixth M&E Report thus seeks to evaluate the extent to which women have been protected against violence within the framework of marriage or in other family contexts as daughters, mothers, widows or divorcees and women in relationships in the nature of marriage through judicial pronouncements.

# Methodology

The Sixth Monitoring and Evaluation Report on the PWDVA focuses on the Orders and judgments of the lower and higher judiciary passed under the Act. Applications under the Act are filed before the Magistrates' Courts from where appeals lie to Sessions Courts. Appeals from these Orders are also heard by the higher judiciary, i.e., the High Courts and the Supreme Court. This Report presents a qualitative analysis of these Orders and judgments. Quantitative data, where presented, is used to indicate trends though no conclusions are drawn from the presentation of the quantitative data.

## 1. Identification of Research Questions

The Objective of the Report, as noted in the previous chapter, is to evaluate the extent to which women have been protected against violence within the domestic sphere under the Act with a specific focus on the role of the judiciary. In order to identify the research questions for the report, the trends emerging from the analysis of judgments and orders in the previous M&E reports were identified. Based on these trends, the Lawyers Collective Women's Rights Initiative identified the following research questions for the evaluation/analysis of judgments and Orders:

- (i) To what extent have Courts been able to protect the Right to Reside in the Shared Household? To what extent has the *Batra*<sup>7</sup> judgment resulted in denial of this right?
- (ii) To what extent have Courts been successful in altering inherited prejudices, stereotypes and discriminatory practices against women to achieve a more equal relationship in the Shared Household?
- (iii) To what extent have Courts imbibed the definition of domestic violence as not confined only to physical violence or demands for dowry?
- (iv) To what extent have Courts recognised the right to be compensated for violence?

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<sup>7</sup> Supra Note 6

- (v) To what extent have judges understood that Protection Officers must play a major role in dispensation of justice by presenting evidence as and when called upon to do so?
- (vi) Are interim orders being granted as they would be in other cases on the basis of prima facie evidence based on an affidavit recording the violence or the threat of violence?
- (vii) To what extent have certain vulnerable categories such as single women, daughters facing violence in the natal home, widows and divorced women been protected?
- (viii) Does the analysis of the Orders indicate any State or district specific trends?

## **2. Collection and Analysis of Judgments and Orders**

### **2.1 High Court and Supreme Court Judgments**

#### ***2.1.1 Judgments gathered and analysed***

Three Supreme Court and 34 High Court judgments on cases under the PWDVA were delivered during the current monitoring period,<sup>8</sup> between September 2011 and September 2012.<sup>9</sup> The judgments were identified through a review of the All India Reporter (“AIR”) and Supreme Court Cases (“SCC”). In addition key judgments of the higher judiciary delivered during the previous reporting period and not analysed in the previous M&E Reports are also included in this year’s analysis.

#### ***2.1.2 Analysis of Judgments***

The analysis offers a review of the judgments against the primary objectives of the law to ascertain whether these judgments will have a positive impact on the orders passed by the lower courts; namely, the Sessions Courts and the Magistrates’ Courts. While the analysis is based on the research questions, it focuses on those issues that have not been settled previously by the higher judiciary.

### **2.2 Orders of the Magistrates and Sessions Courts**

The Orders of the Magistrates’ and Sessions Courts were collected through the Registrar of the Supreme Court of India. In addition, details of the number of

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<sup>8</sup> Judgments by the higher judiciary before 2011 have been included in previous monitoring and evaluation reports.

<sup>9</sup> We note a decline in the number of judgments by the higher judiciary this year, compared to last year. Whether this trend is a reflection on the fact that most issues of law have been settled with respect to the PWDVA leading to more authoritative orders by the lower courts deserves further deliberation.

applications filed, the nature of orders passed (interim or final) and the appeals from the others were obtained through a template provided by Lawyers Collective Women's Rights Initiative to the Registrar of the Supreme Court.

The Reporting period for the Orders from the Magistrates' and Sessions Courts is 1 April 2011 to 31 December 2011. The reporting period for the Orders is different from that of the judgments of the higher judiciary due to the lack of journals reporting lower court decisions in India. The judgments of the higher judiciary are reported on a monthly basis through the AIR or SCC or other State specific reporters. The orders of the lower courts, by contrast, have to be called for by higher courts (in this case through the Registrar of the Supreme Court) and the time lag for collecting the Orders is much greater.

### ***2.2.1 Orders Received and Analysed***

Copies of Orders from the Magistrates' and Sessions Courts were received from 27 of the 35 States and Union Territories while detailed information requested in the template were received only from 18 states (See Table 1). The number of Orders received and analysed by Lawyers Collective Women's Rights Initiative from the lower courts has increased steadily over the years. In the first year of M&E, all Orders received were analysed. These were a total of 592 Orders that were analysed. In the second year only judgments of the higher judiciary were analysed as Orders from the lower Courts were not available. From the third year onwards, representative samples of Orders were analysed every year. In the third year, 852 Orders were analysed, in the fourth year, 3493 Orders were analysed and in the fifth, 7,557 Orders were analysed.

In the sixth and current year of M&E, Lawyers Collective Women's Rights Initiative received Orders from 27 States and Union Territories. The total number of Orders received for the time period of 1 April 2011 to 31 December 2011 (nine months) was 22,255 of which 9,526 orders have been analysed for the purpose of this Report. In addition, Orders from Haryana from the last reporting period that were not analysed in the previous M&E Report due to late receipt of the Orders have been included in this year's analysis.

### ***2.2.2 Translation***

Not all Orders received were in English. Orders received from Maharashtra, Gujarat, Rajasthan, Karnataka, Tamil Nadu and Uttar Pradesh were translated by Lawyers Collective Women's Rights Initiative.

### ***2.2.3 Representative Sampling for Analysis***

As in previous years, this year's M&E Report on the Orders passed by the Magistrates' and Sessions Courts is also based on representative sampling for two reasons. One, the sheer number of Orders received this year. Two, the fact that

**Table 1: State-Wise Data on Applications and Orders under the PWDVA<sup>10</sup> during the period 01.04.2011 to 31.12.2011**

S. No.	States	Total Number of Cases filed	Total Number of Interim Orders	Total Number of Final Orders/ Applications Disposed off	Total Number of Applications Pending	Total Number of Appeals Filed	Total Number of Appeals Disposed of by the Sessions Court
1	Arunachal Pradesh	0	0	0	0	0	0
2	Assam	441	245	157	284	30	5
3	Gujarat	3141	128	986	2155	184	72
4	Himachal Pradesh	988	101	433	555	92	18
5	Manipur	325	36	45	312	28	13
6	Maharashtra	16632	1327	3465	13167	939	345
7	Meghalaya	0	0	0	0	0	0
8	Mizoram	38	6	33	10	0	0
9	Nagaland	0	0	0	0	0	0
10	Puducherry	35	9	5	30	1	1
11	Sikkim	20	5	19	1	0	0
12	Tamil Nadu	1395	104	289	1106	126	41
13	Tripura	435	18	92	326	11	2
14	Uttar Pradesh	9804	413	1272	8532	770	248
15	Kerala	4928	1759	1496	4356	62	8
16	Punjab <sup>11</sup>	1476	5526	229/216	1186	59	21
17	Haryana <sup>12</sup>	2325	6825	670/553	1821	57	65
18	Chandigarh	165	15	0/58	124	59	3

all the Orders were not received at the same time and continued to be sent even while the Report was being written. Prior to the representative sampling of the Orders received, some outright exclusions were made for this year's Report. These include:

- Orders from Assam, Madhya Pradesh and Chhattisgarh which were received late and resulted in the complete exclusion of these Orders for this year's Report.
- Orders from West Bengal, Tripura, Bihar and Jharkhand were hand written and those that were illegible were excluded from the Report.

<sup>10</sup> Source: Data received from the Supreme Court of India based on inputs from the High Courts.

<sup>11</sup> In the case of Punjab, interim orders are greater than applications filed and these maybe carry over cases from before the reporting period

<sup>12</sup> In the case of Haryana interim orders are greater than applications filed and this may be due to the carry over cases from before the reporting period

- No Orders or data indicating that any applications had been filed were received from Meghalaya, Nagaland and Arunachal Pradesh.

The Lawyers Collective Women's Rights Initiative intends to analyse the Orders excluded from this Report in a separate report.

The representative sample of Orders for the purposes of the Report was arrived at as follows:

1. **Less than 100 Orders:** Where less than one hundred orders were received from a State, all orders were tabulated and analysed.
2. **More than 100 Orders:** For States where over one hundred Orders were received, Lawyers Collective Women's Rights Initiative, based on the amount of time that analysis of cases would require, set a cut off date of 15 May 2012 for the receipt of Orders. Further criteria as described below were established for States where the orders were received before and after the cut-off date.
  - a. ***More than 100 orders received before the cut-off date: exclusion based on districts.*** Where more than one hundred Orders were received from a particular State before 15 May 2012, 60% of the Orders from those States were tabulated and analysed. The sample for the 60% was chosen based on districts within those States with certain demographic characteristics such as low sex ratio, low female literacy, high incidence of crimes against women, identification of the district as backward by the Planning Commission, presence of NGOs working on domestic violence and presence of government schemes to encourage awareness on domestic violence. State Capitals were included for tabulation and analysis for all States.<sup>13</sup> The choice of districts based on these criteria was made to determine if these indicators had any impact on the number and types of applications filed and the orders passed.
  - b. ***More than 100 orders received after the cut-off date: exclusion based on districts and the category of women applying for relief:*** For States where more than one hundred Orders were received after the cut-off date, analysis of 60% of the Orders was not possible due to the paucity of time. These were the States of Andhra Pradesh, Karnataka, Kerala, Punjab, Haryana, Rajasthan and Uttar Pradesh. For these States, in addition to identification of districts based on the criteria discussed above, Orders for analysis were identified based on the category of women that were applying for the Orders. Except Orders passed in cases of Hindu married women, all other orders were

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<sup>13</sup> See Annexure 2 for further details.

tabulated and analysed. The exclusion of Orders involving married women was made on the basis of the observation emerging from the previous M&E reports as well as from the Orders collected this year that firstly, Hindu married women are the primary users of the Act and secondly, in such cases reliefs appeared to be granted routinely by the lower Courts. This is, however not the case with daughters, widows, women in relationships in the nature of marriage, women belonging to religious minorities and divorced women.

Table 2 details the number of Orders received by Lawyers Collective Women's Rights Initiative from States and Union Territories as well as the number and percentage per State of Orders analysed and where applicable, the districts chosen for the review of the Orders.

**Table 2: Break up of Orders Received<sup>14</sup> and Analysed from each State for the Time Period of 1.4.2011 to 31.12.2011**

S. No.	Name of the State & Districts	No. of Orders Received	No. of Orders Analysed	Percentage of Orders analysed	Districts chosen for Analysis <sup>15</sup>
1	Andaman and Nicobar	9	9	100	
2	Andhra Pradesh	928	309	33	Hyderabad, Nellore, Rangareddy, East Godavari, Gadwal, Guntur, Vijaywada, Warangal, Anantpur and Kurnool
3	Bihar	44	44	100	
4	Chandigarh	36	36	100	
5	Delhi	518	311	60	
6	Gujarat	1164	709	60	Ahmedabad, Kachh, Surat, Junagarh, Jamnagar, and Rajkot
7	Himachal Pradesh	610	361	60	Chamba, Kangra, Kullu, Shimla and Solan
8	Jharkhand	73	73	100	
9	Karnataka	1073	509	47	Bengaluru, Haveri, Bellary, Dakshin Kannada, Chikamagalur, Devanagere, Raichur, Dharwad, Mysore, Bidar, Gulbarga and Mandya
10	Kerala	2753	1193	43	Thiruvananthapuram, Ernakulum, Marlapuram, Kannur, Pathanamthita, Idukki, Thissur, Kotayam, Kozhikode and Wayanad
11	Maharashtra	4326	2590	60	Amravati, Aurangabad, Mumbai, Nagpur, Nashik and Pune
12	Manipur	59	59	100	
13	Mizoram	26	26	100	

<sup>14</sup> Source: Orders received from the Supreme Court of India

<sup>15</sup> Please refer to Annexure 2 for detailed reasons for selecting the districts for analysis

S. No.	Name of the State & Districts	No. of Orders Received	No. of Orders Analysed	Percentage of Orders analysed	Districts chosen for Analysis <sup>15</sup>
14	Odisha	238	146	60	Balasore, Kalahandi, Balangir, Koraput, Cuttack, Khorda and Mayurbhanj
15	Punjab and	4992	1499	30	Muktar Sahib, Ludhiana, Patiala and Jalandhar
16	Haryana				Jhajjar, Kurukshetra, Gurgaon, Yamuna Nagar, Jind, Hisar, Karnal, Panipat and Bhiwani
17	Rajasthan	840	271	32	Jaipur, Jodhpur, Pali and Chittorgarh
18	Sikkim	22	22	100	
19	Tamil Nadu	363	215	60	Puducherry, Theni, Thirunelveli, Vellore, Coimbatore, Chennai, Erode, Karur, Madurai, Cuddalore
20	(including Puducherry)				
21	Tripura	80	72	100% of legible orders	
22	Uttarakhand	460	284	60	Chamoli, Udham Singh Nagar, Dehradun, Haridwar and Nainital
23	Uttar Pradesh	1625	541	33	Lucknow, Allahabad, Ghaziabad, Agra, Meerut, Rampur, Chitrakoot, Azamgarh, Mathura, Balia and Faizabad
24	West Bengal	766	247	100% of legible orders	
States' Orders not analysed					
25	Assam	293	Not Analysed		
26	Chhattisgarh	92	Not Analysed		
27	Madhya Pradesh	865	Not Analysed		
	TOTAL	22,255	9,526		

### 2.2.4 Tabulation Sheet and Analysis

The first step in the analysis of the Orders was to capture the information and data from the text of the individual Orders in an analytical form. To this end, a matrix based on key indicators such as Marital and Familial Status of the Aggrieved Woman, Nature of violence, Reliefs claimed, Reliefs granted etc., was created. The tabulation in this matrix was also marked according to the district and State from where the Order was received.<sup>16</sup> This year, in order to address the specific research questions, revisions were made to the tabulation sheet. For instance, to validate the hypothesis emerging from the previous years' analysis that the place of residence of the woman at the time of filing the application impacts the final outcome of the case, new indicators were added to the Tabulation Sheet. Cases filed by married women were, therefore, segregated under the following heads:

<sup>16</sup> For further details on the tabulation process please refer to 'Resource Tool for Monitoring and Evaluating the Implementation of The Protection of Women from Domestic Violence Act' (2013) Lawyers Collective Women's Rights Initiative

- Married and living in the Shared Household
- Married and living in the Natal Home
- Married and Living on her own

In addition, based on five years of experience of Order analysis, an effort was made to standardise the tabulation sheet by making the sheet objective and providing a set of options for each indicator in the matrix. The data entry operators now had to choose the most appropriate option from a list provided for each indicator. For example, the indicator on marital status of the woman had the following set of options:

- a) Married
- b) Married and living in Shared Household
- c) Married but living separately in the Natal Home. If yes, please specify for how long
- d) Married but living on her own
- e) Divorced
- f) Divorced and living in Shared Household
- g) Divorced but living separately in the Natal Home.
- h) Divorced but living on her own
- i) Unmarried
- j) Widow
- k) Widow and living in Shared Household
- l) Widow but living separately in the Natal Home.
- m) Widow but living on her own
- n) Relationship in the Nature of Marriage
- o) Not Known

Based on the tabulation of cases, trends in the Orders were discerned with specific focus on the Research Questions. The analysis of the Orders identified both Orders demonstrating the trend as well as those that were exceptions to the emerging trend. In addition, State and district specific analysis of the Orders was also carried out and where State and district specific trends were identified these have been mentioned in the Report.

### ***2.2.5 Limitations***

Limitations in the gathering of the Orders and Judgments under the PWDVA and their analysis are related to the nature of the information gathered as well as to the analysis itself. These are:

- The number of Orders received by Lawyers Collective Women's Rights Initiative does not correspond in each State to the number of applications filed by women under PWDVA.
- Orders from Maharashtra, Gujarat, Rajasthan, Karnataka, Tamil Nadu and Uttar Pradesh have been translated and while every effort was made to cross-check the translation, there can be no guarantee of the complete accuracy of the translations.
- Orders from West Bengal and Tripura were hand written. There can be no guarantee that no errors were made in deciphering some of the handwriting.
- A total of 9,526 cases were tabulated and human errors in the tabulation cannot be ruled out.
- Due to the paucity of time and staggered receipt of Orders, not all the Orders received could be analysed. Though every attempt was made to identify a proper representative sample for analysis in light of the Research Questions, the exclusion of key Orders that could have impacted the analysis cannot be ruled out.

### 3. Structure of the Report

The sixth M&E Report is divided in five sections.

**Section A** sets the context of the sixth M&E Report including an introduction to the PWDVA, the Objective of this Report and the Methodology adopted for this Report.

**Section B** presents the analysis of the judgments of the High Courts and the Supreme Court under the PWDVA.

**Section C** presents the analysis of the Orders of the Magistrates' and Sessions Courts under the PWDVA and commences with a profile of the users of the Act and of the forms of violence reported under the Act. Each relief under the Act is analysed separately through an examination of the reasons for the grant or refusal of reliefs. The analysis commences with an explanation of these reasons and a summary of findings in relation to the Orders followed by case studies to elucidate the findings. The emerging trends from the findings are highlighted at the end of every Chapter. In the Chapters on Residence Orders and Monetary Reliefs, the reasons for grant or refusal of orders are further categorised according to the marital, familial and residential status of the women applying for these orders, i.e.,:

1. Married women living in the Shared Household
2. Married women residing in the Natal Home

3. Widows (including cases filed by mother against sons and daughters-in-law and those filed by the woman against her in-laws.)
4. Divorced Women
5. Women in Relationships in the nature of Marriage
6. Daughters/Sisters

**Section D** presents the Conclusions of the Report including reflections on the analysis of the Orders and Judgments and recommendations for the implementation of the Act in relation to the Judiciary.

**Section E** contains the Annexures to this report. This includes the detailed list of all individuals who have been a part of this year's monitoring and evaluation process and the rationale for choosing the districts for the representative sample of Orders for analysis.



Section B

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**Analysis of Judgments of the  
Higher Judiciary:  
*High Courts and the Supreme Court***





# Judgments of the Higher Judiciary

## 1. Introduction

Judgments of the higher judiciary are critical to the successful operation and implementation of the PWDVA. While Magistrates' Courts are empowered to entertain applications and pass orders under the Act, cases that go in appeal to the High Courts and to the Supreme Court, clarify and substantiate the law. Since its enforcement in 2006, the PWDVA has matured considerably through judicial interpretation. The interpretation and application of the provisions of the Act in most cases has helped to draw focus on the objectives of the law to protect women from domestic violence and destitution.

Three Supreme Court and 34 High Court judgments on cases under the PWDVA were passed during the current monitoring period,<sup>17</sup> between September 2011 and September 2012.<sup>18</sup> This Chapter does not analyse all the judgments of the higher judiciary and focuses only on those judgments that settle issues that have not been settled previously by the higher judiciary. The analysis reviews the judgments against the primary objectives of the law to ascertain whether they will have a positive impact on Orders passed by the lower courts.

## 2. Substantive Rights: The Right to Reside

Among the reliefs specifically provided for in the PWDVA are Residence Orders. On the finding of domestic violence, a Magistrate may pass a myriad of Orders to protect the Right to Reside of a woman in a Shared Household. Section 2(s) defines a Shared Household as one that may be owned or tenanted jointly or singly by the woman and/or the respondent and in which they may or may not have any interest.

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<sup>17</sup> Judgments by the higher judiciary before 2011 have been included in the earlier M&E Reports.

<sup>18</sup> We note a decline in the number of judgments by the higher judiciary this year, compared to last year. Whether this trend is a reflection on the fact that most issues of law have been settled with respect to the PWDVA leading to more authoritative orders by the lower courts deserves further deliberation.

## 2.1 Woman's Right to Reside in Husband's Rented Premises

In *Kavita Dass v. NCT of Delhi & Anr.*<sup>19</sup>, the Delhi High Court dealt with a complex factual situation. In this case, the aggrieved woman had been married to the respondent since 1975. He left their home and abandoned her in 2009. She continued living in the rented house that they were both living in, when with the connivance of the landlord, the respondent had her evicted rendering her homeless and forcing her to take shelter at her brother-in-law's house. In 2009, the respondent filed a divorce petition and also coerced the woman to sign an out-of-court Memorandum of Understanding ("MoU") by fraudulent means. The aggrieved woman filed a complaint under Section 12 of the PWDVA seeking interim relief and was granted an interim order of Rs.10,000 per month as interim Maintenance and a monthly rent of Rs.25,000 from the date of her eviction from the Shared Household.

In 2011 the husband rented another premises for his use which the woman entered with the help of a Protection Officer who procured the keys to the premises from the husband. Since then, the woman had been residing with the husband in the new rented shared accommodation.

The woman then moved an application in the District Court seeking protection against her removal from this Shared Household. An interim order under Sections 17 and 19 of the PWDVA was passed by the Magistrate, granting her the Right to Reside in the new Shared Household. This Order was later reversed as, in the opinion of the Magistrate, the woman in signing the MoU, was fully aware that she had to vacate the premises where she was residing. The Magistrate therefore directed her removal from the premises by taking due recourse to law. On appeal, the Sessions Court upheld the Magistrate's Order and the woman was directed to be removed from the husband's rented premises on the ground that the premises was not a Shared Household and the woman had no right to enter the premises forcefully.

At the Delhi High Court, the wife sought to quash a First Information Report ("FIR") registered against her under Section 448 of the IPC for trespassing and to set aside the order of the Sessions Court. In the judgment delivered by **Suresh Kait, J.** the Delhi High Court, on a perusal of the PWDVA and the judgment of the Hon'ble Supreme Court in *Smt. Kanwal Sood v.. Nawal Kishore and Anr.*<sup>20</sup>, noted that the Phrase "shared household" includes any household owned or tenanted by either of the parties in respect of which either the woman or the respondent or both, jointly or singly, have any right. Since the woman was the legally wedded wife of the respondent, the High Court held that she had a right to live with the

<sup>19</sup> CrL. M.C. 4282/2011: Decided On: 17.04.2012

<sup>20</sup> MANU/SC/0107/1982: (1983) 3 SCC 25

respondent, whether he lives in an ancestral house, his own acquired house or a rented house. The Orders passed by the Magistrate's and the Sessions Courts were held to have defeated the very purpose of the PWDVA. Allowing the woman's petition, the judgment set aside these Orders and directed that the FIR against the woman be quashed along with all the emanating proceedings.

In light of the above judgment it is imperative that we bring to the attention of the reader, the Madras High Court judgment delivered by **V. Ramasubramanian, J.** in ***Vandhana v. T. Srikanth and Krishnamachari***<sup>21</sup> in 2007, less than a year after the PWDVA came into force. In this case, the Court opined that a *"healthy and correct interpretation of 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"*. The judgment upheld the aggrieved woman's Right to Reside in her husband's home, despite the contention of the husband that they had never lived together in the Shared Household after marriage. The judgment clarified that the woman's right to protection under Section 17 of the Act, co-exists with her right to live in the Shared Household and is not dependent on whether or not she had marked her physical presence in the Shared Household. Thus, the Court held that, *"[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."*

The High Court also observed that though the offer made by the respondent-husband to pay a certain amount towards rent appeared to be fair and reasonable, the right guaranteed under the PWDVA could not be negated by such offers, however reasonable they may be. It was further held that *"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 PWDVA. Such a statutory right cannot be rendered nugatory by asking the wife to look for a rental accommodation and demand payment of the rent from the husband."*

Both the judgments above clarify and reaffirm the wife's Right to Reside in the Shared Household by virtue of her "marriage", irrespective of whether the property is rented or owned by the husband. The judgment by the Madras High Court also indicates that in situations where the wife wants to reside in the

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<sup>21</sup> 2007(51)Civil CC (Madras), MANU/TN/7835/2007

Shared Household, the suggestion of providing alternate accommodation or rent for the same may not be adequate and cannot compensate for her Right to Reside in the Shared Household.

## 2.2 Right to claim Residence in a 'particular' Shared Household

The Delhi High Court in *Sunil Madan v. Rachna Madan & Anr*<sup>22</sup> was faced with the question of whether a woman could claim a Right to Reside in the Shared Household, where the husband was residing, despite the fact that she had been offered alternative residence by the husband.

In the judgment delivered by **M. L. Mehta J.**, the Court reflected on the facts and circumstances of the case and the purpose of providing the Right to Reside under the PWDVA and came to the conclusion that the reason for providing this right of residence to the wife is that she should not be left homeless by the actions of the husband. Construing this objective strictly, the High Court stated that it was unable to agree with the wife that the husband, who was the owner of the house and in view of the settlement arrived at between them (by virtue of which she got a few properties), should be directed to leave the premises and made to stay in a far away place, especially at his age.

The High Court considered the husband's offer to arrange alternative accommodation of a two bedroom apartment in a similar locality to be just and reasonable. The Court held that till such arrangements could be made they would stay in the Shared Household and if they could not live together then the husband would provide market rent of a two bedroom accommodation in a similar locality. The Court also directed that the woman would have exclusive use of the car and that other matters related to Maintenance and educational expenses for the child would be determined by the Magistrate. The Court also held that the woman could obtain a Protection Order while she continued to live with the respondent if it was required.

## 2.3 Right to Residence in Property Belonging Exclusively to the In-Laws

In *Raj Kumari v. Preeti Satija & Anr*<sup>23</sup> the mother-in-law filed an eviction suit in the Delhi High Court against her son and daughter-in-law, on the grounds that they were harassing her and that she had formally disowned her son. In this case the daughter-in-law had mostly resided in the United States of America ("USA") with her husband. It was only recently after a marital dispute, that she had returned to India and resided with her father, while the son had temporarily

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<sup>22</sup> Cr.L. M.C. 3071/2008, MANU/DE/2548/2012, Decided on 02.06.2012

<sup>23</sup> I.A. No. 500/2011 in CS(OS) No. 85/2010, Decided On: 13.01.2012

resided with his parents. The mother-in-law stated that her husband's will clearly left the property in her exclusive ownership. The daughter-in-law subsequently filed for the Right to Reside in the above property claiming that it was her matrimonial home.

**Manmohan Singh, J** delivering the judgment observed that the duty to maintain the daughter-in-law falls on the parents-in-law only after the death of their son. In this case since the property belonged exclusively to the mother-in-law it was held to be neither a Shared Household nor a matrimonial home of the daughter-in-law, since she had never resided there on a regular basis and her husband also does not live there. In view of the settled law in the *Batra*<sup>24</sup> judgment and in *Shumita Didi Sandhu v. Sanjay Sing Sandhu and Ors*,<sup>25</sup> the Court held that the daughter-in-law did not have the Right to Reside in the property. The High Court granted the defendants one month's time to hand over peaceful possession of the occupied portion of the property and issued a permanent injunction in favour of the mother-in-law.

In an eviction suit filed by the parents-in-law, with respect to property owned by them, against their daughter-in-law, the Delhi High Court in *Pal Singh and Anr. v. Priyanka Singh and Anr*,<sup>26</sup> once again held that the wife only has a right to claim residence against the husband or in a Shared Household where the husband has a claim. The Court based its judgment on the *Batra* judgment and granted a permanent injunction in favour of the parents-in-law.

## 2.4 Domestic Relationship with a Blood Relation and the Right to Reside

In *Rafat Araa v. Kamar Mirja*<sup>27</sup> the aggrieved woman who filed an application for a Residence Order was the aunt (father's sister) of the respondent and alleged physical cruelty by him in trying to oust her from the house where they had lived and continued to live together. Both parties made claims about being the true owners of the Shared Household.

The Sessions Court granted relief to the woman. On appeal, the Uttarakhand High Court observed that for the purposes of the relief under the PWDVA, the property dispute was not relevant and the question before the Court was whether it was a Shared Household. Examining the definitions of "aggrieved person," "domestic relationship" and "shared household", in Section 2, the Court concluded that the aunt and her nephew could not be said to be persons living together in a Shared

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<sup>24</sup> Supra Note 6

<sup>25</sup> MANU/DE/2773/2010, 174(2010)DLT79, II(2010)DMC882

<sup>26</sup> Manu/DE/7325/2011, Decided on: 22.12.2011, Manmohan Singh, J

<sup>27</sup> Criminal Misc. Application (C-482) No. 600 of 2011, Decided On: 04.01.2012

Household in a Domestic Relationship.

The High Court found that based on the definition of “domestic relationship,” in this case, the existence of a joint family had not been established. Nor did the Court find that the petitioner and respondent were related by consanguinity, marriage, or relationship in the nature of marriage, or adoption. Accordingly, the aunt and her nephew were held not to be persons living together in a Shared Household, under a “domestic relationship”.

The understanding of consanguinity as applied by the High Court is unclear. Consanguinity is commonly defined as a blood relationship, i.e., the relationship of people who descend from the same ancestor.<sup>28</sup> Since the aunt was the respondent’s father’s sister and she and the nephew resided in the same household, the relief under PWDVA may have been appropriate. The main purpose of the PWDVA is to protect all women residing in a Shared Household who have a Domestic Relationship with the respondent, from dispossession. Given that the ownership of the property is the only fact in dispute, a Residence Order to prevent the aunt from being rendered homeless should have been granted. Given that it is not uncommon in India for aunts to reside along with relatives other than their children, the impact of this judgment may leave these women outside the purview of the PWDVA.

### 3. Procedural Issues

#### 3.1 Retrospective Operation of the PWDVA

Though adjudicated by various High Courts<sup>29</sup> in previous years,<sup>30</sup> the issue of the retrospective operation<sup>31</sup> of the PWDVA came before the Supreme Court for the first time this year in *Lt. Col. V. D. Bhanot v. Savita Bhanot*.<sup>32</sup>

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<sup>28</sup> “Consanguinity is the relationship of persons of the same blood or origin.” See Black’s Law Dictionary, Eighth edition. 2004.

<sup>29</sup> *Dennison Paulraj and Ors. v. Mrs. Mayawinola* (MANU/TN/0525/2008); *Sarvanakumar v. Thenmozhi* (MANU/TN/9828/2007); *Shyamal and Ors. v. Kantabai; Kishor v. Sou. Shalini, Master Shantnu S/o Kishor Kale and State of Maharashtra, through P.S.O. Rajapeth Police Station* (2010 (112) Bom LR 1398), The Bombay High Court judgment was critically analysed in the 2009 M&E Report; *Gajendra Singh v. Minakshi Yadav and Anr* (MANU/RH/0338/2011, SB Cr Rev. Petition No: 449/2010); *Karimkhan v State of Rajasthan and Nahid Akhtar* (Cr Writ petition No : 252 of 2011, High Court of Bombay, Nagpur Bench, passed in August 2011); *Sataswathy v Babu*, (CrL. R.C. No. 1321 of 2010, Decided On: 13.12.2011)

<sup>30</sup> For a detailed analysis of the High Court judgments on the point, please refer to previous years’ M&E Reports.

<sup>31</sup> It is an established legal principle that criminal statutes cannot have retrospective application as they create new offences and impose penalties thereon. Giving retrospective operation to a criminal law would imply, that at the time the person committed an act, the act was not an offence and therefore no penalties could be attached to the act. However, because a new law has since been enacted that renders the same act an offence, retrospective application of the new law would imply that a person could now be penalised *ex post facto*.

<sup>32</sup> Special Leave Petition (CrL.) No. 3916 of 2010, Decided On: 07.02.2012.

In this case, the aggrieved woman left her matrimonial home in 2005 after having lived there with her husband since 1980. In 2006, after the PWDVA came into effect she filed for Protection, Maintenance and Residence Orders. The latter Order was claimed to protect her Right to Reside in the matrimonial home, which had been allotted to the husband who was with the Armed Forces. In 2007, on retirement, the husband filed an application for the wife's eviction in the Magistrate's Court. The Magistrate's decision allowed the wife to reside on the first floor of the residence. In the alternative, the husband was directed to arrange for her alternative residence or provide Rs. 10,000 per month to cover rental costs. An appeal in the Sessions Court by the wife, challenging the "other arrangements" and highlighting her requirement to reside in her permanent matrimonial home, was dismissed. The Sessions Court held that the woman's cause of action arose before the PWDVA came into force in 2006 as she left her matrimonial home in 2005. In a separate proceeding before the Delhi High Court in 2010<sup>33</sup>, the Court determined that the matter could be decided under the PWDVA and this would not amount to a retrospective operation of the law.

A Special Leave Petition ("SLP") filed by the husband in the Supreme Court led to the judgment of **Altamas Kabir and Chelameswar, JJ** upholding the High Court's judgment. The Supreme Court found that the High Court had correctly held that a woman who previously shared a household was entitled to the reliefs under the PWDVA even though she no longer resides there. In this particular case, the Supreme Court took notice of the circumstances that the woman found herself in, that *"after more than 31 years of marriage, having no children she is faced with the prospect of living alone at the advanced age of 63 years, without any proper shelter or protection and without any means of sustenance except for a sum of Rs. 6,000/- which the Petitioner was directed by the Magistrate."*<sup>34</sup> The Supreme Court agreed with the view of the High Court, that the past conduct of the parties, even if prior to the PWDVA coming into effect, were relevant for passing orders under Sections 18, 19 and 20 of the Act.

Holding that the situation falls squarely within the ambit of Section 3 of the PWDVA, which defines "domestic violence" in wide terms, the Supreme Court directed that the woman was entitled to a suitable portion of the matrimonial home along with all necessary amenities and furnishings of her choice, *"to enable her to live with dignity in the shared household"* as well as Rs. 10,000 per month for expenses. On the wife's apprehension for her safety, the Supreme Court further modified the order of the High Court to include Protection Orders.

With this decision, the Supreme Court has conclusively settled the question of the retrospective application of the PWDVA. It should be noted that cases involving

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<sup>33</sup> Details of the proceedings are not provided in the judgment.

<sup>34</sup> See para 9 of the judgment.

the retrospective application of the Act are likely to decrease over time as newer cases are more likely to address recent acts of domestic violence as opposed to the cases filed in 2006 and 2007. However, the Supreme Court judgment is critical for the recognition that a woman dispossessed of her Shared Household at any time in the past continues to suffer the effects of that dispossession. Actions brought under PWDVA thus relate to the present and any relief granted cannot be seen as the retrospective operation of the PWDVA.

### 3.2 Limitation Act applicable to the PWDVA

Even as the matter of the retrospective application of the law has been settled, a case from the Karnataka High Court which has held that the *Limitation Act, 1963* is applicable to cases filed under the PWDVA is a cause for concern. In ***Sri K.M. Revanasiddeshwara, v. Smt. K.M. Shylaja***<sup>35</sup>, the aggrieved woman had filed an application under Section 12 of PWDVA seeking reliefs against her husband. The Magistrate's Court granted Residence and Maintenance Orders in favour of the wife. The husband filed an appeal before the Sessions Court under Section 29 of PWDVA but did not file it within the 30-day period specified by the Act. He, therefore, also filed an application seeking condonation of delay under Section 5 of the *Limitation Act, 1963* which was dismissed as not maintainable by the Sessions Court. The husband then filed an appeal with the Karnataka High Court.

The High Court in dealing with the question of the applicability of the *Limitation Act 1963* to proceedings under the PWDVA, read Section 29(2) of the Limitation Act along with Section 36 of the PWDVA which states that the provisions of the PWDVA are in addition to and not in derogation of existing laws. The High Court further held that the operation of the *Limitation Act, 1963* had to be specifically barred for it not to be applicable to a particular law. With respect to Section 29(3) which bars the application of the Limitation Act to any law related to marriage and divorce, the Court held that this provision was not applicable to the PWDVA. The Sessions Court was therefore directed to consider the application for condonation of delay filed by the husband.

This decision of the High Court raises critical concerns for the effective implementation of the Act. In cases of domestic violence women often take long periods of time to emerge and seek remedies for the violence against them. By making the Limitation Act applicable to the PWDVA, the Court is restricting access to the remedies provided by the Act. The distinction made by the High Court holding in effect that the PWDVA is not a law related to marriage or divorce is questionable.

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<sup>35</sup> Criminal Revision Petition No. 836/2011, High Court of Karnataka at Bengaluru, Decided On: 25.01.2012

### 3.3 The Aggrieved Woman has an Independent Right to File an Application under the Act

In *M. Jayamma v. The State of AP, rep. by its Public Prosecutor, High Court of AP., Hyderabad and another*,<sup>36</sup> an order of the Magistrate returning an application filed under the Act with an endorsement "complaint is to be filed before the Protection Officer" was challenged before the Andhra Pradesh High Court. The High Court observed that Section 12 of the PWDVA is clear that the woman, a Protection Officer or any other person on behalf of the woman may present an application to the Magistrate. The Court observed that this was also confirmed by Form-II provided in the Act. It further found that the proviso to Section 12 states only that before passing any order on such application, the Magistrate shall take into consideration any Domestic Incident Report received by him. The High Court directed the Magistrate to entertain the application filed by the petitioner and proceed in accordance with law.

### 3.4 Domestic Incident Report of the Protection Officer is not Mandatory

The PWDVA provides for the filing of a Domestic Incident Report by a Protection Officer who receives a complaint of domestic violence which is meant to act as a record of the incident of domestic violence. Though required to be recorded by Protection Officers, Domestic Incident Reports are not mandatory for the filling of applications for relief which as noted above can be filed directly by women themselves. If it is filed, Section 12(1) requires the Magistrate passing an Order under the Act to take the Domestic Incident Report into account.<sup>37</sup> Orders passed under the Act since 2007, have at times been challenged by respondents on the grounds that the Protection Officer's report was not submitted. In all cases the higher courts have rightly held that the Protection Officer's report is not mandatory for passing an Orders/and shall be taken into consideration only in cases where it has been filed.<sup>38</sup>

This position was again affirmed by the Delhi High Court in *Shambhu Prasad Singh v. Manjari*<sup>39</sup> in a judgment delivered by **Mukta Gupta, J** which notes that the proviso to Section 12(1) uses the word "any", i.e., "any domestic incident report having been received" indicating that the Domestic Incident Report has to

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<sup>36</sup> Criminal Petition No. 3873 of 2009, Decided On: 05.01.2012

<sup>37</sup> Section 12(1), Proviso: "...the magistrate shall take into consideration any DIR received by him from the Protection Officer or the Service Provider"

<sup>38</sup> *Amar Kumar Mahadevan v Karthiyini* MANU/MH/0957/2009 (Decided by K. Mohan Ram, J, discussed in detail in *Staying Alive*, 2nd M&E Report, 2008), *Milan Kumar Singh & Anr v State of U.P. & Anr*, Criminal Application No. 2970 of 2008, *Nand Kishor v Kavita and Anr*, 2009 Cri LJ 107, *Damodar Patil v. Vishakha Vishal Patil*, 2009 Cri LJ 107

<sup>39</sup> Cr.M.C. No. 3083, Manu/DE/0899/2012, decided on 5.3.2012

be considered in all cases where it is received. However it is not mandatory for the Court to wait for the said report before issuing notice. Further, under Section 23 of the PWDVA the Magistrate has the power to pass such interim and ex parte orders as deemed just and proper on the basis of affidavits filed by the woman filing the complaint. The Court found that this provision also indicates that the Domestic Incident Report is not mandatory for passing Orders.<sup>40</sup>

The judgment noted, however, that since the view being taken was contrary to that expressed by the Court in *Bhupender Singh Mehra & Anr. v. State of NCT of Delhi & Anr.*,<sup>41</sup> it was deemed appropriate that the issue be considered by a Division Bench. The matter was accordingly placed before the Chief Justice to be referred to a Division Bench. The Division Bench<sup>42</sup> upheld the view expressed by the Single judge. A bench comprising S. P. Garg, J and S. Ravindra Bhat, J held that “*the Magistrate, when petitioned under Section 12(1) is not obliged to call for and consider the DIR before issuing notice to the respondent. However, if the DIR has already been submitted, that should be considered, in view of the proviso to Section 12(1)*”.

### 3.5 Non-disclosure of Pending Litigation can be Fatal to PWDVA Proceedings

The PWDVA has been designed to be complementary to reliefs that women may apply for under other civil and criminal laws.<sup>43</sup> Section 26, therefore allows proceedings under the Act to proceed concurrently with those under other laws. However Section 26(3) creates a positive obligation on the woman seeking relief under the PWDVA to disclose any reliefs obtained under another law to the Magistrate. The impact of the non-disclosure of pending litigation and all relevant facts on proceedings under the PWDVA was determined by the Delhi High Court in *Douglas Breckenridge v. Jhilmil Breckenridge*.<sup>44</sup>

The case revolved around an application under the PWDVA by the aggrieved woman while custody proceedings before the Guardianship Judge between her and her husband were ongoing. The guardianship proceedings were referred to the Mediation Centre on both parties agreeing to submit to an amicable settlement. The Guardianship Judge had previously disposed of an interim application by the husband seeking custody of the youngest child when the husband produced the child in court himself to show that physical custody of the youngest child was now in fact with him. The Order referring the proceedings to the Mediation

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<sup>40</sup> Though the judgment does not specify, it is safe to assume that the Domestic Incident Report is not compulsory for passing orders – both interim and final.

<sup>41</sup> 2010 (4) JCC 2939. This case was discussed in the 2011 M&E Report.

<sup>42</sup> Judgment delivered 17.05.2012, CRL.M.C. 3083/2011 & CRL.M.A.10914/2011

<sup>43</sup> Section 36 of the PWDVA makes it clear that the law is in addition to and not in derogation of existing laws.

<sup>44</sup> Cont. CAS (C) 815/2011 and C.M. No. 20360/2011: Decided On: 21.02.2012, Vipin Sanghi, J.

Centre also outlined the visitation rights of the woman with her minor children as well as access to the matrimonial house which was previously denied. She was however restricted from taking any of the children outside the National Capital Region (“NCR”). During the proceedings the woman is alleged to have picked up the youngest child from his school without informing the husband and had the child in her custody ever since.

Thereafter the woman filed an application under the PWDVA and moved an interim application seeking a restraining order against the husband from interfering with her custody of the youngest child on the ground that she had actual custody of the child. While the Magistrate’s Court directed that the child not be removed from the NCR territory, the Order did not extend to restricting the husband from removing the child from the custody of the woman. In an appeal under Section 29 of the PWDVA by the woman, the Sessions Court passed an order that the child’s custody with the mother should not be disturbed until further orders.

The petition before the Delhi High Court was filed by the husband under the *Contempt of Courts Act, 1973* read with Article 215 of the *Constitution*, alleging that the woman had deliberately and wilfully disobeyed the orders passed by the Guardianship Judge as well as the orders passed in the PWDVA proceedings. After perusing the facts of the case in detail, the High Court found that the woman had sought to overreach the Guardianship judge and was guilty of disobeying his orders by removing the child from the custody of the husband. The Court also found that the woman was guilty of contempt of court as *“she has abused the process of the Court, calculated to hamper the due course of judicial proceedings or the orderly administration of justice, thereby making a mockery of the judicial process.”* The Court directed the woman to *“purge the contempt”* by restoring the custody of the child with the husband.

With respect to the PWDVA proceedings, the High Court found that the only record of the guardianship proceedings produced by the woman before the Magistrate’s Court was an uncertified copy of her statement made during one of the early proceedings. The Order referring the matter for mediation and recording her visitation rights, for instance, were not produced. The High Court also made significant observations on the role and responsibilities of the woman’s legal counsel stating that the woman, *“seemingly with the aid and advice of her counsel had sought to mislead the courts dealing with the PWDVA proceedings by suppressing material facts and orders passed by the learned Guardianship Judge with a view to gain advantage in the proceedings under the PWDVA.”*

The Delhi High Court declared the Orders passed under PWDVA with respect to the custody of the child as null and void. The woman was asked to show-cause why she should not be punished for contempt of Court and was further subjected to a cost of Rs. two lakhs.

While the judgment has been appealed, the findings of the Delhi High Court highlight the significance of placing on the record in PWDVA proceedings any other ongoing litigation and placing all relevant facts in these proceedings.

### 3.6 Proceedings Under the PWDVA cannot be Quashed

The Bombay High Court in the case of *Mangesh Sawant v Minal Vijay Bhosale and Anr*,<sup>45</sup> was called on to determine whether proceedings under the PWDVA could be quashed under Section 482<sup>46</sup> of the Cr.P.C. read with Article 227 of the *Constitution*. Rejecting the petition **A.S. Oka, J.** noted that there are only two penal provisions in the Act. These are Section 31, which provides criminal sanction for the breach of a Protection Order and Section 33, under which a Protection Officer can be punished for refusal to discharge duties as directed by the Magistrate under a Protection Order. The Court also noted that the reliefs under the PWDVA can be sought in any legal proceedings before a Civil, Family or Criminal Court. The High Court accordingly held that power under Section 482 of the Cr.P.C cannot be invoked for quashing the proceedings under the PWDVA as the proceedings are not criminal in nature and the powers under the Act can also be exercised by a Civil or Family Court.

It is a well known proposition that where there are existing remedies these should be exhausted before the higher courts are approached. The decision of the Bombay High Court should be understood in the context of the findings of the Delhi High Court in *Maya Devi v. State of NCT of Delhi*.<sup>47</sup> The High Court held that “an order passed by the Magistrate under this Act has an alternate relief under the PWDVA itself which has not been availed of by the petitioner in the instant case.” The Court stated that where a right or liability has been created by a statute which gives a specific remedy for enforcing it, the remedy provided by that statute only, must be used. A person may approach the higher court under any other provision only after the specific statutory remedy has been exhausted. This judgment comprehensively lays down the procedure with regard to appeals against any order passed under the PWDVA. While both these decisions reflect the correct position regarding the Act, it is unfortunate that the Supreme Court in *Inderjit Singh Grewal v. State of Punjab and Anr*<sup>48</sup> quashed PWDVA proceedings under Section 482 of the Cr.P.C.

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<sup>45</sup> Criminal Writ Petition No. 905 of 2010, Decided On: 05.10.2011

<sup>46</sup> Section 482, Cr.P.C.: Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

<sup>47</sup> MANU/DE/8716/2007: Decided by: V.B. Gupta, J

<sup>48</sup> (2011) 12 SCC 588

### 3.7 Maintenance (Including Interim Maintenance) Orders cannot be enforced through Section 31

Section 31 of the PWDVA makes the breach of a Protection Order or an interim Protection Order an offence punishable with imprisonment and/or a fine. The question of what are considered to be Protection Orders under the PWDVA came before the Allahabad High Court in the case of *Manoj Anand v. State of U.P. and Another*.<sup>49</sup> The case involved an interim Maintenance Order passed in a complaint filed by an aggrieved woman against her husband. The interim Order was challenged under a Writ Petition under Article 227 of the Constitution and a subsequent order holding that the non-payment of the maintenance was an offence under Section 31 of the PWDVA was challenged under a Criminal Revision Petition. Both petitions were dealt with in the same order by **Sudhir Kumar Saxena, J.**

The Writ Petition under Article 227 was brought on the grounds that the interim Order was passed without any evidence being adduced and did not identify the kind of violence being remedied. The Court dismissed the Writ Petition holding that Section 23 allows interim Orders to be passed based only on the affidavit of the woman. In addition, the Magistrate had gone into the details of the case and determined the income of the husband before passing the Order. The Order was also confirmed by the appellate court. The High Court accordingly found that there was no error in law in the passing of the interim Maintenance Order and there were no grounds for invoking the jurisdiction under Article 227.

In relation to the Criminal Revision Petition, the husband challenged the Section 31 Order for failure to pay the interim maintenance arguing that Section 31 was not attracted in this case. Quoting Section 31 in the judgment, the Court held that there was merit in the argument of the husband, that orders for maintenance and interim maintenance were not covered by Section 31 and that an order passed under Section 23 (interim order) could not be enforced through Section 31. The Court held that penal provisions had to be construed strictly and that acts not intended to be covered by the legislature to be punishable as an offence cannot be said to be included under Section 31.

In response to the contention of the aggrieved woman that this would make orders under Section 23 inoperable as there would be no way to enforce such orders, the High Court noted that Section 28 provides that all proceedings under Sections 12, 18, 19, 20, 21 and 23 shall be governed by the provisions of Cr.P.C. It further enables the Magistrate's Court to lay down its own

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<sup>49</sup> Criminal Revision No. 635 of 2011 along with Writ Petition No.17658 of 2010, Decided On: 10.02.2012

procedure for disposal of applications under sub-section (2) of Section 23 of the Act, i.e. for interim Orders based only on the affidavit of the woman filing the application. Specifically, the Court held that Section 20 provides the mechanism for compliance with the Maintenance Order.<sup>50</sup> The Court also referred to the Rules framed under the Act and specifically to Rule 6(5).<sup>51</sup> The Court thus held that Section 31 being inapplicable to orders under Section 23 do not make the provision redundant or inoperable. The order of the Magistrate under Section 31 was accordingly set aside and the High Court ordered the lower Court to pass an appropriate order to ensure compliance with the interim Maintenance Order.

### **3.8 Procedure to be Followed Before Passing of Interim Orders under PWDVA**

In *Abizar N. Rangwala, Nuruddin Rangwala and Alifiya Rangwala v. Ms. Sakina*,<sup>52</sup> the Madras High Court dealt with the question of the sort of procedures to be followed by the Magistrate in passing interim orders under the PWDVA. The Court found that the Magistrate had passed detailed Orders in favour of the aggrieved woman under Sections 12, 18, 19, 20 and 21 of the Act. These interim Orders were challenged by her husband on the ground that the Magistrate did not conduct a fair trial and that he was denied an opportunity to cross-examine the witnesses. The aggrieved woman contended that the relief claimed and granted was of interim Protection Orders for which the PWDVA allows the Magistrate's Court to use summary procedures.

Holding that applications under the PWDVA are governed by the principles of the Cr.P.C., the High Court found that a fair trial has been assured under the Act. The High Court observed that the woman examined herself as a witness and produced documents, the sanctity of which could not be considered without a cross examination. The High Court accordingly held, *"it is needless to say that the parties are entitled to put forth their defence and establish their case before the Court of law, for which, they are entitled to cross-examine the witnesses."*

The High Court, however, also held that courts cannot be allowed to adopt lengthy trial procedures and *"one cannot water down to dilute the concept of the Act"*. Given that the relief sought for was of an interim nature, the High Court

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<sup>50</sup> The provisions of Section 20 were not specifically quoted in the judgment. Section 20(4) empowers the Magistrate to forward the order for maintenance to the in charge of the police station in whose jurisdiction the respondent resides while Section 20(6) empowers the Magistrate to order the respondents employer or debtor to directly pay the woman the amount of the maintenance.

<sup>51</sup> Rule 6(5): Applications to the Magistrate.- The applications under section 12 shall be dealt with and the orders enforced in the same manner laid down under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974).

<sup>52</sup> CrL. O.P. No. 26916 of 2011 and M.P. No. 1 of 2011, Decided On: 02.12.2011 by A. Arumughaswamy,J

directed that the Trial Judge must conduct the trial in the nature of a summary procedure while ensuring a fair trial at the same time. While providing an opportunity for cross-examination, this must not be conducted in an unnecessary or lengthy manner. The High Court further directed that it is not necessary for the parties to lead oral evidence and the mere production of documents would be sufficient unless the party thinks that oral evidence is essential, then it is for the Magistrates' Court to permit the parties to examine necessary persons along with the necessary documents. The matter was remanded back to the Magistrate's Court with directions to dispose of the case within 45 days.

### **3.9 Indian Courts can Exercise Jurisdiction even if Parties Reside in a Foreign Country as Long as Some Incidents of Domestic Violence Take Place in India**

In *A. Ashok Vardhan Reddy, (A-1), A. Jani Reddy, (A-2) and Smt. A. Vijayamma, (A-3) v. Smt. P. Savitha, D/o. Potula Krishna Reddy*<sup>53</sup> the Andhra Pradesh High Court dealt with a case where the parties had lived in the USA since their marriage. The case before the Court was filed to quash criminal proceedings filed by the woman's father under Section 498 A of the IPC and under the PWDVA, alleging severe physical and mental violence and excessive demands for dowry by the husband and his parents.

The High Court noted that though the decree of divorce in this case was granted in Sweden, the offence of bigamy was alleged to have been committed at Nellore in Andhra Pradesh while cruelty under Section 498A of the IPC was alleged to have taken place in Nellore and Sweden. Consequently, it was held that the Courts and the police at Hyderabad have no jurisdiction to investigate or enquire into the alleged offences.

However, the High Court declined to invoke its powers under Section 482 of the Cr.P.C. to quash the proceedings noting that whether the actions alleged to have been committed in India occurred or not was a matter to be determined by the trial court. These actions would have to be investigated even if the alleged offence took place primarily outside of India. Thus, in the opinion of the High Court, whether a part of the cause of action for prosecuting the petitioners for the offences or for domestic violence alleged to have taken place at Hyderabad, could only be a matter of conclusion at a trial. The High Court further stated that the observations made in the judgment should not influence the consideration of the domestic violence or criminal cases on their own merits.

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<sup>53</sup> Cr.L.P. No. 7063 of 2008, Decided On: 29.02.2012, G. BhavaniPrasad,J.

## 4. Conclusion

The real significance of the judgments of the higher judiciary from the point of view of victims of domestic violence will lie in how far these judgments impact the understanding of the provisions of the PWDVA and their application by the lower judiciary.

Possibly the most significant decision this year is that of the Supreme Court in the *Bhanot*<sup>54</sup> case. With this judgment, the question of the retrospective application of the Act has been settled. The decision of the Supreme Court is essential to the understanding that domestic violence is never an isolated act but a continuous violation of the woman's right to live free of violence. Therefore, while the domestic violence may have started before the Act came into force, the abuse is deemed to continue until the aggrieved woman is restored to a position of safety and her Right to Reside in the Shared Household restored. In addition there should be no concerns regarding the penal provisions of the PWDVA and whether that impacts the retrospective application of the Act. The Act only penalises the violation of an Order passed under it, and since such penalisation could not have taken place before the enforcement of the Act, there is no question of the criminal sanctions being retrospective in their application

On the procedural front, it is encouraging to note that in several cases, the Courts are not allowing the Protection Officers to be treated as "gateways" to access the justice system. However it is also true that Protection Officers are not being utilised by the Courts to a greater extent, for the benefit of the victims of domestic violence, as envisaged by the PWDVA. Section 9 of the PWDVA provides a broad role for Protection Officers to assist women filing applications under the Act as well as the Courts in dealing with these cases. An expansion of their role in the future is likely to enhance the implementation and effectiveness of the PWDVA.

In another positive development, High Courts are increasingly holding that proceedings under the PWDVA cannot be quashed under Section 482 of the Cr.P.C. and that respondents have other remedies that should be exhausted before the higher judiciary is approached in relation to applications under the Act.

However some areas of concern related to procedures remain. In relation to interim Orders, the judgment of the Madras High Court requiring lengthy procedures to be adopted in the passing of these Orders is of concern. This judgment may run contrary to the plain reading of the provisions of the PWDVA. Section 23(2), for instance, empowers Magistrates to pass ex parte interim orders based only on the

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<sup>54</sup> Supra Note 32

affidavit of the woman filing the application where a prima facie case of domestic violence is established. Although the High Court attempts to balance the trial procedures with the object of the Act, particularly where there is urgency in the requirement of an interim protection order, the requirement for even a summary trial procedure requires not only that the person committing the violence be notified of the proceedings thus endangering the woman and her application but also delays the passing of the orders. Even the delay of 45 days (as the period of time given in this case by the High Court) would be significant in the urgent circumstances facing a woman. The ability to enforce Orders under the Act through Section 31 is also an area of concern as Courts are increasingly adopting a strict approach to this provision.

On the substantive provisions of the PWDVA, the negative impact of the *Batra*<sup>55</sup> judgment in denying women the Right to Reside where the property belongs to the in-laws is noticeable in judgments of the High Courts. This impact is also noticeable across the board in the case of the lower judiciary as will be discussed in greater detail in relation to Residence Orders in the following chapters.

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<sup>55</sup> Supra Note 6



Section C

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**Analysis of Orders of the  
Lower Judiciary:  
*Magistrates' and Sessions Courts***







# Trends in Usage of the Act

The Orders received by Lawyers Collective Women's Rights Initiative provide a rich opportunity to highlight trends in the usage of the Act.

## 1. Profile of Users of the Act

As in previous years, the single largest group of users of the Act remains Hindu married women followed by widows, divorced women, daughters and sisters (women filing against members of their natal family) and women in relationships in the nature of marriage. In comparison to married women, the number of cases filed by other users of the Act remains small

The review of the Orders also indicates that applications are predominantly filed by women after they leave the Shared Household. In most cases women move to their natal homes or reside on their own. Thus a presumption may be drawn that they left the household on account of unbearable violence or were ousted from the Shared Household. This also indicates that women find it difficult to file applications under the Act while still living in the Shared Household. The impact of the filing of applications after leaving the Shared Household is specifically examined in the following chapters. Table 3 below highlights the main users of the Act identified from the Orders analysed.

## 2. Preference of the use of PWDVA over other legislation

The sheer number of Orders received by the Lawyers Collective Women's Rights Initiative this year indicates the growing use of the Act by women. It also appears that women prefer using the procedures and provisions under the PWDVA as compared to the *Dowry Prohibition Act, 1961* which is rarely used by women who are facing harassment for dowry. According to the National Crime Record Bureau, 6,619 cases were filed in 2011 across the country under the *Dowry Prohibition Act, 1961*.<sup>56</sup> By contrast, the number of applications filed under the PWDVA between April and December 2011 according to the data collected by Lawyers Collective Women's Rights Initiative was 42,148 from 18 states alone (Please See Table 1).

<sup>56</sup> Crime in India: 2011 Statistics, National Crime Records Bureau, Ministry of Home Affairs, p. 81 available at <http://ncrb.nic.in/CD-CII2011/cii-2011/Chapter%205.pdf> (last visited on 01.01.2013)

**Table 3: Users of the Act: 01.04.2011 to 31.12.2011**

State	Married Women	Married and Living in the Shared Household	Married and Living in the Natal Home	Married and Living on Their Own	Women Filing against the Natal Family	Divorced Women	Women in relationships in the nature of marriage	Widows
Andaman and Nicobar	3	0	0	2	1	0	0	0
Andhra Pradesh	156	2	55	12	6	12	2	16
Bihar	48	14	18	1	2	0	0	2
Chandigarh	13	13	5		1	0	1	1
Delhi	279	24	43	14	8	9	3	11
Gujarat	590	4	484	11	1	4	0	7
Himachal Pradesh	92	13	60	0	0	2	1	0
Jharkhand	49	18	20	3	1	0	1	1
Karnataka	241	48	113	36	8	3	3	5
Kerala	608	165	186	71	5	12	3	46
Maharashtra	1378	77	761	185	7	12	4	40
Manipur	53	0	8	4	0	0	5	1
Mizoram	25	4	3	0	0	0	0	1
Odisha	134	10	29	22	2	0	4	5
Punjab and Haryana	332	23	70	24	4	3	4	16
Rajasthan	146	10	78	6	2	3	4	3
Sikkim	22	4	2	11	0	0	0	0
Tamil Nadu	99	8	64	0	3	3	2	3
Tripura	25	3	10	1	1	0	1	0
Uttar Pradesh	283	4	139	127	1	0	0	7
Uttarakhand	219	69	59	7	2	4	1	9
West Bengal	212	18	84	18	4	3	3	7
<b>Total</b>	<b>5,007</b>	<b>531</b>	<b>2291</b>	<b>555</b>	<b>59</b>	<b>70</b>	<b>42</b>	<b>181</b>

# Causes and Forms of Domestic Violence Reported under the Act

The analysis of Orders indicates the causes and forms of violence most often reported by women. The definition of “domestic violence” under Section 3 of the PWDVA includes acts of physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. The Orders reveal not only the forms of violence being alleged by women but also the extent of the recognition of different forms of domestic violence by the Courts. State and district specific trends were noticeable in this part of the analysis and have been mentioned where relevant.

## 1. Causes of Domestic Violence

### 1.1 Key Findings on the Causes of Domestic Violence

- Based on the Orders analysed for the Report, the primary causes for perpetrating violence on women appear to be dowry harassment followed by alcoholism, extra-marital affairs, and birth of a female child or the aggrieved woman’s inability to bear children.
- Harassment for dowry accompanied by physical and economic abuse is the most common form of domestic violence reported from across the country.
- State-wise analysis shows that dowry harassment as a cause or basis of violence was not reported in any of the cases from Mizoram and is not as frequently reported in cases from Kerala.
- Although dowry harassment is the leading cause of violence alleged by women in their applications under the Act, the analysis indicates a tendency amongst Judges to doubt its existence.

### 1.2 Case Studies

#### ***1.2.1 Disbelieving Allegations of Dowry Harassment***

In a case from **Haryana**,<sup>57</sup> the Court noted that *“Dowry itself is a bogus word that did not exist in India prior to the arrival of the British who had been practicing it for centuries...However the word ‘dowry’ has been misused by the radical Indian*

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<sup>57</sup> Case No 5/2010, Haryana, Sonepat

*feminist organisations. The Save Family Foundation have continuously demanded that if any one harasses others for any money or property the same should be termed as extortion or blackmail.”*

In another case from **Haryana**,<sup>58</sup> the court held that “...the Hon’ble Supreme Court of India has held that each and every dispute should not be termed as dowry harassment which is one small step towards stopping the legal terrorism and rampant misuse of s 498A, domestic violence and s.125 Cr.PC.”

In a case from **Andhra Pradesh**,<sup>59</sup> the aggrieved woman alleged dowry harassment and sought a Compensation Order. She was married to an older man, who had previously been married but whose first wife had died. The court held “*In Indian society no woman come forward to marry a widower who is having three children unless she fell in love with him or she has financial difficulties or for any other strong reason. It is not the case of PW (Petitioner) 1 that the marriage with R (Respondent) 1 is a love marriage or she is having financial difficulties. Since P1 failed to put forth any strong reason for her marriage with R1 and there is no independent evidence to prove they paid dowry, hence the contention of petitioner claiming dowry is not sustainable.*” The aggrieved woman’s application was dismissed.

## 2. Physical Abuse

### 2.1 Key Findings on Physical Abuse

- The most common form of physical abuse forming the basis of applications across all States is the beating and slapping of women.
- Acts of severe physical violence are alleged primarily in applications in Rajasthan, Delhi, Tamil Nadu, Kerala, Manipur, Andhra Pradesh and Karnataka.
- Acts of severe physical violence are those that border on attempts to murder the aggrieved woman. Orders in the current reporting period recorded acts such as:
  - ◆ Pouring kerosene on the aggrieved woman and trying to burn her
  - ◆ Stabbing the aggrieved woman with a knife and other dangerous weapons
  - ◆ Beating the aggrieved woman with a tube light and thrusting glass into her
  - ◆ Throwing the aggrieved woman into a well

<sup>58</sup> Case No. 264/2009, Haryana, Sonapat

<sup>59</sup> DVC No 2/1008, Andhra Pradesh, East Godavari

- ◆ Trying to run over the aggrieved woman with a vehicle
- ◆ Trying to push the aggrieved woman off the roof of the house
- Acts of physical violence associated with alcohol consumption were frequently reported from the North Eastern States of Tripura, Manipur, Mizoram and Sikkim. Alcohol related physical abuse was also recorded in Orders passed in Gujarat, West Bengal and Kerala.
- Assaults on the aggrieved woman with dangerous weapons accompanied by threats to kill her were often recorded in Orders from Rajasthan and Delhi.
- In granting Orders where physical abuse has been alleged, in some cases Magistrates appear to substitute their own understanding of tolerable pain and physical abuse for that alleged by the aggrieved woman.
- Physical abuse representing pronounced forms of discrimination have also been noted in cases of forcible abortions where the foetus is discovered to be female. Courts have granted relief in cases of forcible abortions.

## 2.2 Case Studies

### ***2.2.1 Subjective understanding of Physical abuse and pain***

In a case from **Manipur**,<sup>60</sup> the aggrieved woman applied for Protection, Residence and Compensation Orders against her husband and in-laws. In her allegation of domestic violence, she stated that when she went into labour, she requested the respondent-husband and in-laws to take her to the hospital. Her request was refused and she delivered her baby at home. The Court refusing the application of the aggrieved woman held that “...to feel ache, pain to the abdomen and private part of a woman just after delivery of a child in a normal delivery and also general weakness to the woman is a general one.”

### ***2.2.2 Relief granted for forcible abortion***

In a case from **Delhi**,<sup>61</sup> the aggrieved woman was forced to have an abortion by her husband and in-laws once it was discovered she was carrying a girl child. The Court granted monthly Maintenance based on the fact that domestic violence was established through the Domestic Incident Report. However, a Protection Order was denied.

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<sup>60</sup> Case No 5/2008, Manipur, Manipur East

<sup>61</sup> CC 108/1/10, Delhi

## 3. Verbal and Emotional Abuse

### 3.1 Key findings on verbal and emotional abuse

- Verbal and emotional abuse recorded in the Orders was primarily in relation to harassment for dowry.
- As noted below in Section 6, acts of verbal and emotional abuse tend to precede or coincide with other acts of violence, particularly physical abuse.
- Common forms of verbal and emotional abuse identified by the Courts include:
  - ◆ Threatening to kill the aggrieved woman
  - ◆ Threatening to re-marry
  - ◆ Respondent indulging in an extra-marital relationship
  - ◆ Threatening to divorce the aggrieved woman
  - ◆ Insulting the aggrieved woman for not having a male child
  - ◆ Treating the aggrieved woman as a domestic help
  - ◆ Stating that the aggrieved woman is not worthy of being the respondent's wife
  - ◆ Stating that the aggrieved woman is not beautiful
  - ◆ Ridiculing the disability of the aggrieved woman
- Existence of Extra-marital affairs is a common form of verbal and emotional abuse noted in Orders from Mizoram.

### 3.2 Case Studies

#### ***3.2.1 Existence of extra marital affair is a common ground for granting of reliefs: Cases from Mizoram***

In a case from **Mizoram**,<sup>62</sup> the aggrieved woman's husband was having an extra marital affair and she filed an application seeking Temporary Custody of the children. The Magistrate's Court observed "*...there is no reason why the Respondent should have custody of their children while he is living with another woman.*" Temporary custody was granted along with other reliefs.

In another case from **Mizoram**,<sup>63</sup> the Judge concluded that the possibility of reconciliation would not exist if the husband is having an affair.

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<sup>62</sup> Case No. 162/2011, Mizoram, Aizawl

<sup>63</sup> Case No. 88/2011, Mizoram, Aizawl

## 4. Sexual abuse

### 4.1 Key Findings on Sexual Abuse

- Sexual abuse has been alleged by women in some cases.
- The Courts generally grant reliefs when sexual abuse is alleged without specifically making a reference in the Order to the sexual abuse alleged by the aggrieved woman. In only very few cases have the Courts taken cognizance of sexual abuse while granting relief.
- In the few cases where Magistrates have referred to sexual abuse in the Order and granted relief, the reasoning has been predominantly patriarchal and sexual abuse has been looked at from a moral viewpoint rather than as a form of violence and abuse.
- The analysis of the Orders showed that most allegations of sexual abuse are made by married women.
- In most Orders it appears that the applications filed by women do not describe the acts of sexual abuse directly or clearly. For instance, an aggrieved woman may allege her father-in-law had an 'evil eye' on her and she became pregnant or that the respondent-husband sought carnal intercourse against the order of nature, or that he suppressed information that he was HIV-positive.
- The most common form of sexual abuse reported by women is of forced intercourse by the husband, father-in-law or brother-in-law.
- Refusal by the respondent-husband to have intercourse is the third most common form of sexual abuse reported.
- Other forms of sexual abuse that have been recorded in the Orders are:
  - ◆ Forcing the aggrieved woman to watch obscene videos
  - ◆ Forcing the aggrieved woman into prostitution
  - ◆ Forcing the aggrieved woman into sexual acts with the male partner's friends
  - ◆ Forcing the aggrieved woman to participate in oral and anal sex
- In one case, the Court refused relief to the daughter filing the case against her father on the ground that after her marriage no Domestic Relationship between them survives if she is married and residing separately.

### 4.2 Case Studies

#### 4.2.1 Examples of different forms of sexual abuse

In a case from **Andhra Pradesh**,<sup>64</sup> the aggrieved woman was informed by her in-laws that the respondent-husband would have sexual intercourse with her only

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<sup>64</sup> DVC 4/2011, Andhra Pradesh

if she pays Rs. 3 lakhs as dowry. She filed an application seeking Protection, Residence, Monetary Relief and Maintenance Orders. A Protection order was granted to the aggrieved woman along with Maintenance as Monetary Relief and the return of her *stridhan* items.

In a case from **Maharashtra**<sup>65</sup> the Magistrate held that contracting a second marriage during the subsistence of the first amounts to an illicit relationship and therefore amounts to inflicting sexual abuse on the aggrieved woman. The Court directed the respondent-husband to secure alternative accommodation for the aggrieved woman and to pay her Maintenance. The Court also granted Compensation to the aggrieved woman.

In another case from **Maharashtra**,<sup>66</sup> the respondent-husband's failure to prove his allegations of infidelity against the aggrieved woman was held to be sexual abuse within the meaning of Section 3 of PWDVA. The court granted monthly Maintenance to the aggrieved woman.

#### ***4.2.2 Relief is usually granted where sexual abuse is alleged***

In a case from **Manipur**,<sup>67</sup> the aggrieved woman alleged that she was subjected to a forcible abortion, forced sexual intercourse with the respondent-live in partner, forced to remove her clothes in front of family members, forced to sleep nude in front of family members, had pictures taken of her nude and being blackmailed by these pictures. Though sexual abuse was not identified as the ground for granting the Order, Compensation of Rs 2 lakhs was granted for mental distress, pain and agony along with Maintenance and Protection Orders. The Court referred to the *Constitution* while granting relief as well as several international treaties and declarations including the *Vienna Accord 1994*, the *Beijing Declaration 1995* and General Recommendation No. 19 made by the Committee under the *Convention on the Elimination of All forms of Discrimination Against Women* ("CEDAW").

In a case from **Maharashtra**,<sup>68</sup> the aggrieved woman alleged sexual abuse. The Judge held that the respondent-husband was guilty of an offence under Section 377 of the IPC for "unnatural sexual intercourse" with the aggrieved woman. A Protection Order was granted to the aggrieved woman, along with return of *stridhan* items and monthly Maintenance.

#### ***4.2.3 Judicial stereotyping of women as helpless victims in cases of sexual abuse***

In a case from **Odisha**,<sup>69</sup> the aggrieved woman filed an application against her husband and in-laws. She alleged that her father-in-law "*kept an evil and lustrous*

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<sup>65</sup> M.A.No. 35/2010, Maharashtra

<sup>66</sup> Cri. Misc.appl.no.91/2009, Maharashtra

<sup>67</sup> Case No. 63/11, Manipur, Manipur East

<sup>68</sup> Criminal Misc. Application No.419/2010, Maharashtra, Miraj

<sup>69</sup> Case number not mentioned in the Order

*eye evincing an interest to have sexual relations with her and asked her to watch English films with sexual content in it with him.”* The Magistrate while finding that the evidence supporting the aggrieved woman’s allegations in the case was “crystal clear” held that “*the relationship between the father in law and the daughter in law is sacred, pious and there should be no question of illegitimate thought and perception and the latter should be treated as a daughter in the eye of the former. The oblique eye of the Respondent No. 2 results in the moral and emotional earthquake in the mind of the petitioner which in turn is capable of collapsing homes and weakening values, shattering families and threatening to crack open the very foundation of our Indian culture. The sweet dream of women turns into mirage, a truckload of pressure and anxiety revolves over her head and ultimately she may even take her own life.*” In addition to other reliefs, the Court directed the husband to pay Rs. 20,000/- to the aggrieved woman as Compensation for the torture, mental and emotional injuries caused to the aggrieved woman.

#### ***4.2.4 Relief denied to daughter on grounds that domestic relationship with the father does not exist after marriage***

In a case from **Delhi**,<sup>70</sup> an aggrieved woman filed an application against her father and brother alleging that her father had raped her on a number of occasions. She told her mother about these incidents, but her mother advised her to keep quiet. She then confided in her brother, who verbally threatened her to keep quiet about the incidents of rape. The daughter filed a PWDVA application following her marriage, after she had set up a separate household. The court held that a person cannot be made a respondent on the grounds of a past relationship. Further, the court held that “*The petitioner is admittedly a married woman residing separately with her husband and is not residing with her father any more. Thus there is no present/alive relationship with the petitioner with her father...The petitioner has alleged that pursuant to her marriage with her husband she was raped by her father whenever she visited her parental home. It is not the case of petitioner that her father came to her matrimonial house and then raped her. It was up to the petitioner not to visit the house of her parents...*” Hence the application was dismissed.

In this case it may be noted that the Court has misconstrued the definition of Domestic Relationship in the PWDVA by drawing distinctions based on past relationships. In cases of sexual abuse, particularly between a parent and a child, Courts could ask for more inquiry into the circumstances and ask for expert assistance in understanding the behaviour of sexual abuse survivors before denying Orders.

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<sup>70</sup> CC No. 226/1, Delhi

## 5. Economic Abuse

### 5.1 Key findings on economic abuse

- Allegations of economic abuse are almost always associated with harassment for dowry. Harassment for dowry is usually accompanied by denying the aggrieved woman basic necessities (such as food). Where dowry demands are not met, the woman is typically forced to leave the matrimonial home.
- Desertion is also a commonly reported form of economic abuse.
- Denial of basic necessities to women who are disabled is also a common form of abuse. It is usually accompanied by verbal ridiculing of the disability. Courts however do not usually mention the nature of disability or include observations on violence related to disability in their Orders.
- Other forms of economic abuse noted in the Orders include:
  - ◆ Refusal to return the aggrieved woman's *stridhan* articles
  - ◆ Refusal to give the aggrieved woman her share in the ancestral property
  - ◆ Refusal to let the aggrieved woman work
- In most cases of economic abuse, women filed applications requesting the grant of Maintenance. In cases where the aggrieved woman has been dispossessed, Residence Orders are also claimed.
- The primary response of Courts to allegations of economic abuse is to grant Maintenance. Courts also tend to be sympathetic in cases involving Maintenance for disabled children.

### 5.2 Case Studies

In a case from **Mizoram**,<sup>71</sup> the aggrieved woman alleged that her husband used his entire salary to purchase alcohol and did not provide for the family. An interim Order was passed directing the husband to credit his salary into the account of the aggrieved woman.

In a case from **Andhra Pradesh**,<sup>72</sup> the respondent-brother ridiculed the disability of the aggrieved woman and dispossessed her from the Shared Household. The court denied relief since the aggrieved woman had claimed partition. Further, it was held PWDVA does not have retrospective operation.

In a case from **Delhi**,<sup>73</sup> the respondent-husband was having an extra marital affair and not providing basic necessities to the aggrieved woman and her children.

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<sup>71</sup> Case No. 78, Mizoram, Aizawl

<sup>72</sup> DVC 18/2011, Andhra Pradesh, Hyderabad

<sup>73</sup> CC No. 588/1 Delhi

Maintenance was granted to the aggrieved woman. Since her daughter was disabled, it was ordered that a separate bank account be opened for the daughter.

## **6. Women are usually subject to multiple forms of domestic violence**

### **6.1 Key Findings on cases involving multiple forms of domestic violence**

- The analysis of Orders reveals that the applications for relief filed by women record multiple forms of domestic violence.
- In particular, cases of verbal and emotional abuse, particularly related to dowry harassment, tend to precede physical acts of violence such as, pulling the aggrieved woman's hair and tearing her sari, beating her with a broom, not taking care of her during pregnancy and in extreme cases attempts to kill the aggrieved woman, usually by pouring kerosene on her and trying to burn her.
- In several cases, different forms of domestic violence take place concurrently.

### **6.2 Case Studies**

In a case from **Tamil Nadu**,<sup>74</sup> the respondent-husband used abusive words and harassed the aggrieved woman for failure to bring dowry. The Order recorded the fact that he was having an affair with another woman. On one occasion, he tried to kill the aggrieved woman by pouring kerosene on her and trying to set her on fire. Ultimately, he dispossessed the aggrieved woman from the Shared Household. The Magistrate's Court granted both Protection and Residence Orders to the aggrieved woman.

In a case from **Haryana**,<sup>75</sup> the respondent-husband would verbally taunt his wife by saying she was not beautiful. He threatened her with divorce a number of times. On one occasion he tried to run her over with his car. An Ex parte Protection Order and Monetary Relief were granted by the Court.

## **7. Allegations of violence committed by the Aggrieved woman not sufficient to deny relief**

### **7.1 Key Findings on allegations of violence committed by the aggrieved woman**

- The analysis of Orders has highlighted cases where respondents have alleged that they are the victims of domestic violence at the hands of the aggrieved woman.

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<sup>74</sup> DVA No. 3/2010, Tamil Nadu, Coimbatore

<sup>75</sup> Case No. 51, Haryana, Gurgaon

- In such cases, the respondents argue that the aggrieved woman is suffering from a mental disorder or that she has a violent temperament and her allegations of domestic violence are false.
- In some cases, where the aggrieved woman is a widow, counter allegations of murder have been made by the in-laws against the aggrieved woman.
- In most cases, Courts have found these allegations insufficient to deny relief to the aggrieved woman.

## 7.2 Case Studies

In a case from **Haryana**,<sup>76</sup> a case under Section 306 of the IPC had been filed by the respondent-in laws prior to the PWDVA application filed by the aggrieved woman. The respondent-in-laws alleged that the woman had tortured her late husband and instigated his suicide. In this case, the investigating authorities found the aggrieved woman was innocent and the Court granted her a Residence Order (Right to Reside in the Shared Household) and Temporary Custody of the minor child.

In a case from **Maharashtra**,<sup>77</sup> the aggrieved woman filed an application alleging physical, emotional and economic violence. She had been convicted for killing her child by the Sessions Court, and had filed an appeal against this order. A final order was passed granting Maintenance to the aggrieved person. In its observations, the Court held that it would have been the father who had not approved of the gender of the child stating that *“Mothers do not discriminate on the basis of the gender of the child, particularly when it is the first child.”*

In a case from **Delhi**,<sup>78</sup> a copy of an FIR filed under Section 302 of the IPC identifying the aggrieved woman as an accused person was placed before the Court that was considering her application under the PWDVA. The Court denied interim relief holding that since there was no admission with regard to residence in the matrimonial home, and evidence was still to be led, interim relief could not be granted. The court held, *‘it appears that applicant wants to pursue the petition with not very clear and genuine motives. Considering the pendency of one FIR against her with respect to the murder of respondent 1, who was her husband, and in view of the observations given above, relief of right to residence cannot be granted at this stage.’*

In a case from **Chandigarh**,<sup>79</sup> a case of murder was pending against the aggrieved woman. It is unclear whether the criminal case was filed before or after the

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<sup>76</sup> Petition No. 9/2011, Haryana, Rohtak

<sup>77</sup> CMA 1211/2011, Maharashtra, Aurangabad

<sup>78</sup> CC No. 230/1, Delhi

<sup>79</sup> Case No. 19210, Chandigarh

PWDVA application was filed. The Court granted Protection, Residence and monthly Maintenance Orders. However Temporary Custody to the aggrieved woman was denied as one of the minor children was a prosecution witness against her in the pending murder case.

In a case from **Haryana**,<sup>80</sup> the brothers-in-law of the aggrieved woman alleged that she mercilessly beat her father-in-law after the death of her husband with the motive of grabbing his property. They alleged that these injuries led to the father-in-law being admitted in hospital and ultimately his death. However, due to the intervention of respectable people of the locality, no criminal case was lodged against her. The aggrieved woman filed an application seeking Protection, Residence, Maintenance and Compensation Orders. The Protection Officer filed a report mentioning that the “real cause” behind the dispute was related to a share in the property. Therefore, the court did not grant a Protection Order. The Court granted the aggrieved woman the Right to Reside in the Shared Household, but did not direct the brother-in-law to vacate the household nor restrained him from alienating the Shared Household. These reliefs were denied since the aggrieved woman was not able to prove her share over the property.

## 8. Good Practice: Appreciation of the Broad Definition of Domestic Violence under the Act

In a case from **Mizoram**,<sup>81</sup> the aggrieved woman alleged alcohol-related physical abuse and economic abuse and filed for Protection, Residence and Temporary Custody Orders. The court granting all the reliefs claimed, observed that the, *“PWDVA does not require violence, be it emotional, physical, economic or sexual to be violence of the acutest kind .A gesture as small as a pinch or a slight nudge can amount to domestic violence as long as that particular act or violence is done with the intention of subjecting the other to a certain measure of cruelty.”*

## 9. Emerging Trends on causes and forms of domestic violence

The Orders of the Courts are a rich source of understanding the causes and forms of violence being faced by women across the country. However, Court Orders seldom record the history of the violence with precision or in any detail. Without access to the actual petitions and complete Court records, it is difficult to make definitive comments in this regard. However it is evident from the Orders, that Courts are accepting and applying the definition of domestic violence and have gone beyond the concept of violence as only physical violence.

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<sup>80</sup> Petition No. 392/2008, Haryana, Rohtak

<sup>81</sup> CrL. Complaint No. 94/2011, Mizoram, Aizawl

# Remedies under the Act - Protection Orders

## Protection Orders

**Section 18. Protection Orders.** -The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her *stridhan* or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- (f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
- (g) committing any other act as specified in the protection order.

Protection Orders under the Act are chiefly in the nature of ‘Stop Violence’ orders designed to put an immediate end to acts of violence against the aggrieved woman. They have been visualised as the primary preventive measures to deal with violence and to offer protection to victims.

With the grant of a Protection Order, the aggrieved woman must be assured of the maximum protection from violence that the law can provide. In the experience of the Lawyers Collective Women’s Rights Initiative, the grant of a Protection

Order gives the aggrieved woman the ability to deal with the reality of violence by restoring her to a position of equality and empowering her to negotiate an exit from the violent relationship on fair terms. Often the grant of a Protection Order enables an aggrieved woman to consider her options in a violence free atmosphere.

Protection Orders empower women more than other forms of reliefs. It has also been observed that several women use the period during which a Protection Order is operational to seek gainful employment and become self reliant. Courts must therefore be encouraged to grant such orders and communicate the judicial attitude that domestic violence will not be tolerated and that it is the responsibility of the Courts to ensure immediate protection to the victims of violence.

## 1. Key Findings on Protection Orders

This year's analysis shows that Protection Orders are the second most commonly granted relief, the first being Monetary Relief/Maintenance.

### 1.1 General findings

- Protection Orders appear to be invariably granted once the Court is prima facie satisfied that domestic violence has taken place or is likely to take place. This is the case, even in situations where the aggrieved woman is divorced.
- Prima facie satisfaction means that the evidence presented by the aggrieved woman should lead to a reasonable conclusion of the existence of alleged acts of domestic violence. In the Orders analysed, prima facie satisfaction has been established through:
  - ◆ The affidavit of the aggrieved woman
  - ◆ The testimony of the aggrieved woman
  - ◆ The testimony of neighbours
  - ◆ The Domestic Incident Report submitted in the Court
  - ◆ The Report or Home Visit report of the Protection Officer
  - ◆ Previous complaints filed by the aggrieved woman
- When severe violence is alleged by the aggrieved woman, Courts are more inclined to grant Protection Orders.
- Specific Protection Orders are now being granted in many cases that identify particular acts of violence. Specific orders facilitate better enforcement and are of greater assistance in proving a breach of an Order under Section 31 of the Act.

- Previous complaints filed against violence work strongly in favour of the aggrieved woman. In this regard, pending cases under Section 498A of the IPC are usually recognised by Courts as proof of the perpetration of domestic violence. However the lack of any previous complaints is also being taken into consideration in the denial of Protection Orders in some cases.
- In a few cases from Uttarakhand and Delhi it has been observed that Courts refuse to grant Interim Protection Orders where evidence has not yet been led. It appears that Court are not granting orders at the interim stage on prima facie satisfaction based on affidavits and documentary evidence but require a full fledged trial. However in Chandigarh, Sikkim, Mizoram, and Kerala, Protection Orders are granted at the interim stage based on affidavits.
- It has been noted in a few cases that Magistrates have a tendency to disbelieve the acts of violence alleged by the aggrieved woman and Protection Orders are denied.

## 1.2 Specific findings

- *Married women residing in the Shared Household:* If the aggrieved woman is residing in the Shared Household and alleges domestic violence and the Court is prima facie satisfied that domestic violence has taken place or likely to take place, Courts will grant a Protection Order.
- *Women residing in their Natal Home or living separately:* In the case of Protection Orders, the hypothesis that married women or widows living in their natal home or separately or divorced women living separately are denied relief under the Act appears to be validated in the analysis. Courts appear to be overwhelmingly reluctant to grant Protection Orders in such cases on the ground that since the parties are residing separately there is no imminent threat of violence. In the case of married women, prolonged separation strengthens the conclusions of Courts that there is no opportunity for violence and hence Protection Orders are denied
- *Mothers v. Sons:* Mothers are more likely to get Protection Orders against children who are trying to dispossess them. Courts appear to have a more sympathetic attitude towards the aggrieved woman in such cases. However in all such cases, the reason identified by the Courts for the grant of the order is that they are “prima facie satisfied that domestic violence has taken place or is likely to take place.”
- *Daughters/Sisters:* In cases where daughters/sisters have alleged emotional violence such as being pressurised into getting married and filed cases against fathers/brothers, Courts are not inclined to grant Protection Orders. However, in these cases Maintenance is granted.
- *Property Disputes:* Courts tend to deny Protection Orders if they feel that the case is really about a property dispute. This is noted in cases of widows

filing cases against their in-laws. In addition, where sisters have filed cases against brothers alleging economic violence, the courts have a tendency to deny relief on the ground that the dispute is a property dispute and the relief of partition cannot be granted under PWDVA. The aggrieved woman is usually advised to approach a civil court with competent jurisdiction.

## 2. Case Studies

### 2.1 Nature of Protection Orders Granted

Courts are granting either general Protection Orders or specific Protection Orders that identify a particular act that the respondent must not commit. The two most common forms of general Protection Orders granted are:

- *“Restraining the respondent from committing further acts of domestic violence”*
- *“Restraining the respondent from communicating with the Aggrieved Person.”*

Some examples of specific Protection Orders are:

- *“The respondent is restrained from obstructing the marriage function of the younger son of the petitioner and himself and not to abuse or ill treat the petitioner and her children and the invitees to the marriage function and not to create any situation which will adversely affect the marriage ceremony in any manner.”<sup>82</sup>*
- *“The respondent is directed not to go home in a drunken state.”<sup>83</sup>*
- A Protection Order was passed restraining the respondent-husband from arguing and threatening his wife when intoxicated.<sup>84</sup>

### 2.2 Reasons for Granting Protection Orders

#### 2.2.1 Prima Facie Proof of Domestic Violence

In a case from **Andhra Pradesh**,<sup>85</sup> the respondent-husband would kick the aggrieved woman on her stomach while she was pregnant. She was forced to give birth even though she was weak and did not wish to continue with the pregnancy. The respondent-husband entered a second marriage and the aggrieved woman left the Shared Household. The Court in granting the Protection Order took

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<sup>82</sup> C.M.P 4323/2011, Kerala, Idukki

<sup>83</sup> MC 79/11, Kerala, Kannur

<sup>84</sup> Case No 269/09, Rajasthan, Jodhpur

<sup>85</sup> Case No. 10/2008, Andhra Pradesh, Nellore

into consideration medical reports submitted by the woman and the Domestic Incident Report filed by the Protection Officer. In addition, the respondent-husband was also directed to pay Rs. one lakh as Compensation.

In a case from **Mizoram**,<sup>86</sup> the respondent-husband was having an extra-marital affair with another woman. This was mentioned in the report of the counsellor, which led the Court to come to the conclusion that domestic violence had taken place and grant a Protection Order.

In a case from **Bihar**,<sup>87</sup> an aggrieved woman filed an application against her son alleging that he was demanding that the Shared Household be transferred to his name. She further alleged that when she objected to the misuse of electricity and water, he broke the windows of the house. The aggrieved woman filed for Protection and Residence Orders. The Court while granting the Protection Order took into account the evidence given by the neighbours that the aggrieved woman was facing domestic violence from her son.

In a case from **Delhi**,<sup>88</sup> the aggrieved woman alleged physical violence (beating, slapping, and kicking on her private parts) and the denial of proper care during pregnancy. The Court granted a Protection Order based on the report of the Protection Officer which stated that the *“Aggrieved Person is living in the Shared Household and has exclusive possession of one room.”*

## 2.3 Reasons for denial of Protection Orders

### 2.3.1 No Prima Facie Proof of Domestic Violence

In a case from **Andhra Pradesh**,<sup>89</sup> the aggrieved woman filed an application asking Protection and Monetary Relief Orders against her sons. The Protection Order was denied as the Court held that the burden of proof is on the aggrieved woman who could not prove domestic violence took place and has been living separately for 20 years prior to filing the application. An Order restraining her sons from entering her land was also denied as she could not prove she was the owner of the land. Monetary relief was also denied as Maintenance was not mentioned as a relief in the written prayer.

In another case from **Andhra Pradesh**,<sup>90</sup> the aggrieved woman alleged that she was beaten by the first wife of the respondent-partner, that he lied about his caste at the time of marriage and did not provide her with basic necessities. She filed for Protection and Maintenance Orders. The Court finding no proof of domestic violence except economic violence held that, *“Granting protection order*

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<sup>86</sup> 120/2011, Mizoram, Aizawl

<sup>87</sup> 006/2011, Bihar, Araria

<sup>88</sup> CC 89/6/08, Delhi

<sup>89</sup> DVC No. 9/2010, Andhra Pradesh, East Godavari

<sup>90</sup> Case No. 253/2010, Andhra Pradesh, Hyderabad

*is not a blanket order. To grant the same there should be warranting circumstances i.e. Aggrieved Person must be unable to lead a peaceful life.”* While Maintenance was granted, the Protection Order was denied.

In yet another case from **Andhra Pradesh**,<sup>91</sup> an aggrieved woman filed a case against her father and step-mother. She alleged that they were forcing her to get married and that she and her sisters were denied basic necessities. She filed a case seeking Protection and Maintenance Orders. The Protection Order was denied as she could not prove she was being forced into marriage while the Maintenance Order was granted since the *“father is responsible for the maintenance of an unmarried daughter.”*

In a case from **Delhi**,<sup>92</sup> the husband filed an appeal against the interim Protection Order granted by the lower court restraining the husband from communicating with his wife. The wife had alleged that she was stalked by her husband. The Sessions Court set aside the order of the Magistrate’s Court on the ground that *“simple averments were made in the application and the date when A.P was physically assaulted was not shown nor any complaints were made to the superior officers of the husband.”*

### ***2.3.2 No Previous Complaint filed***

In a case from **Delhi**,<sup>93</sup> the aggrieved woman alleged physical, emotional, sexual and economic abuse. She filed an appeal against the order of the Magistrate’s Court dismissing her claim for Protection and Maintenance Orders. The Respondent-in laws stated in their reply that she had filed the complaint only to extract money and she had already taken her *stridhan*. The Sessions Court held that the woman had not filed any previous complaints with the police regarding the beatings. Both Protection and Maintenance Orders were denied since proof of domestic violence was not established.

### ***2.3.3 The Parties are residing separately hence no imminent threat of violence***

In a case from **Delhi**,<sup>94</sup> an aggrieved woman residing in her natal home filed an application against her husband alleging that she was not given proper care during her operation for breast cancer, that she had faced dowry harassment and that she was denied basic necessities. The Protection Order was denied by the Court on the ground that the *“Aggrieved Person is not residing with the Respondent and hence imminent threat of domestic violence is not present.”* The Residence Order was denied since the aggrieved woman was unable to prove that the property was joint family property and because she had left of her own volition. A monthly Maintenance Order was granted to her.

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<sup>91</sup> DVC 6/2009 Andhra Pradesh, West Godavari

<sup>92</sup> CrI Appeal No. 3/11, Delhi

<sup>93</sup> CrI Appeal 10/2010, Delhi

<sup>94</sup> MP No. 165/1, Delhi

In a case from **Uttarakhand**,<sup>95</sup> the aggrieved woman filed an application against her husband for Interim Protection and Maintenance Orders. The Interim Protection Order was denied on the ground that the *“Aggrieved Person is living separately from the respondent and the protection order will be passed in the final order after taking evidence.”* The Interim Maintenance Order was granted to the woman on the basis of her affidavit and after hearing the respondent-husband.

In a case from **Gujarat**,<sup>96</sup> a divorced woman residing in her natal home filed an application against her husband claiming Protection, Residence, Monetary Relief and Compensation Orders. The Court denied the Protection Order on the ground that *“since the parties are divorced and residing separately, imminent threat of violence is not present.”* The Residence Order was also denied but the Court granted Monetary Reliefs of Maintenance and litigation expenses.

#### ***2.3.4 No explanation for the parties residing together even after filing of domestic violence case***

In a case from **Andhra Pradesh**,<sup>97</sup> an aggrieved woman filed an appeal against the order of the Magistrate’s Court dismissing her claim for Protection and Residence Orders. She also sought enhancement of the maintenance amount granted. The Sessions Court refused to grant the Protection Order since there is *“no explanation why aggrieved person is residing with R1 even after filing DV case”*. The request for a Residence Order to prevent the woman from being dispossessed from the Shared Household was denied as the house was owned by the father-in-law. The Court held that the Right to Reside was available only against the husband. Enhancement of the maintenance amount was granted.

#### ***2.3.5 Disbelieving the aggrieved woman’s version of events***

In a case from **Rajasthan**,<sup>98</sup> an aggrieved woman alleged that her husband had started drinking alcohol and had been beating and insulting her when intoxicated. The Court, refusing to grant the Protection Order, held that the parties had been married for twenty-four years, and no person would start drinking alcohol and harassing his wife after so many years of marriage.

#### ***2.3.6 If the dispute is perceived to be a property dispute/ no jurisdiction***

In a case from **Jharkhand**,<sup>99</sup> an aggrieved woman filed a case against her father and brother alleging that they used abusive words and denied her right to a share in the ancestral property. She filed for Protection and Residence Orders. The Court denied both orders and observed that the remedy lay in the woman approaching a court with jurisdiction to try cases of a civil nature.

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<sup>95</sup> 36/2011, Uttarakhand, Nainital

<sup>96</sup> Cri. Misc. App. 536/09, Gujarat, Kachh

<sup>97</sup> Crl Appeal 62/2009, Andhra Pradesh, Ranga Reddy

<sup>98</sup> Case No. 8/2010 Rajasthan, Jodhpur

<sup>99</sup> Case No. 002/2009, Jharkhand, Seraikella-Kharswan

### 3. Emerging Trends in Cases Involving Protection Orders

While there is an increase in the number of Protection Orders granted by Courts, there is a noticeable difference in approaches adopted by the lower courts of the level of proof required for prima facie satisfaction that there has been domestic violence. Courts have been willing to accept several forms of evidence to indicate the existence of violence or the threat of violence and many Courts appear to be adopting a broad approach in this regard. However, this is not true for all Courts and some require greater evidence or a higher level of proof before passing a Protection Order.

Of particular concern is the emphasis being placed by some Courts on the existence of previous complaints of violence. Where these are not made or filed Courts tend to disbelieve the women asking for protection, Courts appear to discount the fact that for many women, the PWDVA is the first avenue of redressal that they can pursue that allows them to seek protection from violence while remaining within the parameters of their marital or familial relationships and that does not require the initiation of criminal proceedings. The lack of previous complaints, should, as a matter of course not be held against women using the PWDVA. Similarly the continued cohabitation of the parties, should not be held against a woman filing for a Protection Order as this defeats the very purpose of this order, i.e., to provide a violence free environment for the aggrieved woman while allowing her to maintain her place within the marriage or family relationship and within the Shared Household.

That the Courts tend to frame Protection Orders largely in the context of physical violence is clear from the overwhelming number of cases where the orders are not granted because the aggrieved woman is staying apart from the respondent. Not only does this underestimate the threats that women may face even if they are living in a separate home, it also limits the universe of violence that Protection Orders could address.

Where women are asking for Protection Orders in the context of the right of residence, there is a discernible reluctance among Courts across all States to pass orders which may directly or indirectly create a property right that is not recognised under personal laws. This conservatism on the part of the Courts is an unfortunate development as the Right to Reside is one of the clearest positive rights created by the PWDVA. The implications of this development are discussed in greater detail in the following chapter. There is a clear trend among Courts to grant Maintenance Orders as opposed to Protection or Residence Orders.

# Remedies under the Act - Residence Orders



**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.

**19. Residence orders.**

19. Residence orders.-(1) While disposing of an application under sub-section (1) of section

12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order -

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the Shared Household, whether or not the respondent has a legal or equitable interest in the Shared Household;

(b) directing the respondent to remove himself from the Shared Household;

(c) restraining the respondent or any of his relatives from entering any portion of the Shared Household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the Shared Household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the Shared Household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as

enjoyed by her in the Shared Household or to pay rent for the same, if the circumstances so require:

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

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

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

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

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

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

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

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

The Right to Reside recognised under the Act is aimed at providing secure housing to a woman and is particularly important in cases where women have been dispossessed from the Shared Household. The law states in no uncertain terms that a woman has the Right to Reside in her matrimonial or natal home. She is also entitled to alternative accommodation in case she does not wish to reside in the Shared Household. Residence Orders also encompass orders to return possession of *stridhan* or other property and valuables that a woman is entitled to.

The analysis of Orders has highlighted Residence Orders as the second most commonly claimed relief (after maintenance) and the third most commonly granted relief after Maintenance and Protection Orders. Within the scope of Residence Orders, those requesting the return of possessions of the aggrieved woman are the most commonly claimed and granted in the States of Manipur and Tripura. In these States, these items are referred to as *awunpot* items. In cases asking for the return of the possessions of women, Courts are requiring women to submit lists of these items.

This Chapter analyses the reasons behind grant and denial of Residence Orders. A key research question identified for this year's analysis is to determine the impact of the Supreme Court judgment in the *Batra*<sup>100</sup> judgment where the question of whether the wife had a Right to Reside in the premises owned by the mother-in-law, where she had been living with her husband after marriage was considered. The Supreme Court interpreted the phrase "Shared Household" in the Act and held that since the house was owned by the mother-in-law, the wife could not claim a Right to Reside in that house. Despite the Act stating clearly that a woman has the Right to Reside in the Shared Household, "*irrespective of whether the respondent or the aggrieved person has any right, title or interest*" in the same, the judges felt that the concept of ownership of property was the only decisive factor in considering the Right to Reside in the Shared Household. In addition, the analysis in this Chapter is based on the different categories of women using the Act to determine whether their familial, marital or residential status has an impact on the grant or otherwise of Residence Orders.

## 1. Married Women Living In The Shared Household

### 1.1 Key findings on Residence Orders for married women living in the Shared Household

- Courts are more likely to grant Residence Orders to married women living in the Shared Household. The most commonly granted reliefs are:
  - ◆ Restraining the respondent from dispossessing the woman from the Shared Household;

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<sup>100</sup> Supra Note 6

- ◆ Restraining alienation of Shared Household; and
- ◆ Grant of a separate room in the Shared Household for the exclusive use of the woman.
- In granting Residence Orders, Courts have accepted the submission of address proof (e.g., Ration Card or a Voter Identification Card) by the woman, the Home Visit Report of the Protection Officer or the Domestic Incident Report as proof that she was staying in the Shared Household.
- The Right to Reside in the Shared Household is usually granted by Courts when the marriage between the parties is not disputed and/or the Domestic Relationship is proved. In such cases the Courts have reasoned that the woman as the wife has a legal Right to Reside in the Shared Household.
- In cases where the violence or threat of violence is severe (threats to kill her, where she is disabled, or severe acts of violence endangering her life), Courts have granted the aggrieved woman exclusive use of a portion of the Shared Household.
- In cases where the aggrieved woman apprehends continuation of violence, Courts have granted alternative accommodation to her.
- Alternative accommodation has been denied to the aggrieved woman on the ground that she is already residing in the Shared Household and hence not in need of any alternative accommodation.
- The ownership of the Shared Household in cases involving the matrimonial home has been central to the decision to grant or refuse an Order for the Right to Reside in the Shared Household. Where the matrimonial home belongs to or is rented by the husband, Residence Orders are routinely granted. Where the Shared Household belongs to the in-laws, Courts have denied the Right to Reside in the Shared Household based on the *Batra*<sup>101</sup> judgment.

## 1.2 Case Studies: Reasons for Granting Residence Orders to Married Women living in the Shared Household

### 1.2.1 *Extreme violence is alleged by the aggrieved woman*

In a case from **Karnataka**,<sup>102</sup> an application was filed by an aggrieved woman living in the Shared Household against the respondent-husband alleging physical violence, use of abusive words, denial of basic necessities and the attempted rape of her daughter by the respondent. The Court directed the husband to partition the Shared Household and give a portion to the woman for her exclusive use and allowed the woman the use of common areas of the Shared Household. In addition, the Court also granted a Protection Order and monthly Maintenance to the woman.

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<sup>101</sup> Supra Note 6

<sup>102</sup> 158/2009, Karnataka, Bengaluru

### ***1.2.2 Domestic Relationship is established***

In a case from **Jharkhand**,<sup>103</sup> the aggrieved woman residing in the Shared Household filed an application alleging that the respondent-husband beat and slapped her and used abusive words. She sought Protection, Residence (restraining the husband from dispossessing her from the Shared Household), Maintenance and Compensation Orders. The Court granted the Residence Order to the woman on the grounds that once the Domestic Relationship was established the wife is entitled to stay in the matrimonial home. The husband was accordingly restrained from dispossessing the woman from the Shared Household and from entering any portion of the house where the woman resides. Protection, Maintenance and Compensation Orders were also granted based on the Protection Officer's report and "in the interests of justice."

### ***1.2.3 Property belongs to the husband hence it was the Shared Household***

In a case from **Tamil Nadu**,<sup>104</sup> the application was filed by an aggrieved woman residing in the Shared Household against the respondent-husband. The woman alleged denial of basic necessities, dispossession from the matrimonial home and alienation of immovable property. The Court, finding that the property belonged to the husband, granted Residence orders that restrained the husband from dispossessing or disturbing the woman's possession of the Shared Household and from alienating or disposing of the Shared Household. The Court considered the address proof of the woman showing that she was residing in the Shared Household as evidence.

### ***1.2.4 Good practice: Wife has a Right to Reside even if property belongs to in-laws if they did not object to her residing in the joint family property***

In a case from **Haryana**,<sup>105</sup> the Court granted the aggrieved woman the Right to Reside in the Shared Household, even though the property belonged to her parents-in-law. The Court held that since the family members never objected to the woman residing in the joint family property, she had a Right to Reside in the same. The Court observed "*Equity should come to the aid of the woman who has been living in joint property of the man since it was always open to the other members of family to object and resist such a move. Family consent even willy-nilly should work in favour of women concerned*".

### ***1.2.5 Where the Aggrieved Woman apprehends continuation of violence, alternate accommodation granted***

In a case from **Delhi**,<sup>106</sup> the respondent-husband conducted a sting operation on his wife and telecast their marital problems on a television channel. The aggrieved woman also alleged that he had bad intentions towards her daughter

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<sup>103</sup> Case No 539/10, Jharkhand, Bokaro

<sup>104</sup> MC No. 3/10, Tamil Nadu, Theni

<sup>105</sup> Appeal No 151, Haryana, Bhiwani

<sup>106</sup> CC No 37/09, Delhi

from her first marriage. The Court directed the husband to secure the same level of alternative accommodation for the woman as the Shared Household on the ground that she was residing in a one-room accommodation with him. The Court found that, “...respondent has carried out a sting operation upon his wife and has left no stone unturned to portray his personal life in public which has caused immense mental agony and cruelty to the complainant.”

### **1.3 Case Studies: Reasons for Denying Residence Orders to Married Women living in the Shared Household**

#### ***1.3.1 Shared Household belongs to the In-Laws: Impact of the Batra judgment***

In a case from **Uttar Pradesh**,<sup>107</sup> an appeal was filed by the aggrieved woman against the order of the Magistrates’ Court dismissing her claim for residence. The woman had alleged that she and her husband were living in a room of the house belonging to the in-laws. On returning from her natal home they found the room locked and the father-in-law did not permit them to enter the room. The Sessions Court dismissed the woman’s appeal and held, while referring to the *Batra*<sup>108</sup> judgment that “the Apex Court was of the opinion regarding Section 17(1) that the wife is only entitled to claim a right to residence in the 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 of. The Apex court was further of the opinion that the claim for alternative accommodation can only be made against the husband and not against the husband’s in-laws or other relatives.”

#### ***1.3.2 Alternate Accommodation denied as aggrieved woman is residing in the Shared Household***

In a case from **Himachal Pradesh**,<sup>109</sup> the aggrieved woman alleged that the respondent-husband beat and slapped her, used abusive words and denied her basic necessities. She sought Protection, monthly Maintenance and Residence Orders directing the husband to pay rent for the same level of alternative accommodation as the Shared Household. The Court denied a Residence Order for alternative accommodation since the aggrieved woman was residing in the Shared Household. A Protection Order and monthly Maintenance were granted to the woman.

#### ***1.3.3 Disbelieving the Aggrieved Woman’s complaint***

In a case from **Rajasthan**,<sup>110</sup> the woman alleged that the respondent-husband beat and slapped her, used abusive words and denied her basic necessities. The husband argued that his wife beat him and her allegations were false. The Court,

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<sup>107</sup> CrI Appeal 143/2010, Uttar Pradesh, Faizabad

<sup>108</sup> Supra Note 6

<sup>109</sup> Cr. Misc. Application 44/3/11, Himachal Pradesh, Solan

<sup>110</sup> Case No 319/09 Rajasthan, Jodhpur

denying the application for a Residence Order held that *“This Act is for women who are actually suffering from domestic violence. But when this Act is used by women who are not suffering then because of such women the real victims are also denied of justice under the Act.”* The Court further held that in a male dominated society, no man would lie about being beaten.

## 2. Married Women residing at the Natal Home

### 2.1 Key findings on Residence Orders for married women residing at the natal home

- Residence Orders are often denied to married women who have left the Shared Household and live with their natal families on the ground that they are not in need of immediate relief.
- Where women leave the Shared Household for their natal homes or where the Courts consider that they have left of their own volition, Residence Orders are routinely denied.
- Courts tend to deny Residence Orders in cases where a restitution of conjugal rights application is filed by the husband. In such cases the courts reason that the “respondent had made an offer to the woman to come back”, but the offer was declined by the woman hence she is not eligible for any relief.
- Residence Orders are also denied based on the character assassination of the woman by the respondent and by disbelieving the facts mentioned by the woman.
- In several cases involving Residence Orders, Courts tend to perceive these as property disputes and routinely deny Residence Orders in such cases.
- The *Batra*<sup>111</sup> judgment is routinely used by Magistrates to deny the Right to Reside to the woman on the ground that the property in question belongs to the in-laws.
- However, Courts are granting Residence Orders to a married woman residing in the natal home if she is able to prove that the Shared Household is a Joint Family property in which the husband has a share.
- As a consequence of the *Batra* judgment it has been noticed that the husband relinquishes his right in the Shared Household in favour of his mother in an attempt to disentitle the aggrieved woman from getting a Right to Reside in the Shared Household. In a few cases the Courts have seen through such tactics and have granted the Right to Reside to the aggrieved woman in the Shared Household.
- In some cases alternative accommodation has been granted to the married

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<sup>111</sup> Supra Note 6

woman residing in the Natal Home if the Right to Reside in the Shared Household has been denied on the ground that the property belongs to the in-laws.

- Alternative accommodation is also granted if the woman has shown a reluctance to go back to the Shared Household due to severe violence perpetrated on her. In a few cases the Court has granted alternative accommodation as a moral duty of the husband to provide for his wife.

## **2.2 Case Studies: Reasons for Granting Residence Orders to Married Women Residing at the Natal Home**

### ***2.2.1 Shared Household is Joint Family Property in which the Husband has a Share***

In a case from **Tamil Nadu**,<sup>112</sup> an aggrieved woman living separately in her natal home filed an appeal against the interim order passed by the Magistrate's Court dismissing her claim for Protection, Residence, Maintenance and Custody Orders. While setting aside the Order of the lower Court and granting reliefs including a Residence Order, the Sessions Court held, *"The Hon'ble S.C. has held in the S. R. Batra & Another v. Taruna Batra Judgment that in order to claim a right to a house as a Shared Household, the house must belong to the husband or it must have been taken on rent by the husband. A house which is owned by the joint family of which the husband is a member can also be a shared house hold. Therefore, the learned Counsel appearing for the respondent submitted that no such right has been devolved on the respondent and on the contrary, the documentary evidence available on record clearly shows that the said house was exclusively owned by the father of the respondent. But the father of the respondent has never said that the respondent does not have any share over his property and such being the case the presumption would be that the appellant being the son has a share in the property of his father. In Vimalaben Ajitbhai Patel v. Vatsalaben A. Patel 2008 (4) S.C.C. 649, the Hon'ble Supreme Court has held that the burden of proof is on the respondent to prove that the house is a Shared Household. In the instant case, the learned Magistrate by relying on the reply statement submitted by the respondent arrived to a conclusion that the house belongs to the father of the respondent. The appellant herein by way of a number of photos and documents has proved that she was living with her husband in the house and her belongings have been thrown away from the house. The photos are carefully considered and one can easily say that the appellant has lived in the house of her husband and the respondent being the son of the owner, the Aggrieved Person certainly has a share in the property and as the house is owned by the joint family, the house shall be termed as a Shared Household. Without considering the evidence available on record and the affidavit of the appellant, the learned Magistrate has erroneously concluded that the appellant is not entitled for the residence order u/s 19 of the Act."*

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<sup>112</sup> CrI. Appeal No 112/2011, Tamil Nadu, Chennai

### ***2.2.2 Relinquishment of rights in property by husband in favour of his mother does not disentitle the aggrieved woman of the right of residence***

In a case from **Delhi**,<sup>113</sup> the respondent-husband appealed against the order of the Magistrate's Court granting Maintenance and Residence Orders to the aggrieved woman on the ground that he had relinquished his rights in the property in favour of his mother. The appeal was dismissed by Court holding that *"Merely because the appellant has relinquished his rights in the said property in favour of his mother does not amount that now the respondent is not entitled for the right of residence in the same. Even the spirit of Batra is not so."*

### ***2.2.3 Alternate accommodation granted where aggrieved woman alleges extreme violence***

In a case from **Tripura**,<sup>114</sup> while the Court denied the aggrieved woman the Right to Reside in the Shared Household on the basis of the *Batra*<sup>115</sup> judgment, it directed the husband to provide her with alternative accommodation on the apprehension of severe violence. The Court held that, *"Aggrieved Person is living in the house of her mother and if she goes to the house of the Respondent they will kill her. Her father is no more and her mother is managing with great trouble. She has no income and no residence to live in."*

In a case from **Andhra Pradesh**,<sup>116</sup> the aggrieved woman filed an application under the Act alleging that her respondent-husband and in-laws had thrown her into a well, beaten her with a broom and dragged her through the streets while she was pregnant. She alleged that she was harassed for dowry and ultimately dispossessed from the Shared Household. A Protection Order was granted as the fact of domestic violence was proved. The husband was also directed to pay Rs. 750/- per month as rent for alternative accommodation. Maintenance and Compensation Orders were also granted.

### ***2.2.4 Alternative accommodation granted where Right to Reside in the Shared Household was denied on the basis of the Batra judgment***

In a case from **Tamil Nadu**,<sup>117</sup> the respondent husband filed an appeal against the Residence, monthly Maintenance and Compensation Orders granted by the Magistrate's Court. The Sessions Court relied on the *Batra* judgment to set aside the order granting the woman the Right to Reside in the Shared Household on the grounds that it belonged to the mother-in-law. However the Court directed the husband to provide the aggrieved woman with an alternative accommodation. The monthly Maintenance and Compensation Orders were upheld by the Sessions Court though the original quantum of Compensation was reduced.

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<sup>113</sup> CrI Appeal 49/2010, Delhi

<sup>114</sup> CR 4/2010 Tripura, South Tripura

<sup>115</sup> Supra Note 6

<sup>116</sup> DVC 3/2009, Andhra Pradesh, Nellore

<sup>117</sup> CrI Appeal 160/11, Tamil Nadu, Coimbatore

### ***2.2.5 Moral Duty of the Husband***

In a case from **Maharashtra**,<sup>118</sup> the husband filed an appeal against the Residence Order granted by the Magistrate's court to the aggrieved woman. The Sessions Court upheld the order for alternate accommodation and observed *"He threw her out, and got another woman home, and since she has no place to stay, it is his moral duty to provide her with a house to live in."*

### ***2.2.6 Aggrieved Woman's articles returned***

In a case from **Manipur**,<sup>119</sup> the aggrieved woman filed an application asking for the return of her possessions (*awunpot*) and for a monthly Maintenance Order. The Magistrate's Court directed the husband to return the possessions on the ground that such properties are personal properties of the wife and as such she has the right to possess the same. The court also granted Interim monthly Maintenance to the woman.

### ***2.2.7 Alternate Accommodation granted as woman was facing cruelty***

In a case from **Maharashtra**, a Muslim aggrieved woman filed an application against the respondent-husband alleging physical, verbal and emotional abuse for dowry. She further alleged that her husband had contracted a second marriage during the subsistence of the first. The Court granted Protection, Monetary Reliefs (monthly Maintenance and litigation expenses) and Compensation Orders to the woman. A Residence Order was granted directing the respondent-husband to provide rent for alternate accommodation. The court held that *"She is staying apart only because of his cruelty. He has married again and though polygamy is allowed in Muslims, it is imperative that all wives be given equal rights"*<sup>120</sup>

## **2.3 Case Studies: Reasons for Denying Residence Orders to Married Women Residing at the Natal Home:**

### ***2.3.1 Aggrieved Woman Residing In Her Natal Home is Not In Immediate Need of Relief***

In a case from **Delhi**,<sup>121</sup> an aggrieved woman filed an application under the Act alleging that her husband beat her, verbally harassed her for dowry, did not take proper care of her during pregnancy and dispossessed her from the matrimonial home. The woman had been residing in her natal home for 18 months at the time of filing the case. While her application for Maintenance was granted both the Protection and Residence Orders were not granted on the ground that she was residing with her parents and was not in immediate need of relief.

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<sup>118</sup> Crl Appeal No 33/2011, Maharashtra, Bhandara

<sup>119</sup> Case No 62/2011, Manipur East

<sup>120</sup> MA 32/2011 Maharashtra, Bhokardan

<sup>121</sup> CC No 21/1, Delhi

### ***2.3.2 Aggrieved Woman left the Shared Household of her own volition***

In a case from **Uttarakhand**,<sup>122</sup> the aggrieved woman filed an appeal against the order of the Magistrate's Court dismissing her application for Residence and Maintenance Orders. Her appeal was dismissed on the grounds that she was residing away from the Shared Household of her own volition. The Protection Order was similarly denied on the ground that the threat of domestic violence was not imminent as she was living separately.

### ***2.3.3 Property belongs to the in-laws: Impact of the Batra judgment***

In a case from **Delhi**,<sup>123</sup> an application was filed by the aggrieved woman residing in her natal home against the respondent-husband and in-laws alleging severe physical violence, dowry harassment and dispossession from the matrimonial home. The Court refused to grant her Protection, Residence, Maintenance or Compensation Orders. While denying the Residence Order on the ground that the property belonged to the in-laws, the Court further relied on the judgment of the Delhi High Court in *Neetu Mittal v. Kanta Mittal*<sup>124</sup>, where it was held that *"Where the house is self acquired house of parents, son whether married or not has no legal right to live in that house and he can live in that house only at the mercy of the parents up to the time parents allow."*

### ***2.3.4 Refusal of Aggrieved Woman to join her husband after he filed an application for restitution of conjugal rights***

In a case from **Delhi**,<sup>125</sup> the aggrieved woman filed an application against her husband alleging physical abuse, dowry harassment and forced abortion. The Court denied relief on the ground that the woman had refused to join her husband after he filed an application for restitution of conjugal rights.

### ***2.3.5 Aggrieved Woman's character questioned; dispute perceived to be a property dispute***

In a case from **Delhi**,<sup>126</sup> in response to an application filed by the aggrieved woman, the respondent-husband alleged that she ran away to Nepal with her lover. The woman denied this allegation and claimed her character was being defamed and that she was deserted by the respondent-husband. Her application was dismissed by the Court, which held that the application had been filed to extract money from the husband and further that, *"It is clear that the complainant was leading an adulterous life and now, the case has been filed in order to extract money from the respondent as well as to grab his property."*

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<sup>122</sup> Appeal No 35/2011, Uttarakhand, Dehradun

<sup>123</sup> CC No. 149/04/09, Delhi

<sup>124</sup> (2008) DLT 691

<sup>125</sup> CC No. 692/3, Delhi

<sup>126</sup> CC No 488/3, Delhi

### **2.3.6 Aggrieved Woman denied relief since she was not an Indian citizen**

In a case from Maharashtra,<sup>127</sup> the aggrieved woman who was not an Indian citizen, filed a case seeking a Residence Order. The Court referred to *Sarbanada Sonowal vs. Union of India*<sup>128</sup>, and held that the Constitutional rights of a foreigner in India do not include the right of residence. According to the court, “*Since the DV Act has been brought keeping in view the constitutional rights recognised by articles 14, 15 and 21, the provisions of the Act need not be construed in any manner so as to confer upon a person any additional rights not guaranteed by the Constitution. No doubt, fundamental rights are against the State and not against individuals, but the question is whether a foreigner having no right to reside in India against the State, can seek residence orders against an individual against his will? And whether the State would be committed to protect her interest in the said situation? The DV Act intends to protect the constitutional rights of the woman facing DV and there appears no intention of the legislature to any way confer additional rights upon a foreigner than those recognised by Article 21.*”

## **3. Widows**

### **3.1 Key findings on Residence Orders for Widows**

Widows can either be mothers filing cases against their sons and daughters-in-law or daughters-in-law filing cases against their in-laws. In the majority of cases Courts tend to deny relief to widows who file cases against their in-laws and most claims for Residence Orders are dismissed on the ground that they have no substantive rights. However, when substantive rights are established, Residence Orders are granted. By contrast widows filing cases against their children appear to have greater success in obtaining Residence Orders.

#### **3.1.1 Widows v. Sons/daughters**

- The Courts have a sympathetic attitude towards widowed mothers who file applications under the Act against their sons and commonly grant them the Right to Reside in the Shared Household.
- In most cases, the son is restrained from dispossessing or disturbing the possession of the widow, is directed to remove himself from the Shared Household or restrained from entering the portion of the house where the widow is residing.
- While granting Residence Orders against the son, Courts have held that the property is a joint family property and hence the widow is entitled to relief.
- In very few cases is the respondent-son has been directed to pay rent for

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<sup>127</sup> CC No. 464/ DN/ 2011, Maharashtra, Mumbai

<sup>128</sup> AIR 2005 SC 2920

the widow's alternate accommodation.

### **3.1.2 Widows v. In-laws**

- In most cases where a widow has filed a case against her in-laws, the Courts have relied on the *Batra*<sup>129</sup> judgement to deny a Residence Order on the ground that the property belongs to the in-laws.
- Relief is also denied on the ground that the claim for alternate accommodation can only be made against the husband and not the in-laws and other relatives. Thus the *Batra* judgment has a doubly devastating impact on widows whose husbands are deceased and in effect has denied them not only the Right to Reside in the Shared Household but also any claim for alternate accommodation.
- However there have been exceptions to the rule where Courts have taken a positive approach and granted relief in cases filed against in-laws. The Courts have reasoned that since the woman is the wife of the deceased husband and the house is a common ancestral property of the woman's deceased husband and the respondent-in laws, she is entitled to relief. Address proof produced by the woman showing that she was residing in the Shared Household (Ration Card or Voter's Identification Card) have been taken into consideration in granting Residence Orders in such cases.
- Relief is also denied if the dispute between the parties is perceived to be related to property and it is held that the widow has filed the case to restrain the in-laws from alienating the property or for acquiring a right in the property.

## **3.2 Case Studies: Reasons for Granting Residence Orders to Widows**

### **3.2.1 It is the duty of the son to look after his mother**

In a case from **Uttar Pradesh**,<sup>130</sup> a widow living in the Shared Household filed a case against her son and daughter-in-law on the ground that they hit her younger daughter and threw them out of the Shared Household. Economic abuse and verbal abuse were also alleged. The aggrieved woman claimed Protection, Residence and Monetary Relief Orders. The Court granted an ex parte Protection Order restraining the respondent from committing any further acts of domestic violence and a Residence Order to prevent the dispossession of the aggrieved woman. Monthly Maintenance was also granted. The Court held that it is the duty of a son to look after his mother. The Court relied on the affidavit submitted by the aggrieved woman, the medico-legal report and on the evidence of the aggrieved woman to grant relief.

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<sup>129</sup> Supra Note 6

<sup>130</sup> M.C. No 64/2011, Uttar Pradesh, Azamgarh

In a case from **Haryana**,<sup>131</sup> the case was filed by a widowed mother against her son and grandson. She alleged severe physical violence, including an attempt to murder her by throwing her off the roof of the building, in order to grab her share of the property. The Court granted her a Protection Order and a Residence Order of possession of a room in the Shared Household. The Court observed *“When the children cannot look after their parents and provide them the necessary support and care when they require it, such children have no right to claim any share in the property of their parents.”*

### **3.2.2 Son directed to vacate the Shared Household**

In a case from **Mizoram**,<sup>132</sup> the application was filed by the widowed mother against her son alleging severe physical violence, verbal abuse and not providing her with basic necessities. The Court granted Protection and Residence Orders directing the son to remove himself from the Shared Household. The Court held that *“the continued presence of the Respondent would only entail more violence being caused.”*

### **3.2.3 Widow was Co-Holder of the Shared Household along with her Brother-In-Law**

In a case from **Uttar Pradesh**,<sup>133</sup> a widow living in the Shared Household filed a case against her brother-in-law and his wife accusing them of physical, verbal and economic abuse. A Residence Order was sought asking for the respondents to return her *stridhan* and any property to which she is entitled. She also claimed monthly Maintenance for herself and her children along with Compensation for mental torture. The Court granted an ex parte Residence Order relying on the Election card and Ration card of the woman showing that she was staying at the Shared Household. The Court found that *“A copy of the FIR Report u/s 498A IPC has been attached by the Aggrieved Person which proves that after the death of her husband domestic violence has been inflicted on her by the Respondents. Aggrieved Person has further produced the “Khata Khatoni” (land record registration document) which proves that the names of the Aggrieved Person and the Respondent No. 1 has been mentioned as co-holders of the Shared Household after the death of her Father in Law who was the owner of the Shared Household. The report filed by the Protection Officer also proves that domestic violence has been inflicted on the Aggrieved Person by the Respondents.”* Accordingly, the Residence Order was granted. However, an order for the return of the *stridhan* was refused as she had not provided any details of the *stridhan* and the Court held that it was *“unbelievable”* that her jewellery was with the respondent-brother in law for 20 years and she had never demanded it back.

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<sup>131</sup> Appeal No 20/2 of 2011, Haryana, Hisar

<sup>132</sup> Case No. 46/2011, Mizoram, Aizawl

<sup>133</sup> Case No. 826/2009, Uttar Pradesh, Ballia

### 3.3 Case Studies: Reasons for Denying Residence Orders to Widows

#### ***3.3.1 Property belongs to the In-Laws: Impact of the Batra Judgment***

In a case from **Andhra Pradesh**,<sup>134</sup> the application was filed by the widow against her in-laws alleging dowry harassment and dispossession from the matrimonial home. The Court relied on the *Batra*<sup>135</sup> judgment to deny her a Residence Order on the ground that the property belonged to the in-laws. The Court accepted proof from bank passbooks produced in Court that the property belonged to the in-laws.

#### ***3.3.2 Property in Question not a Shared Household as the Widow was not residing in the property prior to the death of her husband: Impact of the Batra Judgment***

In a case from **Delhi**,<sup>136</sup> the application was filed by the widow against her in-laws alleging physical abuse, verbal abuse and alienation of movable property. The aggrieved woman's claim for a Right to Reside in the ancestral home was denied on the grounds that she had not been residing in that home before the death of her husband and hence it could not be considered a Shared Household. The Court further held that the property was in the name of the father-in-law and was presumed to be self acquired property.

#### ***3.3.3 Claim for Alternate Accommodation can be made only against the husband: Impact of the Batra Judgment***

In a case from **Kerala**,<sup>137</sup> an application was filed by the widow against her in-laws and other relatives claiming Residence, Monetary Relief and Compensation Orders. The Court denied the relief of alternate accommodation on the ground that the Supreme Court, while considering the scope of Section 19(1) of the Act, in the *Batra* judgment had held that *"the claim for alternate accommodation can only be made against the husband and not husband's in-laws and other relatives."* The Court further held that *"since the husband is no more and the respondents (Mother-in-Law and Father-in-Law) are putting up at a rented flat they cannot be directed to provide the Aggrieved Person an alternate accommodation."*

#### ***3.3.4 Not sharing the same kitchen, hence not a Shared Household***

In a case from **Delhi**,<sup>138</sup> an application was filed by a widow against her in-laws alleging that they had disconnected the electricity in her premises and refused to install a separate water meter. She claimed a Residence Order restraining them from dispossessing her from the Shared Household. The Court referred to *Vijay Verma v. State of NCT and Anr*<sup>139</sup> and *Adil and Ors v. State and Anr*<sup>140</sup> to conclude

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<sup>134</sup> 11/2009, Andhra Pradesh, Cyberabad

<sup>135</sup> Supra Note 6

<sup>136</sup> CC No. 238/09, Delhi

<sup>137</sup> MC No. 110/09, Kerala

<sup>138</sup> V-84/10, Delhi

<sup>139</sup> 2010 (4) JCC 2377

<sup>140</sup> 2010 (119) DRJ 297

that sharing the same kitchen is essential to constitute a Shared Household. Since the woman and the in-laws were not sharing the same kitchen, it was held the property was not a Shared Household. The court further held that *“It appears that the actual dispute is relating to the property. It appears that in order to assert her rights in the aforementioned property, the applicant has filed the present application under DV Act which is not a correct remedy for enforcement of said rights.”*

### ***3.3.5 Aggrieved Woman residing at her parental home; not in need of immediate relief***

In a case from **Andhra Pradesh**,<sup>141</sup> an appeal was filed by the widow who was residing separately in her natal home against the Order of the Magistrate’s Court dismissing her claim for a Residence Order against her in-laws. The Sessions Court upheld the impugned order of the lower court on the ground that *“the Aggrieved Person is residing at her parental home and is not in need of immediate relief.”*

## **4. Divorced Women**

### **4.1 Key findings on Residence Orders for Divorced Women**

- In cases where Residence Orders are sought by a divorced woman, the most common reliefs claimed are to direct the respondent to pay rent for the same level of alternate accommodation and to direct the respondent to return the woman’s *stridhan* articles. While alternate accommodation is rarely granted to the woman, orders for the return of *Stridhan* articles are more commonly granted.
- Residence Orders are denied to divorced women on the ground that no Domestic Relationship exists between the parties since they are divorced.
- Residence Orders have also been denied on the ground that since the divorced woman is residing with her parents, there is no need for any immediate relief.
- In a few cases Courts have denied Residence Orders to the woman holding that divorced women have no right over the property of the husband.
- In a few cases the Courts have granted the right to residence to a divorced woman on the ground that she is entitled to relief under the Act if she is not re-married.
- Residence Orders have also been granted if the divorced woman is able to prove that the property in question is the Shared Household.

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<sup>141</sup> 166/2010, Andhra Pradesh, Kurnool

## 4.2 Case Studies: Reasons for Granting Residence Orders to Divorced Women

### 4.2.1 Divorced woman entitled to relief under the Act if not re-married

In a case from **Uttarakhand**,<sup>142</sup> the application was filed by a divorced woman against her husband alleging physical abuse, dowry harassment, denial of basic necessities and dispossession from the matrimonial household. The woman claimed Protection, Residence and Maintenance Orders. In her claim for a Residence Order she asked for alternate accommodation or rent for alternate accommodation. Through an Ex parte Order, the Court directed the respondent-ex husband to pay rent for her alternate accommodation and Maintenance. The Court held that divorced women if not re-married are entitled to relief under the Act.

### 4.2.2 Divorced woman staying in the matrimonial home before she was deserted by the ex-husband; case distinguished from the *Batra* judgment

In a case from Kerala,<sup>143</sup> the woman obtained an ex parte grant of divorce from the Family Court on the ground of desertion and adultery by the respondent-husband who resided abroad. She also filed an application under the PWDVA and was granted Protection and Residence (Right to Reside in the Shared Household) Orders. An appeal filed by her ex-husband and in-laws cited the *Batra*<sup>144</sup> judgment asking for the setting aside of the Residence Order. The Sessions Court dismissing the appeal distinguished the facts of the case from the *Batra* case holding that *“Here, the petitioner and the child have been residing in the mother-in-law’s house even prior to the date of petition when the husband of the petitioner was staying abroad for a long period without looking after the affairs of the petitioner and her child. There is acceptable evidence and clinching circumstance to hold that the petitioner is living in the Shared Household against the will of respondents withstanding the domestic violence. The attempt to throw away the petitioner and her minor child from the Shared Household to the streets by unlawful means cannot be winked at. On an anxious consideration of the peculiar facts, circumstance and evidence of the present case, I am convinced that domestic violence within the meaning of Section 3 of the PWDVA has taken place in the instant case and residence order u/s 19(1) of the Act is highly necessary to protect the peaceful residence of the petitioner and her child in the matrimonial house.”*

## 4.3 Case Studies: Reasons for Denying Residence Orders to Divorced Women

### 4.3.1 Divorced woman is residing with her parents

In a case from **Gujarat**,<sup>145</sup> the divorced woman sought a Residence Order seeking alternate accommodation. The woman admitted in cross-examination that she

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<sup>142</sup> 96/2011, Uttarakhand, Dehradun

<sup>143</sup> Crl Appeal 79/2011 Kerala, Idduki

<sup>144</sup> Supra Note 6

<sup>145</sup> Case No 536/09, Gujarat, Kachh

was better off living with her parents. This went against her with regard to the grant of alternate accommodation. The Court held that since she was residing in her parent's house, she was not in need of relief.

In, a case from **Andhra Pradesh**,<sup>146</sup> the divorced woman filed an application against her former husband and in-laws alleging physical and economic abuse. While the Court granted her Maintenance, a Residence Order was denied on the ground that she had been living on her own for the past five years.

#### **4.3.2 Divorced Woman has no right over the property of the husband**

In a case from **Andhra Pradesh**,<sup>147</sup> the divorced woman filed an application against her former husband and in-laws alleging that she was not provided with basic necessities and was dispossessed from the matrimonial home. The Court denied her a Residence Order holding that *"Since both parties are divorced Aggrieved Person has no right over the property of the respondent husband."*

#### **4.3.3 Divorced, hence no Domestic Relationship**

In a case from **Punjab**,<sup>148</sup> the woman married a non-resident Indian ("NRI") based in the United Kingdom ("UK"). The Magistrate's Court awarded a sum of Rs. 1500 as monthly Maintenance, Rs 20,000 as Compensation and the Right to Reside in the Shared Household. In an appeal filed by the in-laws against the Order of the Magistrate's Court, the Sessions Court overturned the Residence Order holding that since the parties were divorced, there was no Domestic Relationship with the husband or any of his relatives.

## **5. Women in relationships in the nature of marriage**

Although previous M&E Reports had noted that Courts were inclined to grant reliefs to women in relationships in the nature of marriage, the analysis of Orders this year reveals that relief is now granted and denied based on the **D. Velusamy v. D. Patchaiammal**<sup>149</sup> judgment of the Supreme Court. In this case, the Supreme Court held that a relationship in the nature of marriage is akin to a common law marriage which, although not being formally married, requires that:

- a) The couple must hold themselves out to society as being akin to spouses;
- b) They must be of legal age to marry;
- c) They must be otherwise qualified to enter legal marriage, including being unmarried; and

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<sup>146</sup> Case No. 1/2010, Andhra Pradesh, Mahaboobnagar

<sup>147</sup> 7/2007, Andhra Pradesh, East Godavari

<sup>148</sup> CrI. Appeal No. 44T/2008, Punjab, Patiala

<sup>149</sup> AIR (2011) SC 479

- d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

### **5.1 Key findings on Residence Orders for Women in relationships in the nature of marriage**

- The Right to Reside is granted to women in relationships in the nature of marriage only if they are able to fulfil the requirements of a common law marriage as stipulated in the *Velusamy* judgment. Thus, Residence Orders have been denied if the woman cohabited with the respondent-partner against her will or if the respondent-partner states that he never intended to treat the woman as his wife.
- Relief is granted if the woman is able to prove that she is in a Domestic Relationship with the respondent-partner.

### **5.2 Case Studies: Reasons for Granting Residence Orders to Women in Relationships in the Nature of Marriage**

#### ***5.2.1 Requirements of a common law Marriage proved as stipulated in the Velusamy Judgment***

In a case from **Delhi**,<sup>150</sup> the aggrieved woman claimed to be married which was denied by the respondent-partner. Evidence from two neighbours proved that the woman and the respondent had been in a “live-in relationship”. The Court granted a Residence order (restraining the respondent-partner from dispossessing the woman from the Shared Household) but not preventing him from creating any third party interest in the property. The Court also granted monthly Maintenance for the woman (but not for her daughter from a previous marriage). Compensation was denied due to lack of proof of mental torture and distress. The Court relying on the four requirements of a common law marriage stipulated in the *Velusamy*<sup>151</sup> judgment and based on the evidence of the neighbours inferred that *“it is evident that the complainant and the respondent no. 1 had voluntarily held themselves out to society as being akin to spouses for a significant period of 10 years. Hence it can be presumed that complainant and respondent no 1 are live-in relationship.”*

#### ***5.2.2 Domestic Relationship proved: child born out of relationship***

In a case from **West Bengal**,<sup>152</sup> the aggrieved woman filed a claim against the respondent-partner on the ground that he deceived her with a promise of marriage and cohabited with her leading to the birth of a child. Relying on medical reports proving that the child was born out of the relationship, the Court concluded that there was a Domestic Relationship in the nature of marriage. The Court granted a Maintenance Order of Rs. 3000/- per month and a Residence Order for suitable residential accommodation to the woman.

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<sup>150</sup> CC No 255/6/08, Delhi

<sup>151</sup> Supra Note 149

<sup>152</sup> Case No 123/09, West Bengal, Purulia

## 5.3 Case Studies: Reasons for Denying Residence Orders to Women in relationships in the nature of marriage

### 5.3.1 *The woman cohabited with the respondent against her will; Impact of the Velusamy Judgment*

In a case from **Tripura**,<sup>153</sup> the aggrieved woman filed a petition against her live-in partner. The couple cohabited for two years in a rented accommodation and he introduced the woman to the neighbours as his wife. The woman alleged that the respondent-partner began to cohabit with her against her will and tortured her physically when she resisted. In this case, the phrase ‘forced cohabitation’ was used as a euphemism by the woman for forced sexual intercourse. When the woman could not fulfil the respondent-partner’s monetary demands he deserted her to marry another woman. The Court denied relief to the woman relying on the *Velusamy* judgment holding that, *“As per the judgment of the Hon’ble Supreme Court, one of the main criteria of a Relationship in the nature of marriage of the said Act is that the Aggrieved Person and the respondent must have voluntarily cohabited and hold out to the world as being akin to spouses for a significant period of time. In the instant case the Aggrieved Person has clearly stated that she cohabited with the Respondent against her will which directly hits the said judgment of the Supreme Court. Further the live-in relationship between the Aggrieved Person and respondent could not be proved by the Aggrieved Person as there are major discrepancies in the version of the witnesses.”*

### 5.3.2 *Respondent did not indicate that he intended to treat the woman as his wife; Impact of the Velusamy Judgment*

In a case from **Manipur**,<sup>154</sup> the aggrieved woman filed an application stating that she and the respondent-partner had a sexual relationship, which was not denied by him. However he denied any agreement to marry, and also denied any domestic violence. The Court referring to the *Velusamy* judgment held, *“The question is not whether the society has recognised the parties as spouses, but rather if the parties had held themselves out to the society as spouses. The vital question involved in the present case is if the respondent no 1 has shown any indication that he intended to treat the complainant as if she was his wife.”* It was held the woman failed to establish a Domestic Relationship and hence no relief was granted.

## 6. Daughters/sisters

### 6.1 Key findings on Residence Orders for Daughters/Sisters

- In cases where daughters have alleged economic violence against their fathers in terms of dispossession from the Shared Household, Courts seem

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<sup>153</sup> CR 27/11, Tripura, West Tripura

<sup>154</sup> Case No 23/2009, Manipur

more inclined to grant Residence Orders upholding her Right to Reside in the Shared Household.

- In cases where the case has been filed by the daughter against her father and the daughter has specifically claimed for partition, Courts while denying the Right to Reside have given an appropriate note of caution by identifying the issue as a property dispute and pointing out that the recourse lies in civil court. Courts have held that the PWDVA does not provide for the relief of partition.
- The definition of Domestic Relationship to include consanguinity (sister) is ignored if it is found that the sister has “established a separate household” leading to a denial of her Right to Reside in the Shared Household. This trend is particularly noticeable in Delhi where the lower courts are relying on the judgment passed by the Delhi High Court in the case of *Vijay Verma*<sup>155</sup> where a narrow interpretation of the definition of Domestic Relationship was adopted by the High Court which interpreted the phrase “*have, at any point of time, lived together*” narrowly and held that “*Domestic relationship continues so long as the parties live under the same roof and enjoy living together in a Shared Household. Only a compelled or temporarily going out by aggrieved person shall fall in phrase ‘at any point of time’... However, where the living together has been given up and a separate household is established and belongings are removed, domestic relationship comes to an end and a relationship of being relatives of each other survives.*” Thus, the Delhi High Court held that “*“at any point of time” under the Act only means where an aggrieved person has been continuously living in the Shared Household as a matter of right but for some reason the aggrieved person has to leave the house temporarily and when she returns, she is not allowed to enjoy her right to live in the property. However, “at any point of time” cannot be defined as “at any point of time in the past” whether the right to live survives or not.*”

## 6.2 Case Studies: Reasons for Granting Residence Orders to Daughters/Sisters

### 6.2.1 Daughter deserted by her husband has a Right to Reside in her father’s home

In a case from **Odisha**,<sup>156</sup> an aggrieved woman filed an application alleging that she and her minor son were evicted from the natal home by her father and brothers on the grounds that she had already received a cash amount with respect to her share in the natal home. She further alleged that on one occasion her brother threatened to kill her and for some time she had to live in a “mutt” (religious place). The respondents claimed that she was mentally deranged. The

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<sup>155</sup> Supra Note 139

<sup>156</sup> Case number not mentioned in the Order

Court granted a Residence Order restraining the respondents from dispossessing the woman from the Shared Household or in the alternative to provide alternate accommodation. A Protection Order was also granted. The Court held that, *“It is apt to say that when a woman has been deserted by her husband and in-laws, the family members of her father is a great shelter for her. The father’s family takes the burden of the woman in distress. It is true that in case her father’s family does not take her responsibility, the fate of the woman will be in the street. In the present case, though the Aggrieved Person has deposed to have received the share in the landed property of her father, she is entitled to remain in the house of the respondents.”* In this case, the Court determined that the natal family had a responsibility for the woman even though she was also receiving a monthly maintenance for herself and her son from her estranged husband.

### ***6.2.2 Throwing the daughter and her aged mother out of the Shared Household by the father after his second marriage constitutes domestic violence***

In a case from **Odisha**,<sup>157</sup> the aggrieved woman along with her aged mother filed an application against her father, his second wife and her brother alleging that she and her mother were thrown out of the Shared Household and had no means to maintain themselves. The woman claimed Protection, Maintenance and Residence Orders. The Court granted ex parte Interim Protection and Maintenance Orders. The Court also directed the respondent-father to provide the aggrieved woman and her aged mother with accommodation in the Shared Household during the pendency of the case. The Court held that *“The sworn affidavit of the Aggrieved Person clearly speaks that she and her mother were subjected to ill treatment as well as harassment. Further due to negligence of the father of the Aggrieved Person they are leading a life of pauper and striving hard to keep body and soul together in spite of order passed in their favour by the higher forums. These activities of the respondents clearly come under the purview of the PWDVA.”*

## **6.3 Case Studies: Reasons for Denying Residence Orders to Daughters/Sisters**

### ***6.3.1 PWDVA does not provide relief of partition***

In a case from **Andhra Pradesh**,<sup>158</sup> the granddaughter filed a case against her grandfather due to his lack of interest in taking responsibility for her marriage. She sought partition of the agricultural property, which was denied by the Court since *“The domestic violence Act does not provide any relief with regard to partitioning of properties.”*

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<sup>157</sup> Case number not mentioned in the Order

<sup>158</sup> DVC 1/2011 Andhra Pradesh, East Godavari

### ***6.3.2 Domestic Relationship ceases to exist if the married sister establishes a separate household***

In a case from **Delhi**,<sup>159</sup> an appeal was filed by the sister against the order of the Magistrate's Court denying her relief on the ground that since she is married, there is no "Shared Household" or "domestic relationship" between the parties. The woman claimed her share in the property left for her by her father in his unregistered will. The Sessions Court dismissed the appeal relying on the *Vijay Verma*<sup>160</sup> judgment and held that *"The Hon'ble High Court has painstakingly evaluated and construed the above detailed definitions and the phrase 'at any point of time' and opined that once a sister a daughter or a daughter/son in law has established a separate household then they cease to be having a domestic relationship."*

## **7. Emerging Trends in Cases Involving Residence Orders**

Residence Orders are considered to be the heart and soul of the PWDVA since they protect the woman from becoming homeless subsequent to her resistance to acts of domestic violence. The analysis of Orders shows the devastating impact that the *Batra*<sup>161</sup> Judgment has had on the Right to Reside of women in the Shared Household. The decision cuts across all categories of women filing for Residence Orders where the Shared Household is the matrimonial home. However some exceptions are also notable where some lower Courts are attempting to distinguish cases before them from the facts in the *Batra* case.

One emerging exception is where Courts are finding that the matrimonial home in question is Joint Family property in which the husband has a share. Another exception that has been recognised is where the women have stayed in the Shared Household even if it belongs to the in-laws and there has been no previous objection to their residence. In such cases, there are important findings by Courts that equity must come to the aid of the woman. Courts are also seeing through attempts by husbands to alienate their share in the property in favour of his parents in an effort to escape the grant of Residence Orders. In at least one case, a Court has held that even if the *Batra* judgment applies, the woman has to, at least be provided alternative accommodation. However these exceptions are not sufficient to blunt the overwhelming impact of the *Batra* judgment on Residence Orders under the law. The emerging trend in the Orders analysed is an indication that an urgent review of the Supreme Court judgment is required as it appears to go against the very letter of the law.

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<sup>159</sup> 09/2011, Delhi

<sup>160</sup> Supra Note 139

<sup>161</sup> Supra Note 6

Another trend cutting across cases is the suspicion expressed in several orders by judges that Residence Orders are being misused by woman to claim rights in properties that their personal laws do not accord them. Any hint of a potential **property dispute** invariably results in denial of the Right to Reside for the woman.

Amongst the categories of women, it is evident that **married women living in the Shared Household** have greater success in obtaining orders for the Right to Reside in the Shared Household, subject, of course, to the *Batra*<sup>162</sup> judgment. **Married women living separately in their natal homes** are at a much greater disadvantage as Residence Orders are routinely denied to them citing the lack of any need for an immediate relief. As noted in Chapter C.1, the overwhelming numbers of cases are filed by women after they leave the Shared Household. Thus the circumstances that women feel most empowered to file cases in are the very circumstances being held against them. It remains unclear whether Courts are considering the circumstances that lead women to leave or where they are forced to leave the Shared Household.

In many respects the trends emerging in cases of Residence Orders involving **widows** appear to mirror their status under personal laws. As a result under the PWDVA widows have greater success in claims relating to residence against their children than those filed against their in-laws. Courts also tend to view applications for Residence Orders filed by widows as property disputes rather than claims for the right of residence. The *Batra* judgment has a doubly devastating impact on widows as the only option available to women under the decision, i.e., of seeking alternate accommodation from the husband, is not available to them.

In several cases involving widows, the women are senior citizens. In this regard it may be noted that along with the PWDVA, other laws may also be used by women who are senior citizens to claim relief such as the *Maintenance and Welfare of Parents and Senior Citizens Act, 2007*. This law enables senior citizens (including a parent) who are unable to maintain themselves from their earnings or property, to make an application against one or more of their children (who are not minors) and in case of a childless senior citizen, even against their relatives.

As in the cases of other women, **divorced women** are largely denied Residence Orders based on the *Batra* judgment or on the fact that they have been living separately since the divorce. In addition, the factum of divorce is being held against them as Courts are concluding that the divorce means there is no longer a Domestic Relationship. However it may be noted that the law itself does not make any such distinction. For the law to apply, a Domestic Relationship

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<sup>162</sup> *Ibid.*

should have existed at some point in time, and the application of the law is not contingent on the subsistence of this Domestic Relationship.

For **women in relationships in the nature of marriage**, the positive right created by the law has been considerably narrowed by the application of the Supreme Court judgment in the *Velusamy*<sup>163</sup> case. The four step text laid down by the Supreme Court equating live-in relationships with Common Law marriages has put the reliefs under the PWDVA largely out of the reach of women in such relationships.

Cases filed by **daughters** against their parents or siblings are few and far between. While Orders appear to be generally granted in cases alleging economic violence, in at least one State (Delhi) a High Court decision holding that on marriage the Domestic Relationship with the natal family ceases to exist is a cause for concern. In many respects the decision reinforces the idea of daughters as *paraya dhan* while the Act is specifically designed to provide women with equal rights regardless of their marital, familial or residential status. In such cases it appears that judges perceive that a property dispute is involved. However, instead of requiring further investigation or asking women to approach other forums, they are adopting narrow interpretations of the Domestic Relationship and excluding daughters from the purview of the Act.

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<sup>163</sup> Supra Note 149

# Remedies under the Act - Monetary Reliefs



## Monetary Reliefs

### Section 20. Monetary reliefs.-

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

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

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

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

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

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

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

Under the Act, Monetary Reliefs may include relief for the loss of earnings, medical expenses, loss caused due to destruction, damage or removal of property, etc. An order for Monetary Relief under the Act may also include Maintenance for the woman and her children under or in addition to an order under Section 125 of the Cr.P.C or any other law for the time being in force. Apart from expanding the scope of Monetary Reliefs beyond that of Maintenance, the Act provides a single window mechanism for women to obtain relief. The intent of the Act is to make available all reliefs a woman may be entitled to under different laws in one forum and through one application. This Chapter analyses the reasons behind grant and denial of Orders for Monetary Reliefs. In addition, the analysis in this Chapter is based on the different categories of women using the Act to determine whether their marital, familial or residential status has an impact on the grant or otherwise of Monetary Relief Orders.

## 1. Monetary Reliefs other than Maintenance

Although there are several elements to Monetary Reliefs that can be granted under the PWDVA, the analysis of the Orders has found that monetary reliefs other than Maintenance are less frequently granted. The analysis also reveals differing levels of evidence required by the Courts for the different elements. Maintenance is usually granted with no enquiry into the details of the domestic violence and Courts usually require little or no evidence except to determine the quantum of Maintenance to be granted. By contrast, the level of evidence required in considering claims for relief for loss of earnings, medical expenses incurred and litigation expenses incurred appears to be higher.

### 1.1 Key findings on Monetary Reliefs other than Maintenance

- **Loss of Earnings:** There are very few cases filed by women seeking monetary relief for loss of earnings caused as a result of domestic violence. The response of the Courts in the few cases claiming this relief has been dependent on the proof submitted by the aggrieved woman.
- **Medical Expenses:** Courts have considered the submission of medical reports as necessary to receive monetary relief for medical expenses for injuries caused by acts of domestic violence. In most cases, where medical reports are not submitted, the relief is denied. Courts are not inclined to grant relief for medical expenses incurred by the aggrieved woman if they perceive that these have arisen from choices made by her.
- **Litigation Expenses:** Relief for litigation expenses is usually granted if other reliefs claimed by the woman are granted and the fact of domestic violence is established.

## 1.2 Case Studies

### 1.2.1 Loss of Earnings not proved

In a case from **Delhi**,<sup>164</sup> an aggrieved woman filed an application alleging that she was beaten and that her husband tried to strangle her on one occasion. She sought Residence (seeking rent for alternate accommodation), Maintenance and Monetary Relief (for loss of earnings) Orders. While the respondent-husband was directed to pay rent for alternate accommodation, Maintenance was denied as the woman was earning sufficiently on her own. The relief for loss of earnings was also denied since it could not be proved.

### 1.2.2 Denial of medical expenses incurred due to the woman's own choices

In a case from **Kerala**,<sup>165</sup> the aggrieved woman sought monetary relief for medical expenses incurred during pregnancy. The respondent-husband argued that the Employee State Insurance medical facility was available to him where he had offered to take the aggrieved woman for her delivery but she refused. The Court was of the opinion that respondent-husband cannot be held liable for expenses incurred by the woman arising out of her own choices.

## 2. Monetary Relief of Maintenance

### 2.1 Key Findings on Maintenance

- Monthly Maintenance is the most commonly granted form of relief under the Act and is granted across most categories of women, i.e., married women, divorced women, women in live-in relationships, daughters and sisters. However Maintenance is rarely granted to widows.
- The average quantum of monthly Maintenance granted across the country is in the range of Rs 1,000 to Rs 5,000. Even in cases where the income of the respondent is proved, the quantum of maintenance granted rarely exceeds Rs 10,000 per month.
- By and large, the income of the respondents in the Orders analysed usually does not exceed Rs 50,000 per month. This indicates that middle class women are the largest users of the Act. It has been observed that very few cases are filed by women belonging to the higher strata of society.
- In several cases from Delhi, disputes over the amount of income earned by the respondent have been noticed. The aggrieved woman is often unable to prove the exact income made by the respondent. In many cases the respondents argue either that they have no income or that they earn much less than what the woman has claimed.
- In cases where there is a dispute between the parties, the Courts have

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<sup>164</sup> Case No V-116/10 Delhi

<sup>165</sup> M.C 18/09, Kerala, Kochi

considered the following evidence to determine the respondent's income:

- ◆ Standard of living proved by ownership of assets
  - ◆ Proof of respondent's profession or bio-data of the respondent placed before the Court as evidence
  - ◆ Respondent's ownership of land or property established
  - ◆ Salary slip or income tax returns of the respondent submitted as evidence
  - ◆ Un-rebutted testimony of the woman relied upon
  - ◆ Husband's testimony relied upon
  - ◆ Wedding photographs which showed a great deal of pomp and show
- In some cases, where there is no proof of the husband's income, Courts have relied on the *Minimum Wages Act, 1948* to fix the income of the respondent. In these cases the income of the husband is assumed to be Rs 5,000 per month, and the woman is usually granted Rs 1,000 to Rs 2,000 as monthly maintenance.
  - Reliance on minimum wages to assess the income of the respondent and granting of a low amount of maintenance demonstrates the reluctance of Judges to utilise the office of the Protection Officer to submit a financial report on the status of the respondent. Only in Orders from Kachch and Surat district in Gujarat, have Courts relied on the Protection Officer in this regard. However the quantum of relief granted women in Kachch remains low, i.e., within the range of Rs 1,000 to Rs. 5,000 only.
  - In a few appeals, the amount of Maintenance granted by the Magistrate's Court may be reduced or set aside. In such cases the Sessions Courts usually reason that 'parties were not given an opportunity to cross-examine each other in the lower court.' In a few appeals, the Sessions Courts refuse to grant Maintenance if it is denied in the interim Order.
  - Enhancement of Maintenance is a common reason for the woman to file an appeal under the Act. Sessions Courts are granting enhancement of Maintenance if the income of the husband is established and keeping in mind inflation in prices. Appeals for enhancement of Maintenance have been denied where the woman is also earning, if she has been found to make contradictory statements or on a finding that there has been no domestic violence.

## 2.2 Case Studies on Maintenance

### 2.2.1 Disputes over income of Respondent: Cases from Delhi

In one case from **Delhi**,<sup>166</sup> the aggrieved woman claimed that the respondent-husband's salary was Rs. 1.5 lakh per month, while the Respondent claimed he earned Rs 2,500 per month. Maintenance of less than Rs 5,000 was granted. This

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<sup>166</sup> V-260/2007, Delhi

amount was determined considering the needs of the woman.

In another case from **Delhi**,<sup>167</sup> the aggrieved woman claimed that the respondent-husband was in the construction business and earned Rs. 2 lakh per month, while the respondent-husband claimed he was a rickshaw puller. Maintenance was fixed between Rs. 5,000 to Rs. 10,000. Evidence relied upon was the car owned by the respondent-husband, and wedding photographs displaying great pomp and show.

In another case from **Delhi**,<sup>168</sup> the aggrieved woman claimed that the respondent-husband earned Rs. 40,000 per month from his business, while he claimed that he earned Rs. 120 per day as a daily wage labourer. Maintenance was fixed at Rs. 1,000 to 5,000 based on the “moral duty” reasoning.

In a case from **Delhi**,<sup>169</sup> the Court granted maintenance in the range of Rs 10,000 to Rs 50,000 to the aggrieved woman and her minor children. The Court observed that it was indulging in guesswork “*keeping in view the status of the parties*”.

### ***2.2.2 Enhancement of Maintenance Allowed***

In a case from **Delhi**,<sup>170</sup> enhancement of Maintenance was granted to the aggrieved woman since she was able to produce the income tax returns of the respondent-husband in the Appellate Court.

In a case from **Maharashtra**,<sup>171</sup> enhancement of Maintenance was granted keeping in mind the inflation in the prices of commodities.

### ***2.2.3 Enhancement of Maintenance Denied***

In a case from **Delhi**,<sup>172</sup> the aggrieved woman filed an appeal seeking enhancement of the amount granted by the Magistrate’s Court. The Sessions Court dismissed the appeal on the ground that the woman was earning. The Court further held that the appeal had been filed against an Interim Order and that no final order had been granted as yet.

In a case from **Andhra Pradesh**,<sup>173</sup> the aggrieved woman filed an appeal against her husband and in-laws seeking enhancement of Maintenance on the ground that the respondent-husband was unable to lead a matrimonial life. The Sessions Court held that the respondent-husband had led one year of matrimonial life with the woman and hence she was making contradictory statements. Consequently,

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<sup>167</sup> Case No 166/10, Delhi

<sup>168</sup> CC No 441/01/08, Delhi

<sup>169</sup> CC No 75/4/10, Delhi

<sup>170</sup> CrI Appeal No 2/2010, Delhi

<sup>171</sup> C.C. No 46/N/2009, Maharashtra, Mulund

<sup>172</sup> CrI Appeal 17/2011, Delhi

<sup>173</sup> 4/2011, Andhra Pradesh, Hyderabad

enhancement was not granted. In addition, the Sessions Court held that claims of Maintenance could not be made against the in-laws.

In a case from **Karnataka**,<sup>174</sup> the Sessions Court dismissed the appeal of the aggrieved woman seeking enhancement of Maintenance and held *“looking into the facts of the case it appears that the appellant has used the Act as a platform to take revenge on the respondent as the sister of the appellant has filed a same case against her husband and in-laws who happens to be the brother of the respondent in the present case. The appellant has not established any proof of domestic violence, hence appeal is dismissed.”*

### 3. Monetary Reliefs for Children

#### 3.1 Key findings on Monetary Reliefs for Children

- Maintenance and education expenses are primary reliefs claimed in relation to children.
- In general, the Courts grant Maintenance if the woman has a minor child.
- Maintenance is invariably granted where the husband/partner is proven to be the biological father of the child even if Maintenance is not granted to the woman.
- There is lack of clarity regarding grant of Maintenance where the husband/partner is not the biological father. In some cases, Courts grant relief, while in other cases Courts reason that the respondent is not liable to maintain the children if he is not the biological father.
- Courts tend to be lenient in granting Monetary Relief for the educational expenses of children.
- However, monetary relief for educational expenses of the children has not been granted where the relief is claimed against the in-laws and not the husband.
- In a demonstration of good practices, a Court enhanced the Maintenance amount for a child based on Constitutional obligations to children.

#### 3.2 Case Studies

##### ***3.2.1 Lack of clarity on Monetary Relief where respondent is not the biological father***

In a case from **Himachal Pradesh**,<sup>175</sup> the Court held that even though the respondent-husband was not the biological father he was still legally bound to provide food and clothing to the children.

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<sup>174</sup> Crl Appeal 118/2011, Karnataka, Devangere

<sup>175</sup> Case No 79-I/10, Himachal Pradesh, Chamba

In a case from **Delhi**,<sup>176</sup> the Court granted maintenance to the aggrieved woman based on the “moral duty” reasoning. However, Maintenance for the child was denied since the child was from the woman’s first marriage.

### **3.2.2 Educational Expenses of Children**

In a case from **Bihar**,<sup>177</sup> the Sessions Court set aside the order of the Magistrate’s Court directing the father-in-law to pay for the aggrieved woman’s son’s education on the ground that Monetary Relief cannot be claimed against the in-laws.

In a case from **Jharkhand**,<sup>178</sup> the aggrieved woman had been residing separately from her husband for about 15 years. She claimed Protection, Residence and monthly Maintenance and Compensation Orders for herself and her children. The Court granted all reliefs including a Compensation amount over Rs. one lakh for not providing for the educational expenses of the children during the period of separation. The Court held that due to the negligence of the respondent-husband, the children lost their right to education and accordingly directed him to pay Compensation.

### **3.2.3 Good Practice: Maintenance granted to minor son represented by divorced mother**

In a case from **Maharashtra**,<sup>179</sup> a minor son represented by his divorced mother filed a case against the father alleging economic abuse. Granting Maintenance, the Court observed that at the time of divorce, the respondent-father had promised to pay Rs 25,000 per annum to his son, but had failed to do so. Hence in lieu of the promised annual payment, Maintenance was granted.

### **3.2.4 Good Practice: Recognition of Fundamental Duty in the Indian Constitution towards children**

In a case from **Haryana**,<sup>180</sup> the aggrieved woman filed an appeal seeking enhancement of Maintenance for the minor child. The Sessions Court granted enhancement of the monthly Maintenance to Rs. one lakh per month while referring to Article 51A(k) of the Indian *Constitution* which states that “*it shall be the duty of every citizen of India who is a parent/guardian to provide opportunities for education of his child.*”

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<sup>176</sup> CC No 255/6/08, Delhi

<sup>177</sup> Criminal Appeal 29/2011, Bihar, Buxar

<sup>178</sup> Case No 010/2010, Jharkhand, Seraikella

<sup>179</sup> CMA 81/2011, Maharashtra, Miraj

<sup>180</sup> Crl Appeal 33/2010 Haryana, Gurgaon

## 4. Married Women

### 4.1 Key findings on Monetary Reliefs for Married Women

- The analysis of Orders for the current year indicates that married women claiming Monetary Relief are invariably granted Maintenance under the Act on the ground that it is the moral duty of the husband to maintain his wife. Appeals against such Orders are also generally dismissed based on the moral duty of the husband.
- One of the most common reasons for granting Maintenance to the woman is that she has no income to sustain herself or that the Maintenance is required in order to prevent vagrancy. Though there is no mention of “vagrancy” in the PWDVA, this has been interpreted as the reason underlying the grant of Maintenance under Section 125 of the Cr.P.C. by the Supreme Court.<sup>181</sup> This reasoning is being imported into Orders granted under the PWDVA.
- In some cases, Courts have granted Maintenance on the ground that failure to provide basic necessities constitutes economic abuse under the Act.
- Courts have also held that the woman is entitled to the same lifestyle she had with her husband. However, in such cases proof of the lifestyle of the respondent during the course of the marriage has to be established.
- Maintenance is granted as a rule in cases where the woman files an application seeking maintenance for a minor child. If the child is disabled, the Courts in some cases have ensured that the Maintenance amount reaches the child by directing the respondent to open a separate bank account for the child.
- In a good practice observed in some Orders from Delhi, the Courts have granted a 10% commensurate increase in the Maintenance amount every third year from the date of the Order. Although such orders are passed with the intention of protecting the woman from inflation, a 10% increase every three years may be insufficient for the woman.
- In cases where no proof of the husband’s earnings has been submitted in Court or when the respondent has no income, Courts have denied Maintenance.
- Maintenance is also denied if the woman is earning sufficient income.
- In some cases, Maintenance has been denied if an application is pending or has been granted under Section 125 of the Cr.P.C. or in the Family Court through another law.

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<sup>181</sup> See *Danial Latifi and Anr v. Union of India* (2001) 7 SCC 740, *Mohd. Ahmed v. Shah Bano* 1985 SCC (2) 556 and *Chanmuniya v. V.K Singh* 2011 (1) SCC 141

- In Andhra Pradesh, Courts while granting Maintenance also direct the respondent to open a bank account for the aggrieved woman and all payments are to be made into the bank account. This prevents disputes regarding the amount paid.

## 4.2 Case Studies: Reasons for Granting Monetary Relief

### 4.2.1 Moral Duty of the husband to maintain his wife and children

In a case from **Haryana**,<sup>182</sup> the Magistrate while granting Maintenance stated that, *“Women being a keeper of hearth in the home need to be protected as they are the foundation of the society. If women are exposed to physical abuses, to sexual exploitation, the very foundation of the society would begin to weaken. It is only after recognising their importance, sociologically, that the ancient Indian seers had opined that ‘God dwells only in those houses where women are respected.’ Thus both the law and the society recognise a moral and legal duty of the husband to maintain his wife.”*

In a case from **Delhi**,<sup>183</sup> the respondent-husband filed an appeal against the Order of the Magistrate’s Court directing him to pay Maintenance. The Sessions Court granted Maintenance to the aggrieved woman and her child since it is the “moral duty” of the husband to maintain his family.

In a case from **Tamil Nadu**,<sup>184</sup> the respondent-husband filed an appeal against the interim order of the Magistrate’s Court directing him to pay Maintenance to the aggrieved woman arguing that he could not afford to pay the amount. Upholding the Order granting Maintenance, the Sessions Court observed that the stand taken by the appellant regarding his low income seems to be unjust and was not proved. Further, it was held to be the moral duty of the husband to maintain his wife and children.

### 4.2.2 Maintenance ordered to prevent vagrancy

In a case from **Delhi**,<sup>185</sup> the aggrieved woman filed an interim application seeking monthly Maintenance. The Court granted Maintenance to her so as to prevent vagrancy to the aggrieved woman. Although she claimed that the respondent-husband earned Rs 50,000 per month, the Court relied on the respondent’s testimony and granted her Maintenance of under Rs 5,000 per month.

### 4.2.3 Failure to provide Maintenance constitutes economic abuse

In a case from **Delhi**,<sup>186</sup> the aggrieved woman alleged harassment for dowry and filed a case seeking interim Maintenance. The Court through an ex parte

<sup>182</sup> Case No 21, Haryana, Gurgaon

<sup>183</sup> Crl Appeal 33/10, Delhi

<sup>184</sup> Crl Appeal 60/2011, Tamil Nadu, Chennai

<sup>185</sup> Case No. 122/1, Delhi

<sup>186</sup> Case No. V-125/09, Delhi

order granted Maintenance observing that *“Refusal on the part of the husband to maintain the Aggrieved Person and her child inspite of having sufficient income is held to be an economic abuse.”*

#### ***4.2.4 Woman is entitled to the same lifestyle she had with her husband***

In a case from **Haryana**<sup>187</sup> the respondent-husband resided in Russia while the aggrieved woman resided in India with the minor child. She alleged severe forms of physical violence including boxing her ears, beatings with a leather belt, and beatings until her front teeth fell out. An ex parte Order was granted which (1) restrained the Respondent from operating his NRI account; (2) restrained the Respondent from redeeming his fixed deposits; and (3) directed the payment of Maintenance of Rs. seven lakh per month to the aggrieved woman.

The amount was granted based on the following documents submitted in Court: Bank statement, Letters to the Life Insurance Corporation (“LIC”), Watch receipt, Mobile phone receipt, Cheque in favour of Amity School, Receipt of hotel bills, Shopping receipts from Monsoon and Park Avenue, Complaint to the Protection Officer, Receipts of bills for saris, leather accessories and hand bags, Receipt of bills for perfume purchased, Phone bills, Ownership of a racing car, Bank statements from banks in Bikaner and Jaipur and the Entrance Receipt to ‘Kingdom of Dreams.’ The Court held that these documents established the lifestyle the woman was accustomed to.

### **4.3 Case Studies: Reasons for Denying Monetary Relief**

#### ***4.3.1 Denial of monetary relief, as woman was qualified and capable of learning***

In a case from **Delhi**,<sup>188</sup> the application filed by an aggrieved woman seeking maintenance was denied on the grounds that *“Complainant is M.A passed. She cannot sit idle and incapacitate herself.”*

#### ***4.3.2 Respondent has no income***

In a case from **Delhi**,<sup>189</sup> the aggrieved woman filed a case alleging severe acts of domestic violence fuelled by alcohol consumption. She filed an application seeking Protection, Residence and Maintenance Orders. While the Protection and Residence Orders were granted, Maintenance was denied since the woman in her pleadings had mentioned that the respondent was unemployed and was an alcoholic.

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<sup>187</sup> Case number not mentioned in the Order, Haryana, Gurgaon

<sup>188</sup> CC No. 249/08, Delhi

<sup>189</sup> CC 648/1/09 Delhi

#### **4.3.3 No Proof of husband's earnings submitted in Court**

In a case from **Haryana**,<sup>190</sup> the aggrieved woman who was over the age of 80 years filed a case against her husband who was 93 years old. She sought Maintenance which was denied since no proof of the husband's income was placed on the record.

#### **4.3.4 Disbelieving the aggrieved woman**

In a case from **Haryana**,<sup>191</sup> the aggrieved woman alleged physical violence and harassment for dowry and filed a case under Section 498A of the IPC along with the PWDVA application seeking Maintenance and Residence Orders. The Court observed that *"Of late it is being witnessed that this Act is being used for extorting more money from the opposite party and for harassing them."* Both Maintenance and Residence Orders were denied. There was no clear reasoning provided in the Order as to what led the Magistrate to conclude that the Act was being misused by the woman.

In a case from **Delhi**,<sup>192</sup> the aggrieved woman alleged physical, emotional, sexual and economic abuse. She filed an appeal against the Order of the Magistrate's Court dismissing her claims for Protection and Maintenance Orders. The Respondent-in laws stated in their reply that the woman had filed the complaint only in order to extract money and that she had already taken her *stridhan*. The Sessions Court held that the woman had not filed any previous complaints with the police regarding the beatings she received and denied both the Protection and Maintenance Orders on the ground that there was no proof of domestic violence.

#### **4.3.5 Relief already granted in proceedings under other law**

In a case from **Karnataka**,<sup>193</sup> the aggrieved woman was married and residing separately from the respondent-husband. She filed an application alleging he had not provided her with Maintenance for the past 25 years. The application was denied since she was receiving Maintenance through an order passed under Section 125 of the Cr.P.C. Further, the Court held that since the parties had been residing separately for the past 25 years, the allegations of domestic violence do not arise.

#### **4.3.6 Woman living outside matrimonial home of her own volition**

In a case from **Andhra Pradesh**,<sup>194</sup> the aggrieved woman was married and living in the natal family. She filed an application under Section 12 of the Act seeking reliefs including monthly Maintenance for herself and her minor child. Maintenance was denied to the aggrieved woman by the Court since she was staying away from the matrimonial home of her own volition. However the Court granted Maintenance for the minor child.

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<sup>190</sup> Case number not mentioned in the Order, Haryana, Ambala

<sup>191</sup> Case No. 3/2010, Haryana, Sonapat

<sup>192</sup> Crl Appeal 10/2010, Delhi

<sup>193</sup> Case No. 358/2009, Karnataka, Channagiri

<sup>194</sup> DVC 137/2010, Andhra Pradesh, Hyderabad

#### **4.3.7 The woman had developed a relationship with another man**

In a case from **Uttarakhand**<sup>195</sup> the aggrieved woman was residing separately from the respondent-husband. She did not deny during cross examination that she had started living with another man. The Court denied Maintenance and held “*While it is the moral duty of a husband to maintain his wife, in this case the applicant suppressed the fact she had started living with another man.*”

## **5. Divorced Women**

### **5.1 Key findings on Monetary Relief for Divorced Women**

- In a majority of cases Maintenance is granted to divorced women. Where the divorced woman is unable to maintain herself or she has the custody of the children, Maintenance is routinely granted.
- Courts have also granted Maintenance to divorced Muslim women referring to the *Shah Bano*<sup>196</sup> judgment of the Supreme Court and holding that the PWDVA is a secular law and applicable to women of all religions. The *Danial Latifi*<sup>197</sup> judgment was referred to in only one Order though this is really the judgment that ensured the right to Maintenance for Muslim women.
- In a number of cases where the fact of *talaq* is disputed, Courts have disregarded the contentions of the respondent that *talaq* has taken place and have granted Maintenance.
- Maintenance is denied to divorced women on the ground that since the woman is not residing with the husband, domestic violence was not proved.
- If divorce is preceded by a mutually agreed settlement between the parties, Maintenance is denied based on the Supreme Court judgment in the case of *Inderjit*<sup>198</sup> where the Apex Court quashed proceedings under PWDVA where a mutual consent divorce was in existence.

### **5.2 Case Studies: Reasons for Granting Monetary Relief**

#### **5.2.1 If the Divorced Woman is unable to maintain herself**

In a case from **Kerala**,<sup>199</sup> a divorced woman filed an application claiming Maintenance against the husband and in-laws alleging physical abuse and verbal/emotional abuse (ridiculing her disability). Granting the Order, the Court held, “*The petitioner being a physically disabled lady, is entitled to get*

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<sup>195</sup> Case No. 3132/2010, Uttarakhand, Kashipur

<sup>196</sup> Supra Note 3

<sup>197</sup> Supra Note 4

<sup>198</sup> Supra Note 48

<sup>199</sup> MC 24/11 Kerala, Wayanad

*maintenance from the first respondent as per the provisions of S. 20 of the PWDVA, 2005. There is absolutely no basis for contention of the first respondent that there is no domestic relationship between the petitioner and the respondent as their marriage had already been dissolved, and hence the petitioner is not entitled to maintenance...also the contention of the first respondent that he earns only Rs.10,000 per month and the above income is fully required for meeting the expenses of his present life with the new partner, cannot be accepted to deny maintenance to the petitioner. The first respondent cannot shirk off his responsibility to provide maintenance to the petitioner upon such lame excuses."*

### **5.2.2 If the Divorced Woman has custody of the children**

In a case from **Rajasthan**<sup>200</sup> the respondent-ex-husband filed an appeal against the Order of the Magistrate's Court directing him to pay Maintenance to his divorced wife and child. The Sessions Court dismissed his appeal holding that, *"A child born out of the wedlock is not the responsibility of only one parent. Fixed Deposit of Rs. 5 Lakhs is a small amount when considered along with the age of the aggrieved person and her daughter. Keeping in view the present rate of inflation, the Aggrieved Person and her daughter cannot survive their whole life on Rs. 5 Lakhs. The intent of the Act is to provide relief in terms of maintenance even in cases of divorced women."*

### **5.2.3 Maintenance Granted; Reference to Shah Bano and Daniel Latifi judgments**

In a case from **Rajasthan**,<sup>201</sup> the respondent-husband argued that a Muslim woman is not entitled to Maintenance after divorce. The Court rejected this argument on the grounds that (i) *talaq* was given after the Act came into force; (ii) failure to provide Maintenance to a wife constitutes domestic violence; and (iii) as per *Shah Bano*<sup>202</sup> and *Danial Latifi*<sup>203</sup> a divorced Muslim woman is entitled to Maintenance until she remarries.

### **5.2.4 Good Practice: PWDVA recognised as secular law**

In a case from **Delhi**,<sup>204</sup> the respondent-husband filed an appeal against the Order of the Magistrate's Court directing him to pay Maintenance. Upholding the Magistrate's Order, the Sessions Court held, *"The contention that this law cannot apply to Muslim families is misplaced as this legislation is a secular law and has no concern with the religion of the parties."*

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<sup>200</sup> Crl Appeal No 65/2011, Rajasthan, Jaipur

<sup>201</sup> Case No 37/11, Rajasthan, Jodhpur

<sup>202</sup> Supra Note 3

<sup>203</sup> Supra Note 4

<sup>204</sup> Crl Appeal 10/11 Delhi

## 5.3 Case Studies: Reasons for Denying Monetary Relief

### 5.3.1 Not Living with former husband hence domestic violence was not proved

In a case from **Delhi**,<sup>205</sup> a divorced Muslim woman filed a case seeking Maintenance. Denying the relief, the Magistrate's Court held that, *"The definition of 'wife' u/s 125 Cr.P.C. could not be imported to the DV Act. Law gives right of maintenance even to a divorced wife, but an act of DV cannot be committed on a divorced wife, who is not living with her husband or family and is free to live wherever she wants. Therefore petitioner not entitled to any relief at this stage and she has to prove no divorce was effected during the course of the trial."*

### 5.3.2 Divorce decree in existence: incorrect appreciation of the *Inderjit* judgment

In a case from **Haryana**,<sup>206</sup> the aggrieved woman alleged dowry harassment, denial of basic necessities and threats to throw her out of the matrimonial home and filed an application seeking Protection and Monetary Relief Orders. The respondent-husband argued that a divorce decree had already been obtained. The Court referred to the Supreme Court judgment in the *Inderjit*<sup>207</sup> case and interpreted the judgment to mean *"...after getting divorce from the respondent, a complaint by wife against husband under Domestic Violence Act is not maintainable as decree of divorce subsists."* The Court dismissed the application.

However, it may be noted that the Supreme Court decision in the *Inderjit* case related to a situation where there was a divorce based on mutual consent. The misinterpretation of the *Inderjit* case in this order could have the effect of denying relief under the PWDVA to all divorced women

## 6. Women in Relationships in the Nature of Marriage

### 6.1 Key findings on Monetary Relief for Women in relationships in the nature of marriage

- Orders in cases of women in relationships in the nature of marriage are granted only if they can meet the test of the Supreme Court in the *Velusamy*<sup>208</sup> judgment. This is despite a separate judgment of the Supreme Court in *Chanmuniya v V.K Singh*<sup>209</sup> which lays down the ratio that where the parties have lived together in a relationship

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<sup>205</sup> CC No 247/01, Delhi

<sup>206</sup> Criminal Case No. 46, Haryana, Bhiwani

<sup>207</sup> Supra Note 48

<sup>208</sup> Supra Note 149

<sup>209</sup> (2011) 1 SCC 141

in the nature of marriage, a presumption would arise in favour of a valid wedlock.<sup>210</sup> Though the *Chanmuniya* judgment is used by Judges to grant Maintenance in cases where the fact of marriage is disputed, *Velusamy* prevails in cases of relationships in the nature of marriage and has had a negative impact on women in such relationships seeking Maintenance.

- Maintenance is liberally granted to women in '*Nata*'<sup>211</sup> marriages in Rajasthan and '*Karewa*'<sup>212</sup> marriages in Haryana. It has been observed that Courts have refrained from negative comments regarding these customary relationships and they are dealt with in a matter of fact manner for granting of relief.
- Maintenance is also granted by Courts in cases where the respondent promises to marry the woman but later breaks his promise.

## 6.2 Case Studies: Reasons for Granting Monetary Relief

### 6.2.1 Based on the Supreme Court Judgment in the *Chanmuniya* case

In a case from **Andhra Pradesh**,<sup>213</sup> an application was filed by the aggrieved woman against her partner alleging physical, emotional and economic abuse and desertion. In this case, the woman alleged that the concealment of the fact of his marriage by the respondent-partner constituted emotional abuse as she performed a marriage ceremony with him assuming he was unmarried. She claimed Protection, Maintenance and Compensation Orders. While a Protection Order was denied as she had failed to provide evidence of physical abuse, Maintenance was granted for her and her children. An amount of Rs. two lakh was also granted as Compensation. In this case, the Court referred to the *Chanmuniya*<sup>214</sup> judgment in support of granting Maintenance.

### 6.2.2 Broken Promise of marriage by the Respondent

In a case from **Delhi**,<sup>215</sup> the respondent-partner, promised to marry the aggrieved woman but never fulfilled his promise. Maintenance was granted to the aggrieved woman and also for the child born out of the relationship.

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<sup>210</sup> For further details please refer to "*Staying Alive: 5<sup>th</sup> Monitoring and Evaluation Report 2012 on the Protection of Women from Domestic Violence Act 2005*" Lawyers Collective Women's Rights Initiative and International Centre for Research on Women (2012) at page 132.

<sup>211</sup> A *Nata* marriage is a form of second marriage following divorce for women in Rajasthan. The formalities of a Hindu marriage are not followed in a *Nata* marriage, and it is not a legally valid marriage.

<sup>212</sup> Levirate Marriages

<sup>213</sup> Case No. 253/2010, Andhra Pradesh, Hyderabad

<sup>214</sup> *Supra* Note 209

<sup>215</sup> CC No 35/1, Delhi

## 6.3 Case Studies: Reasons for Denying Monetary Relief

### 6.3.1 *Domestic Relationship not established*

In a case from **Karnataka**,<sup>216</sup> the Court denied Maintenance to a woman in a relationship in the nature of marriage since she was unable to prove she was in a Domestic Relationship with the respondent-partner. However, the minor child was granted Maintenance since it was established through a DNA report that the respondent-partner was the biological father of the child.

## 7. Widows

### 7.1 Key findings on Monetary Relief Orders for Widows

- The Courts are sympathetic to widowed mothers in cases filed against their sons seeking Maintenance. Maintenance is granted on the ground that it is the duty of the son to maintain his mother. However in at least one case, Maintenance was not granted on the ground that it was not claimed in the written prayer of the application.
- In cases where the application is filed by the widow against her in-laws, Maintenance is rarely granted. Where it has been granted, Courts have relied on Section 19 of the *Hindu Adoptions and Maintenance Act, 1956*.
- In the majority of cases Maintenance is denied to the widow on the ground that the in-laws are not obliged to pay Maintenance nor can they be held responsible for Maintenance for any children.
- In some cases Maintenance has been denied where the woman is unable to prove the existence of a Domestic Relationship or the acts of domestic violence.
- In general, Courts hold that claims of Maintenance cannot be made against the in-laws.
- Courts have also denied Maintenance to widows who file cases against their in-laws, on the ground that they are receiving death benefits or the pension of their deceased husbands.

### 7.2 Case Studies: Findings on the Reasons for Granting Monetary Relief

#### 7.2.1 *Based on the Rights of Equality and Right to Life enshrined in the Constitution*

In a case from **Haryana**,<sup>217</sup> the widowed mother filed a case against her sons seeking Protection, Residence and Maintenance Orders. She alleged that they

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<sup>216</sup> Case Number not known

<sup>217</sup> Case No 121/11, Haryana, Kurukshetra

had tried to kill her in order to grab her property. All reliefs were granted by the Court, which referred to Articles 14, 15 and 21 of the *Constitution* and also noted that “domestic violence is a serious deterrent to development.”

### **7.2.2 Duty of son to maintain his mother**

In a case from **Kerala**,<sup>218</sup> the aggrieved woman filed a case against her son seeking Maintenance, Protection and Residence Orders. The Court granted all the reliefs holding, “As a human being the prime duty of a man is towards the nature then to the family and then to the society which are to be paved by him. In this present nature of life of the society, it has become necessary to remind the children of this era about their duties towards their parents through an order of court of law.”

### **7.2.3 Referring to Personal Laws**

In a case from **Andhra Pradesh**,<sup>219</sup> the husband of the aggrieved woman died of complications arising out of his HIV-positive status. The woman in her application alleged that he had transmitted HIV to her and she filed a claim for Maintenance against her father-in-law. The Magistrate’s Court dismissed her application. The Sessions Court referred to the decision of the Andhra Pradesh High Court in *Sikakololu v. Sikakollu*<sup>220</sup> and observed that the act of the respondent-in laws in refusing to pay Maintenance to the aggrieved woman amounts to an act of domestic violence. In addition, the Court noted that under Section 19 of the *Hindu Adoptions and Maintenance Act 1956*, the father-in-law is obliged to maintain his daughter-in-law subject to certain conditions. The woman was granted Maintenance by the Court.

## **7.3 Case Studies: Reasons for Denying Monetary Relief**

### **7.3.1 In-Laws are not obliged to pay maintenance**

In a case from **Andhra Pradesh**,<sup>221</sup> the aggrieved widow continued to live in the Shared Household following the death of her husband. She was offered Rs. two lakh to leave by her in-laws. She filed an application seeking Protection, Residence and Maintenance Orders. While a Protection Order was granted, the Residence Order was denied based on the *Batra*<sup>222</sup> judgment and Maintenance was denied holding that the “in-laws are not obliged to pay maintenance.”

### **7.3.2 No Domestic Relationship established**

In a case from **Andhra Pradesh**,<sup>223</sup> the widow filed a case against her in-laws seeking Maintenance. She had been living on her own for 13 years.

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<sup>218</sup> Misc Criminal Application NO. 1642/2008, Kerala, Kuthuparamba

<sup>219</sup> Crl Appeal 158/2011, Andhra Pradesh, East Godavari

<sup>220</sup> 2010 (3) ALT 108

<sup>221</sup> 7/2010, Andhra Pradesh, East Godavari

<sup>222</sup> Supra Note 6

<sup>223</sup> 10/2010, Andhra Pradesh, East Godavari

The Court held that since the aggrieved woman left the Shared Household after the death of her husband and never bothered to take care of her mother-in-law, no Domestic Relationship was established. Hence Maintenance was not granted.

### ***7.3.3 Maintenance was not sought in the petition submitted in court.***

In a case from **Andhra Pradesh**,<sup>224</sup> a widowed mother was denied Maintenance since it was not mentioned in the written prayer of her application.

## **8. Daughters**

### **8.1 Key findings on Monetary Reliefs for Daughters**

- Maintenance is liberally granted to unmarried daughters filing cases against their fathers on the ground that it is the duty of the father to maintain his unmarried daughter.

### **8.2 Case Studies: Reasons For Granting Monetary Relief**

In a case from **Punjab**,<sup>225</sup> an unmarried daughter filed a case against her father alleging denial of basic necessities and sought a Maintenance Order. The Maintenance Order was granted based on the reasoning that a father is responsible for the Maintenance of an unmarried daughter.

## **9. Emerging Trends in Cases Involving Monetary Relief**

Although the Act provides Courts and applicants with wide flexibility in claiming and granting **Monetary Reliefs**, monthly Maintenance remains the most commonly claimed and granted relief under the Act. The analysis of Orders shows that personal laws have little or no impact on Maintenance orders.

Courts tend to equate the grant of **Maintenance** under the Act with an order under Section 125 of the Cr.P.C. However, the PWDVA is a distinct law, with specific objectives and reliefs that are unconnected with Section 125 of the Cr. P.C whose object has been held to be to prevent vagrancy, while an order for Maintenance under the PWDVA is a right of the aggrieved woman who has been subjected to domestic violence.

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<sup>224</sup> DVC 9/2010, Andhra Pradesh, West Godavari

<sup>225</sup> Case number not known

The analysis of Orders has shown that ‘the aggrieved woman is earning’ is a common reason for denial of Maintenance Orders. The Orders do not appear to take into account how much the woman is earning or whether she is in control of her income. It has been noted that even in cases where the aggrieved woman is not earning, Courts have taken it upon themselves to direct the woman to earn for herself, if she is qualified to do so. As an emerging trend, this is of concern as Maintenance may be denied both to working women and to women who are not in paid work.

The office of the **Protection Officer** is rarely used by Courts for submission of financial report on the status of the respondent. Instead, the analysis of Orders shows that Courts rely on figures based on minimum wages and consequently grant very low amounts as monthly Maintenance. Where Courts are able to determine the income and the lifestyle enjoyed by the woman, there is a positive trend of Orders ensuring the grant of Maintenance amounts that allow women to maintain their lifestyles.

Although, as noted above, women across all categories are successful in getting Maintenance Orders, there is a noticeable trend of Courts refusing these Orders where the applications are filed against the **in-laws**. While in the case of Residence Orders, it is the *Batra*<sup>226</sup> decision that is being cited where the property is owned by the in-laws, there is no clarity for the basis on which several Courts are holding that the in-laws have no obligation to maintain the woman or her children. Under the Act, Maintenance can be claimed against any respondent, which may include the in-laws. This holding is of particular concern for **widows** as the only avenue left to them for Maintenance is the natal family.

For **divorced women** the holding of the Supreme Court judgment in the *Inderjit*<sup>227</sup> case requires some clarification as some lower Courts are holding that the subsistence of a divorce decree means that the woman is not entitled to relief. However the *Inderjit* decision dealt with a mutual consent decree that the woman claimed was fraudulently manufactured by her and her ex-husband together. The misinterpretation of this decision can have a devastating impact for divorced women who would be excluded from the purview of the Act. It should be noted that the Supreme Court in *B.P Achala Anand v. S. Appi Reddy and Anr*<sup>228</sup> held that “for the purpose of maintenance the term ‘wife’ includes a divorced wife.”

Among the categories of women, some Orders are being denied based on the broader trends emerging from the Report. Thus, as noted in the Residence Orders chapter, for divorced women, widows, and women in relationships in the nature

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<sup>226</sup> Supra Note 6

<sup>227</sup> Supra Note 48

<sup>228</sup> 2005(3) SCC 313

of marriage, some Courts are denying Orders on the ground that no Domestic Relationship exists. For women in relationships in the nature of marriage, again, *Velusamy*<sup>229</sup> presents the biggest challenge. For women living outside the Shared Household, Orders are being denied in some cases.

In relation to **children** there are positive trends with Courts granting educational expenses and Maintenance either specifically to the child or the woman if she has custody of the children. Given that the definition of child in Section 2(b) of the Act includes natural, step-children or adopted children and the provisions in the Act provide for the grant of monetary reliefs to the aggrieved woman and any child of hers, it is unclear why some Courts are delving into the question of the paternity of children. It is encouraging to note that cases are starting to be filed by children through their mothers and that Courts are citing Constitutional duties in granting Orders for the benefit of children.

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<sup>229</sup> Supra Note 149

# Remedies under the Act - Compensation

## Compensation

### Section 22. Compensation orders.-

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

Section 22 of the Act empowers Magistrates to grant Compensation to a woman for acts of domestic violence that cause injuries, mental torture and emotional distress. The provision recognises the right of victims to be compensated for acts of violence. This right is to be understood separate from that of Monetary Reliefs that are more in the nature of financial support for specific expenses including the woman's living expenses.

## 1. Key Findings On Compensation Orders

This year's analysis indicates that Compensation Orders are rarely granted by Courts under the Act and few Orders contain detailed reasons for the denial or grant of such Orders.

- Judges are reluctant to grant Compensation Orders even if Protection Orders are granted and acts of domestic violence are proven.
- In cases where reasons for the denial of Compensation Orders are mentioned, Courts appear to mainly deny Compensation where the woman is unable to prove mental torture, emotional distress or physical injuries due to acts of domestic violence.

- In cases where the Court is satisfied that the respondent has caused the woman mental torture or emotional distress, the Courts may grant Compensation. It is not clear what evidence is accepted as proof of mental torture and emotional distress. However in cases of physical injuries, the Courts require medical reports proving the act prior to the grant of Compensation.
- Where granted, Compensation Orders are usually bundled with Maintenance Orders and tend to be granted together as a lump sum.
- The quantum of Compensation granted is based on the degree of harm caused. However, no uniform principle can be discerned from the Orders for calculating the amount. For example, in Andhra Pradesh, the quantum of Compensation granted is usually in the range of Rs. one lakh and above, while in Bihar the quantum of Compensation is mainly in the range of Rs. 1,000 to Rs. 5,000.

## 2. Case Studies

### 2.1 Reasons for Granting Compensation Orders

#### *2.1.1 Compensation granted when domestic violence is established*

In a case from **Andhra Pradesh**,<sup>230</sup> the respondent-husband entered the school where the aggrieved woman was teaching and removed all his clothes leading to the termination of her employment. The Court granted Compensation for mental torture and emotional distress of above Rs one lakh to the aggrieved woman, along with other reliefs.

In a case from **Tamil Nadu**,<sup>231</sup> a widow filed a case against her in-laws alleging physical violence, dispossession from the Shared Household, and denial of her share in the property. The Court granted Compensation for mental torture and emotional distress along with other reliefs.

In a case from **Himachal Pradesh**,<sup>232</sup> the parties were married for 16 years and lived separately thereafter. The aggrieved woman in her application alleged physical, sexual and economic abuse. She filed an application seeking Protection, Monetary Relief and Compensation Orders. While a Protection Order was denied since the need for the relief was not proved, and Monetary Relief was also denied,

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<sup>230</sup> DVC 6/2010, Andhra Pradesh, East Godavari

<sup>231</sup> M.C 7/2010, Tamil Nadu, Coimbatore

<sup>232</sup> Case 368-i/10, Himachal Pradesh, Kullu

the Court granted Compensation of Rs. 2.5 lakh so that the woman could live “honourably.” In this case, the Court was satisfied based on the overall evidence presented in the Court that the respondent-husband had caused physical and mental harassment to aggrieved woman.

In a case from **Bihar**,<sup>233</sup> the aggrieved woman was granted Compensation of Rs 20,000 for medical injuries suffered by her. Compensation was granted based on the medical report submitted by the aggrieved woman. Further, the court held *“The husband is a third grade employee in the Sadar Hospital and is therefore employed and earning sufficiently.”*

## 2.2 Reasons for Denying Compensation Orders

### ***2.2.1 Domestic Violence established and other Reliefs granted; No reason provided for denial of Compensation***

In a case from **Himachal Pradesh**,<sup>234</sup> the aggrieved woman was married and living in the Shared Household. She filed a case against her husband alleging physical, emotional and sexual abuse and claimed Protection, Residence (Right to Reside in the Shared Household), Maintenance and Compensation Orders. The Court granted her a Protection Order (restraining the respondent-husband from communicating in any manner with her). He was also directed to pay the rent for an alternate accommodation and Maintenance was granted as the Court held that it was his ‘moral duty’ to maintain her. However, no order for Compensation was made nor was any reason cited for the denial of this claim.

### ***2.2.2 Acts of domestic violence considered inadequate for grant of Compensation***

In a case from **Gujarat**,<sup>235</sup> the aggrieved woman filed a case alleging beating and slapping, the use of abusive words and denial of basic necessities. She also alleged that the respondent-husband was an alcoholic and had an extra-marital relationship with another woman. The Court granted a Residence Order (respondent-husband to pay rent for same level of alternate accommodation) and Maintenance Orders but denied Compensation since *“The type of violence mentioned in the affidavit by the Aggrieved Person is not found to be adequate to grant the compensation.”*

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<sup>233</sup> Case No 997/2011, Bihar, Jamui

<sup>234</sup> 173-3/2011, Himachal Pradesh, Shimla

<sup>235</sup> Crl. Misc Application No 260/10, Gujarat, Ahmedabad

### 3. Emerging Trends In Cases Involving Compensation Orders

The specific provision providing for Compensation in the PWDVA remains largely unused by the lower Courts. With such few cases, this Report hesitates to draw conclusions on trends of decision making though it may be possible to hypothesise that the Judges view Compensation as being awardable, not only where the mental or physical injury is proven but also where it is of a high enough degree to warrant Compensation. Courts may therefore be looking on this relief as one to be granted sparingly and as an exception rather than the rule. The sheer numbers of Orders where all other reliefs are granted except the one for Compensation lends some credibility to this hypothesis. At a minimum the trends indicate that awareness of the existence and potential of this provision is required both amongst the Judiciary and amongst lawyers who may not be advising women filing applications under the Act to file for Compensation. The Orders also suggest that the Courts are often unable to distinguish between Compensation and Maintenance and often grant both reliefs in one single amount. However, the purpose of Compensation which is recompense for injury is different from that of Maintenance and should be recognised as such.

# Remedies Under the Act - Temporary Custody

## Temporary Custody

### Section 21. Custody Orders:-

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

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

The custody of children is an important matter that may come up in legal proceedings under the PWDVA. Statutory laws governing the custody of children are as follows:

- The *Guardians and Wards Act, 1890* confers on District Courts the power to appoint guardians for minor children belonging to any religion. Sections 19 and 41 of this law indicate that the father is the natural guardian of the child. Under Section 19, a guardian of the minor child is not to be appointed if the father is living, and is not, in the opinion of the Court, unfit to be the guardian of the minor. No similar provision exists for the mother. Under Section 41(e), once a father, who was unfit or deemed unfit by Court, is fit to be appointed guardian, the person appointed otherwise ceases to be a guardian. No similar provision exists in such cases for the mother.

- Under Section 26 of the *Hindu Marriage Act 1955* a matrimonial Court may decide to ask questions and pass interim or final orders relating to the custody, education and maintenance of children.
- Section 6(a) of the *Hindu Minority and Guardianship Act 1956* states that the father is the natural guardian of the child, and after him the mother, in case of a boy or unmarried girl, provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. Under Section 6(b), the mother is the natural guardian of an illegitimate boy or an unmarried illegitimate girl, and after her, the father. Under Section 6(c), the father is the natural guardian of a married girl. In *Gita Hariharan and Anr. v. Reserve Bank of India and Anr.*<sup>236</sup> the Supreme Court re-interpreted this provision to recognise both fathers and mothers as equal natural guardians and held that “*Section 6(a) itself recognises that both the father and the mother ought to be treated as natural guardians and the expression ‘after’ therefore shall have to be read and interpreted in a manner so as not to defeat the true intent of the legislature.*”

The provision relating to Temporary Custody of children under the PWDVA operates notwithstanding these laws. Regardless of proceedings under these laws, a woman may file for the relief of Temporary Custody under the law. Under the Act, the relief of Temporary Custody is available only to the woman and can be granted in opposition to the father of the child or the in-laws.

## 1. Key Findings On Temporary Custody Orders

- Temporary Custody of the minor child is granted as a general rule to women under the Act. These Orders are usually granted irrespective of whether the case is filed against the husband or the in-laws.
- In a few cases, positive observations on the rights of the mother are made by Courts in granting Temporary Custody to the woman. In these cases, Courts show an inclination to consider the mother as the natural guardian of the child, though this is not specifically mentioned in the Orders.
- The relief of Temporary Custody has been granted in cross-border custody cases where the man files a claim for custody in a foreign court. In such cases, orders for Temporary Custody granted under the PWDVA have offered immediate relief for the woman.
- In a few cases, Temporary Custody is denied to the woman based on what the Court considers to be in the best interest of the child. In cases where the character of the woman is questioned in Court, the Courts have a tendency to deny Temporary Custody of the child to the mother.

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<sup>236</sup> AIR (1999) 2 SCC 228

- In cases where the minor child is residing with the woman, Courts grant Temporary Custody to her. In some cases, Courts state there is no reason to pass any order granting Temporary Custody since the minor child is already residing with the woman.
- Courts deny Temporary Custody of the child to the woman if the child prefers to stay with the father. The Courts grant the order keeping in mind the best interest of the child and his or her preference.
- In Maharashtra and Gujarat, the woman is often directed to file an application for permanent custody under the *Guardians and Wards Act 1890*. In these cases the Courts do not grant Temporary Custody under PWDVA denying the woman immediate relief.
- In a State specific trend, a large number of Temporary Custody Orders are granted in Mizoram. In granting the Orders, the Courts have cited the following reasons: that the respondent husband is in a relationship with another woman; that the woman is more financially stable than the husband; that the woman as a house-wife is better equipped to take care of the needs of the children; or based on the child's preference. In some cases children have been examined in Court to determine their preference.

## 2. Case Studies

### 2.1 Reasons for Granting Temporary Custody Orders

#### ***2.2.1 Child is residing with the woman***

In a case from **Delhi**,<sup>237</sup> the respondent-husband was restrained from taking custody of the minor children except through a Court Order. Temporary Custody of the minor children was granted to the aggrieved woman since the children were already residing with her.

#### ***2.2.2 In the absence of father, the mother is the natural guardian of the child***

In a case from **Odisha**,<sup>238</sup> the aggrieved woman, who was a widow, filed a case seeking Temporary Custody under the Act. The in-laws were directed to hand over the child to her. The court held, "*...after the death of the father, the mother is the natural and legal guardian of the child. A girl child will remain more secure with her mother than with others. In a number of occasions in future the girl child will need the mental support and assistance of the mother which cannot be fulfilled by any other member of the deceased father's family.*"

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<sup>237</sup> C.C No 275/1, Delhi

<sup>238</sup> Case number not mentioned in the Order

In a case from **Haryana**,<sup>239</sup> the aggrieved woman filed a case seeking Temporary Custody of the minor child. The husband had gone abroad for a five-year course. The woman was granted Temporary Custody until the father returned from his studies with the Court holding that *“In the absence of the father, the mother is the natural guardian of the child.”*

### **2.2.3 Recognition of the Rights of the Mother**

In a case from **Gujarat**,<sup>240</sup> the aggrieved woman filed an application seeking Temporary Custody of the minor child. The Court while granting the Order observed that *“a mother is equivalent to a hundred teachers”*.

In a case from **Karnataka**,<sup>241</sup> the respondent-husband filed an appeal against the Order of the Magistrate’s Court granting Temporary Custody to the aggrieved woman. The Sessions Court while upholding the lower Court’s Order held *“...the minor child was being kept away from the respondent-mother since nine years and was not being told why, which led to her harbouring ill feelings for her mother, which is not in the interest of the society. Also, a mother has right to bring up her children, and children have right to a mother’s affection.”*

### **2.2.4 Reference to government policy on breast-feeding**

In a case from **Manipur**,<sup>242</sup> the respondent-husband filed an appeal against the Order of the lower Court granting Temporary Custody to the aggrieved woman. The policy of the Indian government on breast-feeding was referenced by the Sessions Court to uphold the Order. The Sessions Court observed *“There exists sufficient reason in presuming the respondent was forcibly turned out of the matrimonial home by the appellant...thereby forbidding breast feeding to the newly born child. The government is making policy encouraging breast feeding to children and making advertisement expending huge amount.”*

### **2.2.5 Reference to Customary Law**

In a case from **Mizoram**,<sup>243</sup> the aggrieved woman filed a case for Temporary Custody. The Court granted relief since the child was below three years of age. The Court referred to the local customary law in this case, which grants custody of a child to the mother if the child is below the age of three years.

### **2.2.6 Personal laws do not apply in cases of Temporary Custody**

In a case from **Andhra Pradesh**,<sup>244</sup> a Muslim woman filed a case seeking Temporary Custody of the minor child. The Court granted Temporary Custody to her and

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<sup>239</sup> Case No. 124/2010 Haryana, Rohtak

<sup>240</sup> Case No. 168/09, Gujarat, Surat

<sup>241</sup> CrI. Appeal 42/2010, Karnataka, Bidar

<sup>242</sup> CrI Appeal No 26/2011, Manipur

<sup>243</sup> Case No. 194/2011 Mizoram, Aizawl

<sup>244</sup> DVC 1/2010, Andhra Pradesh, Mahaboobnagar

observed, *“There is no legal impediment to grant Temporary Custody and personal laws will not apply.”*

### **2.2.7 Best Interest of the Child**

In a case from **Manipur**,<sup>245</sup> the aggrieved woman filed a case under Section 31 since the respondent-husband took the child away from her. A detailed Order, keeping in mind the best interest of the child, granting Temporary Custody to the woman was passed detailing visitation rights for the respondent-husband and a break-up of which parent will provide financially for which aspect of the child’s upbringing (e.g., education, medical costs, etc.)

### **2.2.8 Temporary Custody granted in cross-border custody proceedings**

In a case from **Delhi**,<sup>246</sup> the respondent-husband lived in California where he initiated divorce proceedings against the aggrieved woman. She filed an application under the Act seeking to restrain the respondent-husband from taking the child away from her custody without resorting to the proper procedure of law. The court granted Temporary Custody to the woman. However, since the Superior Court of California had ordered that the child be produced in California, the Magistrate’s Court in Delhi noted that the Act does not empower the Court to grant a final order with regard to custody.

## **2.3 Reasons for Denying Temporary Custody Orders**

### **2.3.1 The Best Interest of the Child**

In a case from **Maharashtra**<sup>247</sup>, the Court held that the financial condition of the aggrieved woman was not sound. In such circumstances the minor child would not be adequately maintained by her. Hence Temporary Custody was denied in the interest of the child.

### **2.3.2 Character of the Woman**

In a case from **Jharkhand**,<sup>248</sup> the aggrieved woman filed an application seeking Temporary Custody of the minor child which was denied on the ground that the *“Aggrieved Person had illicit relations with her Brother-in-Law and the Aggrieved Person ran away from the Shared Household and lived with the Brother-in-Law for 15-20 days in a single room. This fact was admitted by the Aggrieved Person.”*

### **2.3.3 Alternative Remedy is available**

In a case from **Gujarat**,<sup>249</sup> a Muslim woman filed a case seeking Temporary Custody of the minor child. No Order was passed regarding Temporary Custody and the

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<sup>245</sup> Case No. 54A/2011, Manipur

<sup>246</sup> C.C 91/1, Delhi

<sup>247</sup> Criminal Misc. Application No. 63/09, Maharashtra, Akole

<sup>248</sup> Case Number 1334/11, Jharkhand, Hazaribag

<sup>249</sup> Crl Misc Application No 45/11, Gujarat, Rajkot

woman was directed to file a case for permanent custody under *The Guardian and Wards Act 1890*.

#### **2.3.4 Child's Preference to stay with the Father**

In a case from **Andhra Pradesh**,<sup>250</sup> the minor son stated in Court that he did not wish to stay in the house of his maternal grandparents. Further, the minor son stated that he wished to continue attending the computer classes his father had arranged for him to attend. Therefore, the Court granted Temporary Custody to the respondent-father.

#### **2.3.5 Child is already residing with the mother**

In a case from **Andhra Pradesh**<sup>251</sup> no Order regarding Temporary Custody was granted to the woman since the children were already residing with her. The court held, "*The aggrieved person is at liberty to approach the competent court seeking permanent custody.*"

### **3. Emerging Trends in Cases Involving Temporary Custody Orders**

Women across all categories appear to have considerable success in getting Temporary Custody Orders issued under the Act. This is one area, where some Courts perceive a tension between the provisions of the Act and those of existing personal and other laws. Hence, the tendency in some States has been noted where they direct the woman to file the application under a different law. However in most cases, the Courts appear to be following the letter of the PWDVA law which provides for the relief to be available regardless of other laws. Accordingly, while granting Temporary Custody, Courts are largely examining issues around the best interest of the child and the relative circumstances of the father and mother before determining Temporary Custody.

However, the tendency in Courts to identify the traits of a 'good' mother remains. A woman in an extra-marital relationship would not be considered suitable for such an Order. Some Courts may also be underestimating the importance of a Temporary Custody Order where the mother already has custody of the child. Although Courts seem to approach this from the perspective that the woman already has actual custody, women who face domestic violence are in particular need of the full protection of the law to prevent the child from being taken away by the husband/partner or her in-laws.

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<sup>250</sup> DVC 3/2009, Andhra Pradesh, East Godavari

<sup>251</sup> 110/2010, Andhra Pradesh, Hyderabad

# Procedures followed in Court

Procedures under the PWDVA have been designed to effectuate the legislative intent of providing immediate and effective reliefs to aggrieved women. The Act lays down the procedure for grant of ex parte and interim orders for providing an efficacious remedy to women facing domestic violence. The Act also establishes a number of institutional mechanisms for assisting victims of domestic violence. It authorises Protection Officers, Service Providers, Shelter Homes and Medical Facilities to support women in accessing both the justice system and social services.

This chapter analyses the use of these mechanisms by the lower Courts and the procedure followed by in granting Orders. Unlike other chapters of this Report, the analysis of Orders as they relate to procedures is matched with the findings presented in the *Manual on Best Practices on PWDVA*.<sup>252</sup> The Manual incorporates information collected by the Lawyers Collective Women's Rights Initiative on the role of various institutional mechanisms established under the Act. This information provides a more complete picture with regard to the institutional mechanisms as Court Orders can sometimes lack the detail that would allow for any findings in this regard.

## 1. Procedures followed in the Grant of Orders

Section 23 of the Act empowers Courts to grant ex parte and interim orders. Ex parte and interim Orders provide an efficacious remedy against the continuation of violence, as an application under Section 12 of the Act by an aggrieved woman may result in immediate tension within the family.

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<sup>252</sup> *Manual on the Best Practices under the Protection of Women from Domestic Violence Act 2005*, Lawyers Collective Women's Rights Initiative (2013)

### **Section 23. Power to grant interim and ex parte orders:-**

Power to grant interim and ex parte orders.-(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

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

### **Section 28. Procedure:-**

(1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

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

**Rule 6(5)** of the *Protection of Women from Domestic Violence Rules, 2006* states that:-

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

The Act categorically states that the Cr.P.C. will be applicable to proceedings under it. However, at the same time since the Act is a civil law, it provides for discretionary powers to the Courts to modify the procedure to meet the ends of justice. Although Section 28 makes the provisions of the Cr.P.C. applicable to proceedings under the PWDVA, Rule 6(5) of the *Protection of Women from Domestic Violence Rules, 2006* (PWDVR) clarifies that applications under Section 12 shall be dealt with and Orders enforced in the same manner as proceedings

under Section 125 of the Cr.P.C. This procedure is provided in Section 126 of the Cr.P.C.<sup>253</sup>

Interim Orders are ordinarily granted on affidavits making out a prima facie case. This is being done in almost all States. However, in Karnataka, the High Court judgment in *Krishna Murthy Nookula V. Y. Savitha*<sup>254</sup> is likely to create a problem for litigants in that State as the High Court has held that only ex parte orders can be granted on affidavits. But if no ex parte order is granted, then the proceeding prescribed for the trial of a summons case will have to be followed. This judgment defeats the purpose of granting interim Orders. Even under Rule 6(5) of the PWDVR, the proceeding prescribed for Section 125 of the Cr. P.C applies and interim orders can be granted on affidavits.

Ex parte and interim orders must essentially be determined, by and large, upon affidavits. If the Respondent also files an affidavit this should be taken into account while deciding whether to grant an Interim Order. As is evident from the format of the affidavit in Form III of the PWDVR the affidavit is essential to get the full picture of apprehension of domestic violence based upon the past misconduct of the Respondent. Any averment made in the application under Section 12 of the Act, any document filed along with that application, and other relevant document, like showing the income or financial status of the Respondent, may also be considered by the Court. Moreover, if a Domestic Incident Report has been filed, it must also be considered at the stage of determination of whether interim relief should be granted.

Hence, it follows that ex parte and interim orders ought to be granted on the Court being prima facie satisfied that a case of domestic violence has been made on the basis of affidavits without insisting on oral evidence. Since one of the goals of the PWDVA is to provide emergency and immediate relief to women, orders in the form of ex parte and interim injunctions form an important component of the law.

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<sup>253</sup> Section 126 of the Cr.P.C. reads: "Procedure. (1) Proceedings under Section 125 may be taken against any person in any district - (a) where he is, or (b) where he or his wife resides, or (c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child. (2) All evidence to such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases: Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper. (3) The Court in dealing with applications under Section 125 shall have power to make such order as to costs as may be just."

<sup>254</sup> 2011(3)KCCR222

PWDVA is a civil law, with criminal features, namely penal provisions to punish breaches of Protection Orders. Section 31 makes the breach of a Protection Order, including an interim Protection Order, passed by the Court an offence. Under Section 31(2) the breach of the Order must, as far as practicable, be tried by the same Magistrate who passed the Order. By making the breach of a Protection Order, a criminal offence, the legislature has attempted to encourage compliance with the Magistrate's orders and to provide immediate and effective protection to women facing domestic violence.

The Act also provides for speedy judicial proceedings and under Section 12(5) every application under the Act should be disposed of by the Magistrate within 60 days from the date of the first hearing. In addition appeals from Orders are required to be filed within 30 days.

## **1.1 Key Findings on Orders**

### **1.1.1 Ex parte Orders:**

- Ex parte orders are usually granted by Courts on the basis of the affidavit submitted by the aggrieved woman and the Domestic Incident Report submitted in the Court.
- Magistrates typically grant ex parte orders if the woman's application discloses an imminent threat that the respondent is likely to commit acts of domestic violence. After the Order is passed, notice is given to the Respondent and after hearing the Respondent, the Order can be vacated.

### **1.1.2 Interim Orders:**

- Interim orders are granted by Courts taking into consideration the affidavit filed by the aggrieved woman, the Domestic Incident Report submitted in Court and after hearing the submissions of the respondent. As mentioned above the position in Karnataka is not the same.
- In very few cases, the oral evidence of the parties is placed on the record at the interim stage.
- In a few cases it has been noted that the courts refuse to grant interim orders since evidence has not been led. Reliefs are not granted at the interim stage on prima facie satisfaction based on the affidavits and documentary evidence, instead, a full trial is required.
- The analysis of Orders shows that the numbers of cases where Magistrates are granting interim orders are low.(See Table 1)

### **1.1.3 Final Orders**

- Final Orders are usually granted on the basis of the affidavit, oral evidence subject to cross examination and hearing the oral arguments of the parties.

- The oral evidence presented by the parties is taken on the record and the witnesses are examined.
- The procedure prescribed by Section 126 of the Cr.P.C is followed by the Courts.

#### **1.1.4 Breach of Orders**

- In a trend consistent with previous years, very few orders were granted under Section 31.
- Courts do not confine the use of Section 31 to breach of Protection Orders, and it is being used in cases of breach of grant of Monetary Relief or Residence Orders as well as they are being considered Protection Orders. However there is no uniformity in the application of this provision across Courts.

#### **1.1.5 Pendency of Proceedings**

- An analysis of the official data on the number of Orders received by the Lawyers Collective Women's Rights Initiative, shows that these are less than the applications filed.
- The figures point to the high pendency rate in cases of domestic violence in Magistrates' and Sessions Courts. The average period of pendency is 8 to 9 months in all States.
- In the case of Rohtak (Haryana), one case was noted to have been pending for four years before it was compromised.

### **1.2 Case Studies: Ex parte Orders**

While passing ex parte orders Magistrates in Karnataka, in 21 cases have held that "*Section 23(2) of the Protection of Women from Domestic Violence Act, 2005 makes it clear that this court can pass an ex parte order on the basis of affidavit filed by the aggrieved person i.e. petitioner.* For instance in one particular case<sup>255</sup> the application was filed by the aggrieved woman against the respondent-husband alleging acts of beating and slapping, use of abusive words and not being provided with basic necessities. The Magistrate's Court, holding the above view, granted ex parte Protection, Residence and monthly Maintenance Orders for the woman. The Ex parte Order was granted on the basis of the affidavit alone.

### **1.3 Case Studies: Interim Orders**

In a case from **Kerala**,<sup>256</sup> the aggrieved woman filed an application against her respondent-husband claiming interim relief for her and her minor child. The Court granted Interim Protection and Interim Monetary Relief Orders for the educational

<sup>255</sup> Case No. 85/2011, Karnataka, Mangalore

<sup>256</sup> CMP 7369/011, Kerala, Thiruvananthapuram

expenses of the minor child. The Orders were granted based on the affidavit submitted by the aggrieved woman after hearing the respondent-husband.

### **1.3.1 No separate application required for interim orders**

In a case from **Tamil Nadu**,<sup>257</sup> the respondent-husband filed an appeal against the Order of the lower Court granting interim Maintenance to the aggrieved woman. Upholding the interim Order, the Sessions Court held that *"The order passed by the learned Magistrate directing the respondent to pay maintenance is an interim order. This is being stated on account of use of the term "from the date of the petition till the decision of main application" in the operative part of order. In this connection, I am referring to the Judgment of Hon'ble High Court of Bombay reported in Vishal Damodar Patil vs. Vishaka Vishal Patil; 2008(6) AIR Bombay report 297, wherein it is observed that 'there is no need to file separate application for interim relief under Section 23 of the said Act. The only requirement is to hear the parties concerned". In the present case the learned 8th MM has undoubtedly heard the appellant as well as the respondent and has passed an interim order. In that extent, in the absence of regular application for interim maintenance, passing of order cannot be faulted with."*

### **1.3.2 Protection Orders denied at the interim stage**

In a case from **Uttarakhand**,<sup>258</sup> the aggrieved woman filed an application against her respondent-husband for an interim Protection Order and for monthly Maintenance. The Court denied the interim Protection Order and held that the Protection Order would be granted at stage of passing the final Order after evidence had been led. Interim monthly Maintenance was granted by the Court.

In a case from **Delhi**,<sup>259</sup> an appeal was filed by the aggrieved woman against the Order of the Magistrate's Court dismissing her claim for Protection and Residence Orders. The Sessions Court upheld the impugned order and held that a Protection Order cannot be passed without taking evidence. It is possible that no prima facie case of domestic violence was made out in this case. However, as there is no access to the entire record of the case. It is not possible to determine why the Court did not grant an Interim Protection Order.

## **1.4 Case Studies: Breach of Orders**

### **1.4.1 Grant of Reliefs under Section 31**

In a case from **Gujarat**,<sup>260</sup> an appeal was filed by the aggrieved woman against the Order of the Magistrate's Court rejecting her application for the issue of a warrant

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<sup>257</sup> Criminal Appeal No. 60/2011, Tamil Nadu, Chennai

<sup>258</sup> Case No. 36/2011, Uttarakhand, Nainital

<sup>259</sup> CA 13/11, Delhi

<sup>260</sup> CrI Appeal No. 297/11, Gujarat, Ahmedabad

under Section 31 against the respondent-husband for failure to pay Maintenance and Compensation. The Order of the Magistrate's Court was set aside as it was found to be inappropriate and the petition was remanded back to the Magistrate's Court to proceed in accordance with law. The Sessions Court held that in cases where a huge amount has been granted as Maintenance and Compensation, the aggrieved woman is entitled to use Section 31 for enforcing the Orders.

In a case from **Haryana**,<sup>261</sup> failure to pay interim Maintenance led to an arrest warrant being issued against the respondent-husband.

#### **1.4.2 Clarification of Original Order**

In a case from **Manipur**,<sup>262</sup> an application was filed under Section 31 for breach of an Order of Temporary Custody. In response, the Court revised its original Order and made it explicitly clear which parent would take care of which aspect of the minor child's upbringing.

#### **1.4.3 When Section 31 Cannot Be Used**

In a case from **Kerala**<sup>263</sup>, the aggrieved woman filed an application under Section 31 for the breach of a Residence Order by the respondent. The Sessions Court referred to *Velayudhan Nair v. Chimnikara Karthayayani*<sup>264</sup> and *Kanakraj v. State of Kerala*<sup>265</sup> observing that "It has been held in these judgments that breach of either a Protection Order or an interim Protection Order, passed u/s 18 and as defined u/s 2(o) of the DV Act alone will attract an offence u/s 31 of the DV Act. In the instant case, interim ex parte order was passed in terms of s. 19(d) of DV Act. Hence the violation of the same will not attract penal consequences u/s 31 of the DV Act."

#### **1.4.4 Improper use of Section 31 – woman directed to vacate Shared Household**

In a case from **Delhi**,<sup>266</sup> the aggrieved woman was an elderly lady living in the Shared Household. She alleged physical violence (throwing glass at her, kicking, and slapping), verbal and emotional violence and economic violence by her respondent-husband who was having an affair. The Magistrate's Court initially granted a Residence Order, but later withdrew it once the respondent-husband stated on oath that he and his wife had been residing separately for the past two years. The Magistrate's Court then directed the aggrieved woman to vacate the Shared Household. A First Information Report ("FIR") was filed under Section 31 directing the woman to remove herself from the Shared Household. The

<sup>261</sup> Application No. 19, Haryana, Sonapat

<sup>262</sup> Case No. 54-A/2011, Manipur, Manipur East

<sup>263</sup> CrI Appeal No. 79/2011, Kerala, Idukki

<sup>264</sup> (2009 (2) KLD 291)

<sup>265</sup> (2009(3) KLT 330)

<sup>266</sup> CA No. 30/11 and CA No. 35/11, Delhi

Sessions Court upheld the FIR and a copy of the order was sent to the Station House Officer (“SHO”) concerned to register an FIR under Section 448 of the IPC (“trespassing”) against the woman.

It should be noted that the Court has no power to direct an aggrieved woman to vacate the Shared Household under the Act. An FIR under Section 31 by the husband cannot be entertained by the Court. The Act is for the protection of women and in cases where the husband has a grievance, he should seek a remedy under other laws.

## 2. Role of the Protection Officer

**Section 9(a) and (b)** provide for the duties and functions of the Protection Officers and reads:

- (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;

Rule 10 of the PWDVR further provides for certain other duties of the Protection Officers and reads:

- (1) The Protection Officer, if directed to do so in writing, by the Magistrate shall--
  - (a) conduct a home visit of the shared household premises and make preliminary enquiry if the court requires clarification, in regard to granting ex parte interim relief to the aggrieved person under the Act and pass an order for such home visit;
  - (b) after making appropriate inquiry, file a report on the emoluments, assets, bank accounts or any other documents as may be directed by the court;
  - (c) restore the possession of the personal effects including gifts and jewellery of the aggrieved person and the shared household to the aggrieved person;

*Contd...*

- (d) assist the aggrieved person to regain custody of children and secure rights to visit them under his supervision as may be directed by the court.
  - (e) assist the court in enforcement of orders in the proceedings under the Act in the manner directed by the Magistrate, including orders under section 12, section 18, section 19, section 20, section 21 or section 23 in such manner as may be directed by the court.
  - (f) take the assistance of the police, if required, in confiscating any weapon involved in the alleged domestic violence.
- (2) The Protection Officer shall also perform such other duties as may be assigned to him by the State Government or the Magistrate in giving effect to the provisions of the Act and these rules from time to time.
  - (3) The Magistrate may, in addition to the orders for effective relief in any case, also issue directions relating general practice for better handling of the cases, to the Protection Officers within his jurisdiction and the Protection Officers shall be bound to carry out the same.

Protection Officers are individuals appointed by the State Governments to assist both victims and Magistrates with respect to the matters under the Act. They act as a link between the Court and the aggrieved woman, as many women are reluctant to approach the justice system directly. Among other things, Protection Officers are required to assist the aggrieved woman when preparing a Domestic Incident Report, filing an application under the Act, accessing Service Providers and implementing Court Orders.

### **2.1 Key Findings on Protection Officers**

- An increase in the role played by the Protection Officers has been noticed this year.
- Courts directing Protection Officers to take police assistance and report any breach of Orders is a positive trend since this ensures better enforcement of reliefs granted by the Court for the aggrieved woman and encourages multi-agency coordination between the Protection Officers and the Police.
- The role of the Protection Officer at the pre-litigation stage is to file the Domestic Incident Report even before the application is filed in Court

and the service of notice after the application is filed. Some other duties performed by Protection Officers at the direction of the Courts are:

- ◆ Seeking police assistance in the enforcement of orders
  - ◆ Reporting to the Police or Magistrates in cases of breach of orders and
  - ◆ Filing reports regarding the compliance of Orders.
- In a few cases from Andhra Pradesh, West Bengal and Maharashtra the role of the Protection Officer in counselling the parties and submitting counselling reports has come to light. It is unclear whether these were submitted pursuant to Court Orders.
  - According to the data presented in the *Manual on Best Practices Manual on the PWDVA*, in Andhra Pradesh, Protection Officers assist in enforcement by filing contempt cases and the case officer concerned files a chargesheet against the accused while it has been reported that in Mizoram, a warrant is issued by the Magistrate and the police arrest and produce the accused before the Magistrate.<sup>267</sup>
  - In at least one case a Station House Officer (“SHO”) has been appointed as the Protection Officer.

## 2.2 Case Studies

### 2.2.1 Protection Officer’s Report not mandatory

In a case from **Kerala**,<sup>268</sup> the Sessions Court held that it is not mandatory for a Magistrate to call for the Protection Officer’s report.<sup>269</sup> The Sessions Court held, “...nowhere does the PWDV Act makes it mandatory to call for the Protection Officer’s report by the learned Magistrate in an interim application. However, if an order from the Protection Officer is there before the learned magistrate either suomoto filed by the Protection Officer or at the instance of the court, the court is bound to look into. Court is bound to look into it if it is there or available.”

In a case from **Delhi**,<sup>270</sup> the appeal was filed by the respondent-husband against the Order of the Magistrate’s Court directing him to pay interim monthly Maintenance to his wife. The Sessions Court upheld the impugned order of the lower Court and on the question of whether a Domestic Incident Report had to be filed in every case, the Sessions Court, referring to the *Bhupinder Singh Mehra*<sup>271</sup> judgment, held that “[t]he above said judgment is only advisory in nature. It is nowhere stated that the court must call the DIR in each and every case. The allegation of lodging an FIR regarding abortion of the child by beatings is specific. No use in such case to call for the DIR.”

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<sup>267</sup> Supra Note 225

<sup>268</sup> Crl Appeal 872/2009, Kerala, Thrissur

<sup>269</sup> For further discussion on the issue refer to Section B – Procedures under PWDVA in the Chapter on Judgments of the Higher Judiciary – Supreme Court and High Courts.

<sup>270</sup> C.A. No. 28/11, Delhi

<sup>271</sup> Supra Note 41

### ***2.2.2 Assisting in restoring possession of the woman's articles***

In a case from **Karnataka**,<sup>272</sup> the Court passed ex parte Protection, Residence, Maintenance and Compensation Orders. Through an interim Order, the Court directed the Protection Officer to restore the possession of the aggrieved woman's personal effects from the respondent-husband.

### ***2.2.3 Conducting home visits***

In a case from **Bihar**,<sup>273</sup> the application was filed by the aggrieved woman living in the Shared Household against the respondent-brother-in-law and mother-in-law. The Court directed the Protection Officer to conduct a Home Visit and submit a report. A Protection Order was passed on the basis of the Protection Officer's Report stating that the aggrieved woman was residing in the Shared Household and a Residence order was granted on the basis of the Home Visit Report submitted by the Protection Officer.

### ***2.2.4 Providing a Report on the Financial Status of the Respondent***

In a case from **Gujarat**,<sup>274</sup> the Protection Officer was directed by the Court to submit a report on the financial status of the respondent-husband. The Court found that his monthly income was under Rs. 10,000 per month. The Court granted the aggrieved woman a monthly Maintenance under Rs 5,000 per month.

### ***2.2.5 SHO appointed as Protection Officer***

In a case from **Chandigarh**,<sup>275</sup> the aggrieved woman asked for the appointment of a Protection Officer. The Court directed the SHO to provide protection to the aggrieved woman and assist in the implementation of the order in letter and spirit.

### ***2.2.6 Failure of Protection Officer to Discharge his Duty***

In a case from **Maharashtra**,<sup>276</sup> a Magistrate ordered legal action to be taken against a Protection Officer for his failure to serve notice on the respondent. The Court further held that the Protection Officer's failure to appear in Court despite the issue of a show-cause notice, amounted to a dereliction of duty on the part of the Officer and that action should be taken against him. The Order of the Magistrate was in keeping with Section 33 of the Act which gives the Magistrate the power to take legal action against the Protection Officer if he fails or refuses to discharge his duties as directed by the Magistrate in the Protection Order without any sufficient cause.

## **3. Role of the Police**

<sup>272</sup> Case No. 01/2011, Karnataka, Yadigiri

<sup>273</sup> Case No. 275/11, Bihar, Buxar

<sup>274</sup> Criminal Misc. Application No 1207/09, Gujarat, Kachch

<sup>275</sup> Case ID No. 36014R0, Chandigarh

<sup>276</sup> C.C.No. 57/Misc/2008, Maharashtra, Vikhroli

Although the Act introduces the institutions of the Protection Officer and the Service Provider, the police continue to play a pivotal role in domestic violence cases. Section 36 of the Act clearly states that the provisions of the Act shall be in addition to the provisions of any existing law. Therefore, the police continue to exercise their powers and fulfil their duties under the existing criminal law regime. In fact, Section 5 of the PWDVA further provides that an aggrieved woman shall have the right to file a complaint under Section 498A of the IPC simultaneously with any application filed under the Act.

Under the Act, the police are duty bound to provide information on the rights and remedies provided under the PWDVA, facilitate the aggrieved woman's access to the Protection Officer, initiate criminal proceedings when appropriate and act on the directions of the Court to assist in the enforcement of Orders.

### 3.1 Key findings on the role of the Police

- The analysis of Orders this year reveals that the predominant role played by the police is to assist the Protection Officer in the enforcement of Orders. The data presented in the *Manual on Best Practices on PWDVA* for this year also reveals that in a majority of States, police assistance is provided to Protection Officers for the enforcement of Orders. In some cases, the police have registered complaints under Section 498A of the IPC and have also recorded complaints of breach of Orders.<sup>277</sup>
- An emerging trend noticed this year is that of Courts using Section 19(5) of the Act directing the police to provide protection to the aggrieved woman and to assist her in the enforcement of the Orders granted.
- According to the data presented in the *Manual on Best Practices on PWDVA*, in Himachal Pradesh and Uttar Pradesh it was noted that the police have been referring women to the offices of the Protection Officer and the Service Provider. This is a positive trend since it encourages the use of the mechanism put in place under the law and enhances multi-agency coordination between the stakeholders.<sup>278</sup>

### 3.2 Case Studies on the role of the Police

#### 3.2.1 Use of Section 19(5) of the Act by the Courts

In a case from **Bihar**,<sup>279</sup> the aggrieved woman filed a case against her respondent-husband and in-laws claiming Protection, Residence and Compensation Orders. She alleged multiple forms of domestic violence including being beaten and slapped, dowry harassment, forced sexual

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<sup>277</sup> Supra Note 225

<sup>278</sup> *Ibid*

<sup>279</sup> Case No. 315/11, Bihar, Buxar

intercourse with her father-in-law, not being given money for basic necessities and dispossession from the matrimonial home. The Court granted Protection, Residence and Compensation Orders and further directed the Protection Officer to take police assistance for the enforcement of the Orders. Under Section 19(5) of PWDVA, the court directed the Police Officer to provide protection to the aggrieved woman.

### ***3.2.2 Police assistance in referring the woman to the office of the Protection Officer***

In a case from **Himachal Pradesh**,<sup>280</sup> the aggrieved woman filed a case against her respondent-husband and in-laws. She alleged acts of severe physical violence, use of abusive words and dispossession from the matrimonial home. The Court granted Protection, Residence and monthly Maintenance Orders. It was mentioned in the Order that the police referred the aggrieved woman to the office of the Protection Officer. The Court also directed the police to assist the Protection Officer in the enforcement of the Orders and, under Section 19(5) of the Act, to provide protection to the aggrieved woman.

## **4. Role of Service Providers, Medical Facilities and Shelter Homes**

The Act provides a safety net of support structures and services to the aggrieved woman to support her when incidents of domestic violence occur. Apart from the appointment of Protection Officers, the Act mandates the notification of Service Providers, Shelter Homes and Medical Facilities. Service Providers are primarily NGOs, registered under the Act, that provide assistance to the aggrieved woman by recording Domestic Incident Reports and provide support in terms of shelter, counselling, legal aid, medical aid, vocational training, etc. The PWDVA protects actions taken in good faith by such organisations.

Medical Facilities are those that are notified by the State Governments. It may be noted that almost all States have notified Government Hospitals as Medical Facilities under the Act. Notified medical facilities cannot refuse to provide medical aid to the aggrieved woman. They are also empowered to record Domestic Incident Reports. Under the Act, Shelter Homes are also notified by the State Governments and cannot refuse to provide shelter to the aggrieved woman.

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<sup>280</sup> Case No. 89/3/11, Himachal Pradesh, Shimla

#### 4.1 Key findings on the Service Providers, Medical Facilities and Shelter Homes

- The role of Service Providers, Medical Facilities and Shelter Homes is not recorded in most Orders with the exception of the North-Eastern States of Manipur and Mizoram. Service Providers in Mizoram provided counselling services in 18 cases and the report of the Counsellor was submitted in the Court.
- The main role played by the Service Providers as seen from the Orders is to counsel the parties. The counselling by Service Providers in Mizoram was not restricted to attempting to get the parties to reconcile their differences. It also included psychological evaluation for alcoholic respondents, group counselling sessions and medical treatments.
- Based on the analysis of Orders it would appear that Service Providers have filed Domestic Incident Reports in very few cases. However, data received from the State Nodal Departments and presented in the *Manual on Best Practices on PWDVA* indicates that Service Providers have been filing Domestic Incident Reports in some States along with providing counselling services, legal aid, conducting home visits and referring the aggrieved woman to the office of the Protection Officer.

#### 4.2 Case Studies

In a case from **Mizoram**,<sup>281</sup> a “Home Supervision Report” was submitted by the Service Provider where counselling was successful and the Court dismissed the application.

In a case from **Manipur**,<sup>282</sup> an important role was played by the Shelter Home. In this case the respondent-husband argued that the Court had no jurisdiction to hear the case. The aggrieved woman had resided in a shelter home temporarily and this fact was used by the woman to successfully argue that the Court had jurisdiction to hear the case. Section 27(1)(a) of the Act states that the jurisdiction to try the case lies with the Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which the aggrieved woman temporarily resides.

### 5. Emerging Trends in Cases Involving Procedures under the Act

Since the monitoring and evaluation exercise of the Act by the Lawyers Collective Women’s Rights Initiative started, there has been a noticeable increase by the

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<sup>281</sup> 77/2011, Mizoram, Aizawl

<sup>282</sup> Case No.60/2009 Manipur, Manipur East

lower Courts of the use of the procedural flexibilities afforded by the Act. **Interim and Ex parte orders** are being granted though there is some reluctance among the Courts especially in cases of ex parte orders. The reluctance to grant ex parte orders by the Courts stems from the need to hear the other party. However, ascertaining whether the aggrieved woman is in need of immediate relief is the primary duty of the judge at this stage and hence ex parte orders must be passed on perceived threats of imminent violence. The purpose of an ex parte order in cases of domestic violence is preventive and passed on the need to protect the life and limb of the aggrieved woman. The balance struck by the Act, where ex parte and interim orders do not prejudice the outcome of the case and allow judges to err on the side of caution to ensure that women do not face violence, must be implemented by the Courts. In the case of interim orders, High Court decisions in Karnataka and Tamil Nadu requiring trial-like procedures to be adopted threaten to undermine the objective of providing immediate remedies to victims of domestic violence.

The lack of the effective use of the enforcement provision of the Act i.e. **Section 31** threatens to leave the Orders granted by the Courts without teeth as Courts appear to be reluctant to invoke criminal consequences. Again the balance sought to be achieved by the Act, of making domestic violence a civil wrong while providing a minimum level of criminal enforcement where Orders are breached is under threat of being undermined. The common lament in terms of Indian laws remains the lack of their implementation and enforcement and this aspect of the PWDVA requires closer evaluation.

One of the key areas of concern in terms of procedures relates to the **high pendency of cases**. The delay in passing Orders thwarts the very vision with which the law was enacted to provide speedy and efficacious reliefs to women. The data presented in the *Manual on Best Practices on PWDVA*<sup>283</sup> also indicates that there is an acute shortage of Protection Officers in the Northern States of Punjab and Haryana, where applications are filed by aggrieved women for the appointment of Protection Officers. The delay caused by the Protection Officers in filing Domestic Incident Reports was reported as a major reason for pendency of cases in Haryana. This appears to be a difficulty faced by Courts that has carried over from previous years. For example last year, reports from Sonapat district indicated that Courts are directing SHOs to be appointed as Protection Officers.<sup>284</sup>

In terms of the institutional mechanisms provided in the Act both for the aggrieved woman and for the use of the Court, it is heartening to note that the role played by the **Protection Officer** has increased in all States. Courts

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<sup>283</sup> Supra Note 225

<sup>284</sup> Supra Note 198

are making increased use of the office of the Protection Officer for adjudicating disputes filed under the PWDVA. The data presented in the *Manual on Best Practices on PWDVA* which was made available to the Lawyers Collective Women's Rights Initiative by the State Nodal Departments of 16 states also indicates that the Courts are directing the Protection Officers to file Domestic Incident Reports in a large number of cases.<sup>285</sup> In the States of Chhattisgarh and Rajasthan the number of Domestic Incident Reports filed by the Protection Officers under Court directions is larger than the number filed by the Protection Officers on their own.<sup>286</sup> This indicates that the Protection Officers are not very active in these states.

Similarly, **Service Providers** appear to be used by Courts as well though this is not recorded in Orders and is largely reflected in the data presented in the *Manual on Best Practices on PWDVA*. By contrast **medical facilities and shelter homes** appear to hardly be invoked by judges in the provision of services to a aggrieved woman filing an application under the Act.

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<sup>285</sup> Lawyers Collective Women's Rights Initiative received infrastructure data from 16 states namely Andhra Pradesh, Arunachal Pradesh, Bihar, Chhattisgarh, Daman & Diu, Gujarat, Haryana, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Mizoram, Odisha, Puducherry, Punjab and Rajasthan. For detailed information, see Supra Note 252.

<sup>286</sup> For instance in the case of Rajasthan, 897 Domestic Incident Reports were filed on the orders of the Court while 249 Domestic Incident Reports were filed by the Protection Officers on their own. In Chhattisgarh, Court directed Domestic Incident Reports were 391 while those filed by the Protection Officers on their own were 228. For detailed information, see Supra Note 252.

# Settlement of Cases



## Settlement of Cases

**Section 14. Counselling:-** (1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.

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

**Rules 13 and 14 of the PWDVR** provide for the appointment of counsellors and for the procedure to be followed in counselling. Under Rule 13, a list of available counsellors (who preferably should be women) is to be forwarded by the Protection Officer. Rule 13 specifies that persons interested or connected with the subject matter of the dispute or is related to any one of the parties or to those who represent them cannot be appointed as counsellor unless objections are waived by all the parties in writing. In addition any legal practitioner who has appeared for the respondent in any legal proceedings cannot be appointed as a counsellor.

Rules 14(2) to 14(6) provide the procedure to be followed by the counsellor and certain safeguards to facilitate the counselling of the woman only. Rules 14(7) to 14(17) provide the procedure to be followed in joint counselling. Counselling may also be initiated by the aggrieved woman prior to litigation, for example, when an Aggrieved Person approaches a Service Provider for psychological counselling. Under Rule 14, the aggrieved woman's consent is required for reaching a settlement. Rule 14 requires that the Court shall, on being satisfied with the report of counselling, pass an order recording the terms of the settlement, or an order modifying the terms of the settlement on being so required by the aggrieved woman and with the consent of the parties.

There is a strong tendency within the judiciary to seek reconciliation of matrimonial disputes in order to save the family from divorce.<sup>287</sup> Provisions in the PWDVA and the Rules under the Act are designed to ensure that any counselling towards reconciliation or settlement of cases is in the best interests of the woman. Under the provisions of the law, counselling can be either pre-litigation or post litigation. Pre-litigation counselling is done by Service Providers. Specifically, the Rules require that the woman must give her consent for reaching a settlement.

**Table 4: State Wise Number and Percentage of Settlements**

State	Number of cases settled out of those analysed for this Report	Percentage of cases settled based on the number of cases analysed for this Report
Andaman and Nicobar	2	22.22
Andhra Pradesh	96	31.07
Bihar	7	15.91
Chandigarh	10	27.78
Delhi	32	10.29
Gujarat	387	54.58
Himachal Pradesh	246	68.14
Jharkhand	31	42.47
Karnataka	42	8.25
Kerala	144	12.07
Maharashtra	667	25.75
Manipur	16	27.12
Mizoram	4	15.38
Odisha	19	13.01
Punjab and Haryana	321	21.41
Rajasthan	0	0.00
Sikkim	18	81.82
Tamil Nadu	57	26.51
Tripura	56	77.78
Uttar Pradesh	112	20.70
Uttarakhand	126	44.37
West Bengal	5	2.02
<b>Indian Total</b>	<b>2371</b>	<b>24.81</b>

<sup>287</sup> See for example, the judgment of the Supreme Court in *Balwinder Kaur v. Hardeep Singh* AIR 85 (1998) SC 764 where the Court observed that “A divorce not only affects the parties, their children, if any, and their families but the society also feels its reverberations. Stress should always be on preserving the institution of marriage.”

The analysis of the Orders received by Lawyers Collective Women's Rights Initiative this year indicates that a substantial number of cases result in settlements. Many cases under the PWDVA are also withdrawn by the woman or were dismissed due to the non-appearance of the woman in court. For the purposes of this Chapter, these have been clubbed together with 'settled cases', as it is assumed the parties may have reached an out-of-court settlement.

Of the Orders in the representative sample, nearly one-fourth (24.8%) were settlements (See Table 4). In continuation of the trend noticed last year, Sikkim has the highest percentage of settlements (81.8%).<sup>288</sup> Across the States, settlements were most common in Orders from Sikkim, Tripura and Mizoram while Rajasthan and Delhi had the lowest number of settlements. Interestingly, Rajasthan and Delhi are also the two States where the severest forms of violence are recorded in the Orders. At the district level, a large number of settlements were noted from Sonapat (Haryana) where over 85% of the Orders analysed this year were settlements. This may be associated with the setting up of Special Cells in police stations in Haryana. Data in the *Manual on Best Practices on PWDVA* shows that officers in these Special Cells are actively engaged in counselling women in Sonapat.<sup>289</sup>

## 1. Key findings in relation to Settlements

The analysis of Orders that disclose settlements are sketchy and provide little information as to how the settlement was reached. It is therefore unknown whether the procedure prescribed under the Act is being followed by the Courts in such cases. Where details of the settlements are mentioned, it appears that the procedure prescribed under the law is not being followed nor is it known if the consent of the woman was taken before the settlements were arrived at. Due to the lack of details in most of the settlement cases, the key findings noted below are primarily State specific.

- In relation to the appointment of counsellors, cases from Maharashtra and Andhra Pradesh indicate that Courts are not following the procedures in the Act and the Rules and are appointing advocates as counsellors. By contrast, Courts in Manipur and Mizoram are appointing Service Providers as counsellors, in accordance with the Act.

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<sup>288</sup> 66% of the Orders analysed from Sikkim were settled in the reporting period of April 1<sup>st</sup> 2010 to March 31<sup>st</sup> 2011. Please refer to the 5<sup>th</sup> M&E Report for more details.

<sup>289</sup> State visits were conducted by Lawyers Collective Women's Rights Initiative in Sonapat, Rohtak and Faridabad districts of Haryana in June 2012. The findings from the State visits have been incorporated in the '*Manual on Best Practices: PWDVA Act 2005*' (2013)

- Courts in Mizoram are taking the consent of the women before sending them for any form of counselling.
- The central role of Lok Adalats, Gram Panchayats and Mediation Centres in the settlement of cases continues as also noted in previous years.
- Lok Adalats have power under Section 22D of the *Legal Services Authority Act, 1987* to arrive at settlements. The analysis of Orders reveals that 'reconciliation between the parties' is the most common settlement reached in cases dealt with by Lok Adalats.
- The role of Panchayats in affecting compromises has been recorded in a few cases from Tripura, Bihar, Jharkhand and Uttar Pradesh.
- In most cases, settlements are reached before the Court passes any Protection Order.
- In Punjab, some cases are referred to Mediation Cells under Section 89 of the *Civil Procedure Code 1908*, prior to the hearing.
- Very few appeals are filed by women against Orders of Magistrates' Courts dismissing their applications for non-appearance. However, where appeals are filed, Courts have taken a positive approach and set aside the order of dismissal.
- In most cases it has been observed that the terms of settlement are not recorded by the Court. However based on the Orders where the terms of settlement are mentioned, reconciliation between the parties is the most common reason for settlement followed by a mutual consent divorce where the respondent agrees to pay to the woman a lump sum amount as the final settlement. Return of *stridhan* or payment of a lump sum amount by the respondent is invariably preferred to payment of monthly Maintenance.
- In several cases, the woman agrees to withdraw all pending litigation against the respondent and the respondent assures that he would not commit any further acts of domestic violence and will live with the woman peacefully.
- Mutual consent divorce is the most common form of settlement in Gujarat.
- Sikkim constitutes a Best Practice since the terms of settlement recorded in the Orders by the Magistrate mention the terms arrived at by the parties in great detail, the informed consent of the woman is taken prior to counselling and the arrival of the settlement and Protection Orders are used by the Courts to ensure the woman's safety.

## 2. Case Studies

### 2.1 Counselling

#### *2.1.1 Advocates appointed as counsellors*

In two cases from **Maharashtra**, the advocate was appointed as the counsellor.<sup>290</sup>

#### *2.1.2 Woman's consent required for counselling; refusal of consent does not impact grant of Orders*

In a case from **Mizoram**,<sup>291</sup> the Court offered the aggrieved woman the counselling services of the Centre for Peace and Development.<sup>292</sup> Though the woman refused to go for counselling, the Court granted Protection and Residence Orders.

### 2.2 Who can Affect Settlement of Cases

In a case from **Tripura**,<sup>293</sup> the aggrieved woman filed a case against the respondent-husband. The case was referred to the Gram Panchayat. The couple reconciled and the woman withdrew the application.

In one case from **Tripura**,<sup>294</sup> the case was referred to village elders and relatives of the parties. The aggrieved woman agreed to withdraw all pending cases against the respondent-husband.

In a case from **Punjab**,<sup>295</sup> it has been noted that one of the respondent-in-laws in the case was designated as the mediator. The case is pending and the outcome is not known.

### 2.3 Terms of Settlements

#### *2.3.1 Respondent files assurance of no further domestic violence as part of settlement*

In a case from **Delhi**,<sup>296</sup> the woman alleged physical violence and filed a case against the respondent-husband. The respondent-husband agreed to remove himself from the Shared Household and stop visiting the woman in her office in the Supreme Court. The woman withdrew the application.

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<sup>290</sup> Crl Misc Application 14/2010, Maharashtra, Sangli and Crl Misc No 208/2011, Maharashtra, Jalgaon

<sup>291</sup> Case No. 129/2011, Mizoram, Aizawl

<sup>292</sup> The counselling offered by the Service Provider is not restricted to attempting to get the parties to reconcile their differences. It also includes psychological evaluation for alcoholic respondents, group counselling sessions and medical treatments.

<sup>293</sup> CR 196/11, Tripura, Agartala

<sup>294</sup> Case number not known

<sup>295</sup> Case No. 30/2/10, Punjab, Jalandhar

<sup>296</sup> Case number not known, Delhi

In a case from **Manipur**,<sup>297</sup> the respondent-husband made an assurance in Court that he would stop the violence. The parties reconciled, and the woman withdrew her application.

### ***2.3.2 Mutual Consent decree includes lump sum payment as settlement***

In a case from **Gujarat**,<sup>298</sup> the respondent-husband agreed to pay a lump sum amount of Rs 2,25,000 to the aggrieved woman. The woman agreed to withdraw all pending litigation against the respondent-husband and consented to divorce him. The cheque was deposited by the respondent-husband with the Mediation Officer who effected the settlement.

### ***2.3.3 Court reluctant to examine existence of domestic violence in light of reconciliation***

In a case from **Odisha**,<sup>299</sup> at the stage of cross-examination, the aggrieved woman and the respondent-husband stated that the matter is amicably settled and they are now residing together. The court held that *“Given the circumstances it is best not to raise the question whether domestic violence was actually caused or not as both the parties should be encouraged to have a good relationship with each other and live their future life peacefully. It is settled that PWDVA is a beneficial legislation, but the law should not be misused to destroy the family, hence I am of the view to let both the parties to enjoy their married life peacefully with their girl – child for the betterment of the marital relationship.”*

## **2.4 Re-instatement of cases dismissed for lack of appearance**

### ***2.4.1 Non-appearance of woman at the lower Court does not affect Orders from the Sessions Court***

In a case from **Andhra Pradesh**,<sup>300</sup> the aggrieved woman filed an appeal against the Order of the Magistrate’s Court dismissing her application due to her non-appearance. The Sessions Court set aside the order of the Magistrate’s Court since the previous order of adjourning the matter was not signed by the officer-in-charge and the docket order was not legal. The court held, *“failure to attend the court on the date is not sufficient ground to dismiss the petition without affording any opportunity.”*

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<sup>297</sup> Case No. 84, Manipur, Imphal East.

<sup>298</sup> Crl Misc Application No 67/09, Gujarat, Rajkot

<sup>299</sup> Case number not mentioned in the Order

<sup>300</sup> Crl Appeal 249/2011, Andhra Pradesh, East Godavari

### 3. Emerging Trends in Cases Involving Settlements

As in previous years, settlements continue to be predominant in cases filed under the PWDVA. A variety of stakeholders are involved in arriving at these settlements including mechanisms provided under the Act (such as Protection Officers and Service providers) as well as institutions like Panchayats and Lok Adalats. However the areas of concern emerging from the analysis this year relate to incorrect appointments of advocates as well as of the practice of Courts in the overwhelming majority of cases to not record any details. This includes whether the consent of the woman has been taken both for the counselling and settlement. The issue of the consent of the woman is a crucial one as many of the institutions used such as Panchayats or in some cases references to family elders can create undue pressure on the woman to withdraw her case. In addition counselling should be allowed by the Courts only after putting Protection Orders in place. Without such Orders, Courts may inadvertently be tolerating domestic violence by leaving women without any safety net during reconciliation proceedings. Where a settlement is reached, this too should be strengthened with a Protection Order and the Protection Officer should monitor the implementation of the terms of the settlement.

As with previous years, Sikkim stands apart from the rest of the country on this account. The good practices observed by Courts in Sikkim should be considered as a model for other Courts.

#### Good Practice: Sikkim

The overwhelming majority (81.82%) of Orders analysed from Sikkim were settled by the parties. The following pattern in passing orders in such cases can be discerned from the cases:

- The Magistrate passes an ex parte Protection Order if it is considered necessary for the safety of the woman based on her submission.
- The woman and the respondent are directed by the Court to try mediation to settle their disputes. The Magistrate records in the Order, that the parties are appraised with the benefits of mediation and amicable settlement. In one case, the Court referred the parties to mediation "*since this is a matrimonial dispute.*"<sup>301</sup> The case is referred to the mediation centre if the parties agree to mediation.
- Only in cases where the Mediator's report indicates that mediation is not possible since the parties could not settle the matter amicably, does the Court proceed with the case.

<sup>301</sup> Crl. Misc. Case No. 78 of 2011, Sikkim,

- In most cases, mutually agreeable terms arrived at by the parties at the mediation centre are presented in Court and appraised by the Magistrate. The Magistrate makes a statement with respect to the reasonableness of the agreed terms and records them in the form of an Order.
- In cases where ex parte interim Protection Orders have not been passed, there is a stop violence clause in the mutual agreement deed filed in Court indicating that the safety of the woman is not disregarded in any case. Under this protection clause, the respondent undertakes that he will treat the woman cordially and not commit any further acts of domestic violence.

As was noted last year, the terms of settlements recorded in the Orders by the Magistrates mention the terms arrived at by the parties in great detail. This constitutes a best practice and is a departure from the national trend where the Orders recording settlements are extremely brief and terse. The following is an example of a settlement recorded in an order from Sikkim:

*“Aggrieved Person will live with the respondent’s parents in their house along with the child, Aggrieved Person shall enjoy the lands registered in the name of the respondent including the “Junerybari” of the in laws, Aggrieved Person shall have every right to inherit the above house of her in laws after their lifetime. However, she will forfeit this right if she re-marries. Aggrieved Person shall inherit half the property of the respondent. Respondent shall maintain the Aggrieved Person and his parents. Respondent shall look after his parents, wife and child in times of illness. Respondent shall pay monthly maintenance of Rs 2,500/- to the Aggrieved Person and shall not repeat similar mistakes in the future and will treat Aggrieved Person as “most beloved”. Aggrieved Person shall not blame or suspect the respondent.”<sup>302</sup>*

Magistrates in Sikkim are making use of Section 19(3)<sup>303</sup> of PWDVA for preventing the commission of domestic violence. In every single case where the respondent has appeared before the Magistrate, he is made to deposit a bail amount of Rs 5,000 with surety. Details of the person standing as surety are also provided in the Order and the magistrate informs the surety of their responsibility. To conclude, it appears that Magistrates in Sikkim consider domestic violence cases to be “matrimonial disputes” which can be resolved through mediation. Nonetheless, they also give due importance to the safety of the woman and pass ex parte Protection Orders liberally before referring the parties for mediation.

<sup>302</sup> Case number not known

<sup>303</sup> 19 (3): The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.



Section D

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# Reflections and Recommendations







# Reflections

The Sixth M&E Report on the implementation of the PWDVA presents analysis of just under 10,000 judicial decisions delivered under the Act for the current reporting period.<sup>304</sup> Apart from the analysis of the legal principles arising out of the Orders, the evaluation was also designed to determine whether the familial and marital status (married, divorced, widowed, in a relationship in the nature of marriage, daughter or sister) as well as their residential status (living in the Shared Household, the natal home or on her own) had an impact on the decisions being given under the Act. District and State-wise tabulation of cases was also designed to determine if there were national, regional or local trends in decision making. At the outset it should be stated that few district or State specific trends were noticeable in the analysis. This is primarily due to the inadequate details contained in most Orders.

As in previous years, the single largest users of the Act are still married women followed by widows, divorced women, daughters and sisters (women filing against members of their natal family) and women in relationships in the nature of marriage, in that order. The sheer numbers of Orders received by the Lawyers Collective Women's Rights Initiative indicates a significant growth in the use of the Act by women across the country. What has emerged is that most applications are filed after the woman leaves the Shared Household and is residing either with the natal family or on her own.

The decisions on domestic violence analysed this year highlight some path breaking judicial pronouncements that firmly support and enhance the objective of the Act. Still, as can be expected, the Courts have not been entirely successful in escaping entrenched patriarchal beliefs and biases. Ironically, in some cases, these beliefs have resulted in positive Orders for women especially where they are couched in terms of moral duties of husbands or fathers to provide protection. In the vast majority of cases, bias is evident in the Orders. The area of greatest concern arising out of the analysis is the danger that judicial decisions may

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<sup>304</sup> The reporting period for Magistrates' and Sessions Court Orders is April 2011 to December 2011 and September 2011 to September 2012 for the High Court and Supreme Court Judgments.

reduce the PWDVA to a mere shadow of the personal laws that govern women's status in the family, failing to understand that the dominant purpose of the law is to address the consequences of violence and provide relief.

With the highly individualised nature of the justice delivery system, individual judges have of course adopted different approaches and at times gone against the trend of decisions. In some areas these individual approaches have revealed good practices while in others they have been regressive. In a few exceptional cases, they reflect an extreme bias.

What follows is an attempt to draw inferences from emerging trends in decision making regarding the factors that result in judicial decisions that enhance, or conversely, diminish the objective of the Act of attaining a more equal relationship for women within and outside the home. This section reflects on the findings from the analysis of the Magistrates' and Sessions Court Orders as well as from the analysis of judgments of the Higher Judiciary.

## **1. Universal and Retrospective Application of the Act**

The analysis of Orders reveals that Courts increasingly have a better understanding of the universal application and secular nature of the Act. Courts have entertained applications filed by Muslim women holding that the Act is a secular law applying to all communities.

The Supreme Court has also conclusively settled the question of the retrospective application of the Act. In the *Bhanot*<sup>305</sup> judgment, the Supreme Court has clearly held that acts taking place before the commencement of the Act have to be taken into account in passing Orders and that a woman who lived in a Shared Household in the past but was no longer doing so when the Act came into existence would still have recourse to the full protection of the PWDVA. The question over the retrospective application of the Act arose in some part due to the two penal provisions (Sections 31 and 33) in the PWDVA. However, it is evident that the Act only penalises the violation of an order passed under it, and since such penalisation could not have taken place before the enforcement of the Act, the criminal provision in the Act cannot be deemed to be retrospectively operational. In understanding the importance of the decision of the Supreme Court, it is also essential to appreciate the fact that it takes a woman a long time to come out of her shell and talk about the domestic violence she has faced.

The judgment of the Supreme Court is fundamental to the understanding that domestic violence is a continuous violation of the woman's right to live free of violence and while domestic violence may have started before the Act came into

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<sup>305</sup> Supra Note 32

force, the abuse is deemed to continue until the aggrieved woman is restored to a position of safety and her rights are secured.

## **2. Broad Acceptance of the Definition of Domestic Violence**

One of the clearest trends emerging from the Orders this year is the acceptance of the definition of domestic violence to include non-physical and sexual violence. Though concerns remain over the approach adopted in some cases with the setting of high bars for evidence of domestic violence, nevertheless, the understanding of violence and abuse appears to have received large scale acceptance in Courts across the country.

In cases related to sexual abuse, Courts may require some assistance in understanding the impact and implications of sexual abuse faced by women in the home. In some Orders, Courts appear unable to comprehend the actions of the aggrieved women wondering why for instance, a daughter claiming to be sexually abused by her father would visit her natal home where she continued to face such abuse. However actions of victims of such abuse, particularly of child sexual abuse, may better be understood by Courts with the assistance of experts who work with victims. Courts should consider further investigation and expert assistance before denying Orders which rely on their own perceptions of proper or expected behaviour from victims of sexual abuse.

## **3. Familial, Marital and Residential Status of Women is Affecting the Outcome of Cases:**

### ***Lack of Understanding of the Nature, Dynamics and Social Reality of Domestic Violence Continues***

#### **3.1 Married Women**

The analysis of Orders shows that Married Women living in the Shared Household are the most likely to succeed in getting Orders granted under the Act. It is a welcome trend that women in the Shared Household are getting Orders. However the fact that women living outside the Shared Household are being denied Orders reflects a failure to understand the antecedent circumstances that cause women to leave the Shared Household. To a large extent, the Courts seem to be in search of the 'ideal victim/woman' while granting relief and adhere to the image of the 'good married woman' still residing in the matrimonial home despite the violence inflicted on her as the one deserving of Orders under the Act.

Despite the increasing understanding of the scope of domestic violence, the likelihood of women getting reliefs under the Act depends greatly on their residential status. The analysis reveals that judges routinely deny Protection

Orders and Residence Orders to 'Married Women living in their Natal Home or on their own.' This trend is most prominent in Delhi. Denial of relief based on the residential status of the aggrieved woman has also been noticed in the States of Rajasthan, Gujarat and Andhra Pradesh. However, denial of relief for the above mentioned reason was not noticed in the North-Eastern States of Mizoram, Manipur, Tripura, and Sikkim.

Protection Orders are denied on the ground that the aggrieved woman is not under any imminent threat or danger of violence. This approach fails to take into account the potentially volatile period between the time of filing of an application and the grant of relief. Irrespective of where the woman resides, she is still subject to the fear of retaliation, lack of economic resources and concern for the safety of her children. In addition, a Protection Order can also play a pivotal role in allowing the woman to negotiate her safe return to the Shared Household. Denial of Residence Orders fails to take into consideration the reality that the woman may not be welcome in the natal home for long and may succumb to societal pressure to reconcile. Denial of this relief is based on the false assumption that the woman has the tacit physical and economic support of her natal family and is shielded from violence while residing in the Natal Home.

The analysis also reveals that Courts tend to deny reliefs to women who have left the Shared Household of their "own volition." Where a woman is living outside the Shared Household, she has to be restored to the Shared Household if she so desires. This is the mandate of the Act and her leaving whether, voluntary or otherwise, should not be a consideration. The woman has an unconditional Right to Reside in the Shared Household and during the subsistence of the marriage it is in any case her right. In such cases, Judges have failed to appreciate the fact that a woman may have left due to unbearable violence or was ousted from the Shared Household and may still need protection given the fear of retaliation or re-victimisation which often thwarts the aggrieved woman's efforts to regain control over her life and move past the violent/abusive experience. As noted above most applications are filed by women who leave the Shared Household; yet the fact of leaving the Shared Household is then held against them.

Further, in various instances, married women living separately have been denied relief on the ground that the husband had filed for restitution of conjugal rights. When a petition for restitution is filed, Courts should consider whether such petitions are filed as legal strategies adopted by the defence. In addition Courts should take into consideration that women are likely to face violence if they do go back in compliance with the petition for restitution. It can be inferred that the denial of relief in these cases is based on the perception that the married woman had refused to carry out her marital obligations and failed to maintain the sanctity of the home, and hence is not deserving of relief.

### 3.2 Widows

The analysis of Orders reveals that Widows are successful in getting Orders under the Act where they file applications against their sons. However Orders are routinely denied where the application is filed against the in-laws. It has been commonly observed that after the death of a spouse, widows are often subject to violence and exploitation and are at the centre of disputes with respect to allocation of resources or property. Widows are often unable to exercise their rights due to their vulnerable position, which is further exaggerated by the violence inflicted on them and the failure on part of the Judiciary to grant relief. Courts tend to deny Protection and Residence Orders to widows if they perceive the dispute to be a property dispute. The refusal to entertain such matters often ignores the proven links between property and violence in India. Widows are also facing a double disadvantage in claiming Residence Rights as a result of the *Batra*<sup>306</sup> judgment. This is discussed in greater detail below.

### 3.3 Daughters/Sisters

Based on the analysis of Orders, Courts have a tendency to deny relief to sisters filing cases against brothers for economic relief under the Act based on the view that it is a property dispute. However, Courts seem to have a sympathetic attitude in cases where the father is named as the Respondent and seem to grant orders with the view that it is the duty of the father to maintain his unmarried daughter.

The analysis also reveals that the Judiciary has constantly ignored the definition of Domestic Relationship to include consanguinity (sister) if it is found that the sister has 'established a separate household' leading to a denial of her 'right' to reside in the Shared Household. Often the reason for denial of relief by the court is a reflection of the patriarchal mindset where a daughter is no longer considered to be a part of the natal family after marriage. In effect, the daughter must be unmarried, deserted or separated for her to claim relief against her father or brother.

### 3.4 Divorced Women

The analysis of Orders reveals that divorced women are often denied relief under the Act, as it is falsely assumed that a divorced woman is able to "live wherever she wants" without taking into account her financial situation. Residence Orders are often denied on the ground that since the parties are divorced and living separately, no Domestic Relationship exists between the parties. In fact, there is a noticeable trend among Judges in the case of divorced women to determine

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<sup>306</sup> Supra Note 6

that no Domestic Relationship exists. Courts are reading down the definition of 'domestic relationship' and in the process leaving many women out of the purview of the protection of the law. Courts also tend to believe that divorced women should have settled their rights at the time of the divorce. However again, these restrictions are being read into the Act which does not make these distinctions.

### 3.5 Women in Relationships in the Nature of Marriage

Very few applications were filed by women in relationships in the nature of marriage. The number of cases filed by women in relationships in the nature of marriage was highest in Manipur as per the analysis of Orders. Although past M&E Reports found that Courts are inclined to grant reliefs to women in such relationships, the analysis of Orders this year reveals that relief is granted and denied largely based on the *Velusamy*<sup>307</sup> judgment of the Supreme Court. The *Chanmuniya* decision has now been relegated to those cases where the marriage is in dispute. The findings reveal that the tests laid down in *Velusamy* are resulting in the denial of reliefs in many cases. The condition that the person must be free to marry which has been introduced through this judgment is disadvantaging those women who are in a second marriage who were led to believe the man was free to marry.

## 4. Privileging Property Rights Over Womens Rights – the Devastating Impact of the *Batra* Judgment

The Right to Reside recognised in the Act is one of the most critical provisions that offers protection to women. The Right to Reside must be distinguished from property rights. After all a woman cannot buy, sell or rent the Right to Reside. The analysis of findings reveals that the *Batra*<sup>308</sup> judgment is now heavily relied on across the country to routinely deny reliefs to the aggrieved woman if the property belongs to the in-laws. The *Batra* judgment strikes at the very heart of Act and goes against the spirit of the law, which is to provide physical, financial and emotional security for victims of domestic violence. But what remains astonishing about the *Batra* judgment is that it went against the very letter of the law which provides the woman the Right to Reside in a Shared Household whether or not she or her husband or partner have any right or interest in the property. A plain reading of Section 2(s) which defines the Shared Household makes this evident.

For widows, the decision places them at a double disadvantage as in other cases, women can at least get Orders for alternate accommodation granted against the husband. For widows, the effect of the decision is to leave them with no option other than to rely on their children who may or may not be grown up enough to

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<sup>307</sup> Supra Note 149

<sup>308</sup> Supra Note 6

provide for them or on the natal family. The failure on the part of the judiciary to grant relief to widows is reflective of the rejection and abandonment faced by widows at the hands of society at large.

Even within this regressive legal conundrum created by the Supreme Court judgment, some lower Courts have attempted to find ways around the judgment. Some Courts have determined that women still have the Right to Reside where the property is a joint family or common ancestral property. Where the property belongs to the in-laws, some Courts have held that this does not detract from the obligation of the husband or partner to provide alternate accommodation. Another emerging exception is where the women have stayed in the Shared Household even if it belongs to the in-laws and there has been no previous objection to their residence. In such cases, there are important findings by Courts that equity must come to the aid of the woman. Courts have also seen through attempts by husbands to alienate their property in favour of their parents to escape the application of the PWDVA. However, there is real danger that ensuring that the property stays solely in the name of the in-laws will become a common legal strategy and over time the Right to Reside may well be rendered ineffective as a result of the Supreme Court decision. This brings into sharp focus the need to over-rule the *Batra* judgment.

## 5. Personal Laws and the Right to Reside

The Right to Reside is also being undermined where judges perceive the application under the PWDVA as one that concerns personal laws. This is particularly the case for widows and daughters where Courts routinely reject their claims on the ground that no such right exists and ask the aggrieved women to file their claims in another forum. While this may be the correct course of action where women file for partition under the PWDVA, in other cases judges appear to be erring on the side of caution in dismissing any case they believe overlaps with a property dispute. The Right to Reside must be clearly demarcated from claims for property rights and the existence of a property dispute does not automatically preclude the right of residence. Under the Act Widows appear to be facing the brunt of this approach in cases where property disputes overlap with applications under the Act. However the Right to Reside is a substantive right created by the PWDVA and must be enforced as such. In fact the rights of women are expanded under the PWDVA and exist regardless of their status under personal law.

Of great concern are those Orders where in their quest to separate property rights for widows and daughters from the Right to Reside, Judges have made fine judicial distinctions in relation to the definitions of “domestic relationship” and “Shared Household.” Courts have thus held that a Domestic Relationship that

existed in the past would not be the basis for claiming reliefs under the Act. These are worrying trends since, as in the case of the *Batra*<sup>309</sup> judgment, they go against the very letter of the law.

Where there is a clear claim by a woman that goes beyond the Right to Reside, i.e., a claim for partition, Courts should refer them to other forums. In other cases, Courts should consider further investigations through the office of the Protection Officer where the issue is unclear or err on the side of protecting the woman and grant Residence Orders. Interestingly in the case of other reliefs like Temporary Custody, judges appear to be more inclined to overlook personal laws and grant custody to the woman.

## **6. Except for Maintenance, Provisions on Monetary Relief and Compensation Remain Under-utilised**

Monetary Reliefs are the most claimed and most granted Orders under the Act. However, it is Maintenance that is the most commonly granted relief while other forms of Monetary Relief are rarely utilised. It is interesting to note that Maintenance is rarely claimed by aggrieved women in Mizoram. The analysis of Orders also indicates that judges are requiring a much higher standard of evidence for the grant of Monetary Reliefs other than Maintenance. The frequent grant of Maintenance as opposed to other reliefs under the Act is also an indication that judges are more comfortable in recognising this obligation of Respondents as opposed to other reliefs like Protection and Residence.

### **6.1 Maintenance Reduced to the Parameters of Section 125 of the Cr.P.C.**

Although this remains the most commonly granted relief, the analysis reveals that Judges appear to adjudicate matters related to Maintenance within the contours and on the basis of the jurisprudence underlying Section 125 of the Cr.P.C. Maintenance for women under Section 125 of the Cr.P.C. is determined in terms of preventing the vagrancy of women. The PWDVA by contrast recognises maintenance as a right and in terms that can extend beyond Section 125 of the Cr.P.C. The impact of this approach can be seen in how Judges determine whether to grant Maintenance or not. The analysis reveals that often working-women are denied Maintenance on the ground that they are employed or can be employed and therefore has no requirement of the maintenance. The Courts also make no attempt to enquire into the comparative income of the woman and her husband or partner or the responsibilities, liabilities and child care involved. Hence, the woman's right to Maintenance in consideration of their contribution

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<sup>309</sup> Supra Note 6

to the household is completely overlooked in keeping with traditional patriarchal notions.

## **6.2 Compensation for Rights Violations not Judicially Recognised**

The analysis of findings reveal that Courts seldom grant Compensation and where it is granted it is not based on the realities of domestic violence suffered by the aggrieved woman. Courts tend to tie the reliefs of Maintenance and Compensation together and grant a lump sum indicating a lack of understanding on part of the judiciary of the objectives of the Act and defeating the purpose of incorporating different reliefs which speak to the different needs of the aggrieved woman.

## **7. Growing Clarity on Procedure Aligned with the Objectives of Act**

The analysis of Orders indicates that Courts now have a better understanding and clarity relating to the procedures to be followed aligned with the objectives of the Act. The High Courts as well as lower judiciary have held that the report of the Protection Officer is not required for the passing of Orders under the Act.

While granting interim Orders Judges are aware of the need to protect the woman from domestic violence and provide a speedy and efficacious remedy. When an imminent threat is perceived, ex parte Orders are being granted after which notice is issued to the respondent. Interim orders are also being granted by the courts taking into consideration the affidavit filed by the aggrieved woman, the Domestic Incident Report submitted in the Court and after hearing the submissions of the respondent. However in the States of Karnataka and Tamil Nadu, the High Courts have held that trial-like procedures with the leading of evidence would be required in the case of interim orders. This is likely to create considerable hurdles for women in these States seeking immediate relief under the Act as hearings are likely to take considerably longer.

The analysis of Orders has raised the question of the more effective use of Section 31 for the enforcement of Orders granted under the Act. In some cases Courts are reluctant to use Section 31 if the original Orders are clearly granted under provisions other than Section 18 which provides for Protection Orders. However Protection Orders as they are granted to deal with any act of domestic violence in essence cover all forms of relief granted under the Act. To ensure that the remedy of Section 31 is available for the enforcement of Orders, judges could consider ensuring that they mention Section 18 in the grant of all Orders under the Act. Residence Orders, for instance could be granted under 'Section 19 read with Section 18' to avoid any confusion in later proceedings. The preferable course would be to amend the Act and bring all Orders granted under Sections 18 to 22 within the purview of the remedy under Section 31.

The question of whether proceedings under the Act can be quashed under Section 482 of the Cr.P.C. has arisen before some High Courts this year and in previous years. As before it has been held that, the two penal provisions in the Act and the application of the Cr.P.C. for proceedings under the Act, do not alter the basic character of the law as a civil law. Courts have also recognised that respondents have several other avenues to challenge or respond to applications and should exhaust those avenues before seeking intervention by the higher judiciary. Unfortunately, in a key decision by the Supreme Court in the *Inderjit*<sup>310</sup> case, proceedings were quashed under Section 482 of the Cr.P.C., without any discussion on whether this provision would apply to an application under Section 12 of the PWDVA.

## 8. Enhanced Role of Protection Officers and Multi-Agency Coordination

The use of institutional mechanisms under the Act can be seen not only from the Orders but also from the data collected and presented in the *Manual on Best Practices on PWDVA*. The Orders themselves reveal an increase in the use of Protection Officers by the Courts as well as an expansion in their roles. Courts are using Protection Officers to assist in restoring *stridhan*, conducting home visits, reporting to as well as taking the assistance of the police and reporting breaches of Orders. However, it has been noticed that delays in the filing of Domestic Incident Reports by Protection Officers in certain States is one of the major reasons for pendency of cases. There are also reports of disturbing trends of Courts directing Station House Officers to be appointed as Protection Officers under the Act. Although not evident from the Orders, the data presented in the *Manual on Best Practices on PWDVA* indicates that Service Providers are being used extensively. Medical Facilities and Shelter Homes, by contrast, are being under-utilised.

## 9. Judicial Bias Remains a Concern

While the Orders and judgments analysed this year certainly indicate an increased attempt by the judiciary to protect rights of victims and survivors of domestic violence, instances of judicial bias have been noticeable. In some cases they also represent trends as they occur across Courts in different districts and States. Judicial bias may emerge from stereotypes of women that are entrenched within a patriarchal mindset. This bias often manifests itself in the responses of Judges to domestic violence which increases the risk of violence against the victims, reinforces misconceptions and at times leads to the tacit approval of domestic violence. Judicial biases have made themselves evident in the Orders analysed in the following ways (1) Narrowing down the definition

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<sup>310</sup> Supra Note 48

of Domestic Relationship; (2) Privileging Property Rights over Women's Rights; (3) Disbelieving the woman; (4) Denial of Orders where the domestic violence alleged is not severe; (5) Lack of framing of domestic violence as a human rights violation; (6) Prioritising the preservation of the family by encouraging settlements without safeguards; and finally in some cases (7) Hostility towards the aggrieved woman and allegations of misuse of the law by the Judges.

### **9.1 Disbelieving the Woman**

Even as the understanding of the scope of domestic violence increases, there is a tendency on the part of some judges to disbelieve the aggrieved woman in the absence of documentary or physical evidence and at times judges question their credibility. Further, based on the analysis, although dowry-related harassment continues to be the primary cause for domestic violence, there is a tendency amongst the judiciary to doubt its very existence.

### **9.2 Granting of Orders Dependent on Severity of Violence Alleged**

The failure to grant Protection Orders in situations where the aggrieved woman does not allege severe acts of violence shows a callous disregard for the gravity of the aggrieved woman's circumstances. It is reflective of a mindset that considers occasional slapping and beating of a woman to be the norm. In this regard a case from Mizoram stands out as a good practice where the Judge notes that even a pinch can be considered to be domestic violence and that the protection offered by the Act is not predicated on the severity of the violence.

### **9.3 Lack of Framing of Domestic Violence as a Human Rights Violation**

The analysis of Orders with respect to the grant of maintenance, of alternate accommodation and other reliefs reveals that Judges often base their Orders on the duty or morality on the part of the Respondent. Most Orders do not reflect an implicit understanding of the culture of rights or that the grant of reliefs is warranted by the violation of rights as a result of the domestic violence. This approach towards granting relief reflects traditional patriarchal notions ingrained in the judiciary with respect to assigned gender roles within the family and the moral duty of the man to provide and care as the economic head of the household, disregarding the legal obligation. The lens of morality lends greater subjectivity to decision making which can lead Judges to equally deny relief on moral grounds such as questioning the character of the woman if she has had an affair or has left the house. The introduction of morality into the argument can result in Orders being denied on moral grounds. The analysis of Orders also reveals that even in certain instances of allegations of sexual abuse, relief was granted to the aggrieved woman through the prism of

morality, painting her as a helpless victim rather than recognising the violation of her human rights. In one such example, relief was granted on the premise that such acts (of sexual abuse) erode family values and Indian culture, and hence there was a moral duty to protect victim from the “evil eye” of the father-in-law and to preserve family values.

#### **9.4 Settlements without Safeguards Pose a Risk to the Safety of the Woman**

With nearly one-fourth of the orders analysed being settlements, it is evident that Judges still approach domestic violence as a strictly relationship problem amenable to marital counselling. There remains a pervasive judicial culture, which aims to preserve the ‘sanctity of the home’ along with the felt need to preserve and protect the institution of marriage even though this may sometime be at the cost of the woman having to tolerate violence. To an extent the predominance of Court ordered counselling and approval of settlements diverts the process away from the legal and judicial system. As this is a noticeable trend in most cases related to disputes under family laws as well, the PWDVA is specific in its requirement of safeguards and of the informed consent of the woman to any counselling process and to any settlement.

The analysis indicates that parties are sent for counselling and mediation by Courts as a matter of routine. This raises concerns over whether Courts are acknowledging the grossly disparate bargaining power of the parties. The failure on the part of the judiciary to understand the power imbalances that define relationships between the victims and the abuser, could lead to re-victimisation. The purpose of the PWDVA is to institutionalise and recognise the agency of the woman. If she wants a settlement she should be able to seek it. The responsibility of the Court, then Courts must guard against substituting themselves for the agency of the woman is to ensure that this is an informed choice and should have sufficient safeguards.

In addition, Orders on settlements do not contain any details of the settlement that would protect the woman should she face violence again. Courts also do not use the office of the Protection Officer to monitor settlements to ensure the safety of women nor are Protection Orders granted as part of the settlement or during the process of counselling. Sikkim, as in previous years, stands apart on this count where the terms of settlements are clearly mentioned in the Orders and there is a clear clause in the settlements to stop violence.

#### **9.5 Extreme Cases Demonstrating Deep Seated Patriarchy**

Although exceptions to the rule, the hostile attitude against women applicants and of allegations of the misuse not only of the PWDVA but also of other laws

meant to empower women expressed by some Judges have come to light during the analysis. Such cases should be condemned by the Higher Judiciary. As noted above, most cases of violence occur in the context of dowry harassment. In *Application No 5/2010*, the Judge referring to the allegations for dowry observed:

*“Thus far, we have been silent witness to the extortion of money or obtaining custody and a legal advantage in the divorce cases in more than 98% of the false dowry complaints (as per court records), where it is the wife's family that is demanding and taking money from the husband's family in open court (in return for them agreeing to have the husband / his family released from jail) and the same is not considered a crime.*

*The bride and groom's family in every culture around the world give gifts. Dowry itself is a bogus word that did not exist in India prior to the arrival of the British who had been practicing it for centuries (without a single dowry complaint having been filed in England). However the word 'Dowry' has been misused by the radical Indian feminist organisations and the greedy/money minded girls' families who hide behind the word 'Dowry' and cheat their own daughters/sisters basic rights on Streedhan and equal right in parental property and always treat the husband's family as a free ATM machine.’*

*The Save Family Foundation and their associate organisations have continuously demanded and urged that if anyone harasses other for any money or property the same should be termed as Extortion or blackmail. However our lawmakers failed to accept that. Finally the Hon'ble Supreme Court of India has held that each and every dispute should not be termed as dowry harassment which is one small step towards stopping the Legal Terrorism and rampant misuse of s 498 A IPC, Domestic Violence Act and S.125 of Cr.P.C regarding grant of maintenance.”*

The Order, even though an exception, sends a clear message to women applicants approaching that particular court for justice.

In reflecting on the extensive analysis of decisions under the PWDVA this year, many instances where Courts have displayed a prescient understanding of the objectives of the Act and have sought to further these, have come to light. But equally where the higher judiciary in particular, has narrowed the scope of the law, as in the *Batra* and *Velusamy* judgments, their adverse impact is writ large across the orders and judgments of the lower judiciary and the High Courts. The primary significance of judicial decisions from the point of view of victims of

domestic violence lies in the purposive, progressive and liberal interpretation of the provisions of the Act. This is of particular importance to the PWDVA which breaks new ground in relation to the accepted legal and social wisdom regarding the status of women. The judiciary is thus tasked with the responsibility of ensuring that the law is interpreted and applied in a manner that achieves its objectives and not in a way that results in it being read down to match prevailing discriminatory notions of the rights of women in the domestic sphere. To this end this Report outlines some key recommendations in the following chapter.



# Recommendations

## 1. Cross Cutting Recommendations

- 1.1 The judiciary at all levels must convey zero tolerance for all forms of domestic violence regardless of the perceived severity of the violence.
- 1.2 In granting or denying reliefs or in the procedures adopted under the Act, the judiciary must look deeper into the causes and consequences of violence. Judges must recognise that subjectivity in examining issues of violence are likely to prejudice the Court against the woman and Courts are required to go beyond that which is apparent in dealing with cases under the PWDVA.
- 1.3 There must be judicial recognition of the biases and stereotyping being reflected in Orders and judgments. Courts must frame issues and their Orders under the Act in terms of the legal provisions of the PWDVA and in terms of Constitutional rights respecting the autonomy and dignity of women. Courts should avoid generalised remarks and Orders displaying extreme prejudice against women and making allegations of misuse of gender laws should attract censure from the Higher Judiciary.
- 1.4 Courts must distinguish the rights of women under the PWDVA from their status under personal laws and ensure that concerns over the application of personal laws do not trump reliefs for women under the PWDVA. This is particularly the case for widows and daughters for whom the Courts should ensure liberal, progressive interpretations of the PWDVA as opposed to the current trend of attempting restrictive interpretations to exclude them from the operation of the law.

## 2. Substantive

- 2.1 Courts should interpret the definitions of “domestic violence”, of “domestic relationship” and of “shared household” in a liberal and purposive manner in keeping with the object and purpose of the Act

- 2.2 A better understanding of the “domestic relationship” and clear recognition that a relationship that has existed in the past is also a Domestic Relationship is necessary particularly in the case of divorced women and daughters. In the case of divorced women, Courts should consider whether a full and final settlement agreed to with the full, free and informed consent of the woman had been arrived at as part of the divorce instead of denying reliefs.
- 2.3 Courts should not draw assumptions from the fact that women have left the Shared Household that they do not require Protection, Residence or other Orders.
- 2.4 Courts should make greater use of Protection Orders as a preventive measure to offer women the full protection of the law. Specific Protection Orders that assist in the enforcement of those Orders should be encouraged.
- 2.5 Courts should clearly recognise the Right to Reside as separate from property rights and ensure the full protection of this right for women. In particular personal laws and issues of the ownership of the Shared Household should not be used as a basis to deny Residence Orders.
- 2.6 Courts should liberalise the grant of Monetary Reliefs other than Maintenance. The mere fact of the employment of the woman without regard for the sufficiency of her income or whether she is in control of her income should not be a consideration in granting or denying reliefs. In relation to maintenance, the understanding of Maintenance in terms of Section 125 of the Cr.P.C. which is to prevent destitution should not be imported into the application of the PWDVA.
- 2.7 Courts should recognise the purpose behind the grant of Compensation Orders distinct from Monetary Relief as the former relates to recompense for violence or injury.
- 2.8 Two decisions of the Supreme Court relating to the PWDVA should be reversed as they are contrary to the letter of the law on critical issues where the Act had broken new ground. The *Batra*<sup>311</sup> judgment by insulating property owned by in-laws from actions under the Act is denying women the Right to Reside in a majority of cases. The *Velusamy*<sup>312</sup> judgment by pigeonholing relationships in the nature of marriage within the understanding of the common law marriage is undermining the intent of the law to cover live-in relationships and offer women in these relationships the full protection of the law. Both decisions need the immediate attention of the Supreme Court and should be taken up for reversal.

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<sup>311</sup> Supra Note 6

<sup>312</sup> Supra Note 149

### 3. Procedural

- 3.1 The procedures adopted by Courts are as significant as the Orders finally issued under the law in providing women the full protection of the law. With two High Courts requiring extensive proceedings to be undertaken at the stage of Interim Orders, the Supreme Court should settle this question once and for all recognising that the purpose of getting Interim Orders would be defeated in trial-like proceedings.
- 3.2 While the judicial system is generally weighed down by the high pendency of cases, there is particular urgency in adhering to the deadlines in the PWDVA to ensure protection for women facing domestic violence. As required by the Act, proceedings must be completed by Courts within 60 days.
- 3.3 Courts must make greater use of Protection Officers particularly in cases where they believe the evidence is insufficient to grant an Order. Before dismissing the application, Courts should ask for further reports by the Protection Officer. Courts should recognise the role of Protection Officers in assisting decision making, granting effective relief and enforcing it. Courts must also recognise that the PWDVA purposefully adopts a multi-disciplinary approach to ensuring the protection of the rights of women recognising that social institutions are essential to the implementation of the law.
- 3.4 Courts effecting counselling and settlements of applications must issue Protection Orders during the period of counselling and as part of the final settlement to ensure the safety of the woman. The free and informed consent of the woman to counselling and to the settlement should be recorded in the Order along with detailed terms of the settlement. Protection officers should be assigned to monitor the implementation of the terms of the settlement.

### 4. Systemic

- 4.1 Judicial sensitisation based on the recognition of the biases and prejudices that may undermine the application and implementation of the PWDVA should be considered on a regular and recurring basis.
- 4.2 The Higher Judiciary should consider the adoption of an M&E process to oversee the application of the Act by the Courts. Exceptionally biased decisions should invite censure from the higher judiciary.
- 4.3 Good Practices in decision making should be widely disseminated across the States and districts and Judges should be encouraged to adopt and adapt these good practices in their own decision making.

## 5. Empowering the aggrieved woman

- 5.1 With married women remaining the single largest users of the Act and other categories of women filing applications in very small numbers, greater awareness of the Act and particularly of the various categories of women who can use the Act is required.
- 5.2 Often the applications filed by women do not seek the full protection of the law with most applications seeking only maintenance. Quality legal aid services must be made available to assist women in filing the strongest possible case asking for the full protection of the law.
- 5.3 Women in the Shared Household must be empowered to file applications under the Act. The full potential of institutional mechanisms like the Protection Officers must be realised and their functioning must be akin to that of an advocate for the woman who must build the self confidence and self esteem of the woman. They should be able to offer women the security to file applications, walk them through the Court process to prevent drop-outs and any undue pressure to settle and to monitor settlements.

Section E

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# Annexures







# List of Acknowledgements

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# Rationale for Choosing Districts

For the purposes of representative sampling for the Order analysis, districts were identified based on criteria such as sex ratio, female literacy, presence of NGOs working on women's rights, rate of crimes against women, or other relevant criteria. The selection was done to determine if there were district specific trends in Orders and to determine whether these trends could be linked to the demographic and other characteristics of the districts. It should be noted here that there were no significant district-wise trends that emerged in the process of the analysis of the Orders.

Table 5 details the criteria on which the districts were selected. The demographic characteristics were predominantly based on data from the Census of 2011<sup>313</sup>. Where characteristics are based on other sources and publications these have been specifically referenced.

**Table 5: Rationale for Choosing Districts**

S. No	State	District	Rationale For Selection
1	Odisha	Balasore	It is the most literate district in Odisha with a female literacy rate of 72.95% but a low child sex ratio of 941. <sup>314</sup> It has high HIV prevalence (2.5%). <sup>315</sup>
		Kalahandi Bolangir Koraput	Koraput, Bolangir and Kalahandi are regarded as the most backward regions in the country. <sup>316</sup>
		Cuttack	The National Law University, High Court of Odisha and The State Legal Services Authority are situated in Cuttack.

<sup>313</sup> Census of 2011, Office of the Registrar General and Census Commissioner, Ministry of Home Affairs, Government of India available at <http://censusindia.gov.in/> (last visited 25-5-2012).

<sup>314</sup> 'Balasore District at a Glance' available at [http://baleswar.nic.in/dist\\_glance.htm](http://baleswar.nic.in/dist_glance.htm) (last visited 25-5-2012)

<sup>315</sup> Odisha State AIDS Control Society Annual Report 2008 available at <http://india.gov.in/allimpfrms/alldocs/11299.pdf> (last visited 25-5-2012)

<sup>316</sup> See for example, 'Impact Assessment of Externally Aided Project Interventions on Livelihood of the Poor and marginalised in KBK districts of Odisha' sponsored by the Planning Commission available at [http://planningcommission.nic.in/reports/sereport/ser/ser\\_2901.pdf](http://planningcommission.nic.in/reports/sereport/ser/ser_2901.pdf) (last visited 25-5-2012)

S. No	State	District	Rationale For Selection
		Khorda	The capital city of Bhubaneswar is located in this district. It has a low sex ratio of 925, but a high female literacy rate of 82%.
		Mayurbhanj	Mayurbhanj is a fully Scheduled District under the 5th Schedule of the Indian Constitution with a 56.6% tribal population. <sup>317</sup> The sex ratio is above the national average at 1005. Witch hunting is prevalent in Mayurbhanj. <sup>318</sup>
2	Uttarakhand	Chamoli	The Scheduled Caste population in this district is high at 18%. <sup>319</sup> 84.89% of the population lives in rural areas.
		Udham Singh Nagar	Udham Singh Nagar is the third most populated district with a high Scheduled Tribe population (43% in 2001).
		Dehradun	Dehradun is the second most populous district – with four Law Colleges. Dehradun has a high percentage of population living in urban areas at 55.9%.
		Haridwar	60% of the cases received were from Haridwar. Haridwar has a sizeable Muslim population of 34.7%. <sup>320</sup>
		Nainital	The High Court of Uttarakhand is situated at Nainital and the State Legal Services Authority is located in Nainital.
3	Karnataka	Bengaluru	It is the Capital of the State. The State Legal Services Authority is located in Bengaluru and numerous NGOs work on women's rights in the city. State visit was conducted in Bengaluru.
		Haveri Mandya	Sex ratio is low at 951 in Haveri. There are reports of children running away from home due to acts of domestic violence in Haveri and Mandya district. <sup>321</sup>
		Bellary Gulbarga Dharwad	Instances of children committing suicide as a result of domestic violence are common in Gulbarga, Dharwad and Bellary districts. <sup>322</sup>
		Dakshin Kannada	A number of orders were in Kannada from this district, hence it was selected in order to discern whether there is any difference in orders in English and in Kannada.
		Chikamagalur	It has a high sex ratio at 1005, and there are NGOs present working on D.V

<sup>317</sup> 'Socio-Economic Profile of Tribal Populations in Mayurbhanj and Keonjhar Districts' available at <http://Odisha.gov.in/e-magazine/Odishareview/2011/may/engpdf/63-68.pdf> (last visited 25-5-2012)

<sup>318</sup> See for example 'Murder by Superstition' Express News Service 27 May 2011 available at <http://expressbuzz.com/magazine/murder-by-superstition/278038.html> (last visited 25-5-2012)

<sup>319</sup> Chamoli 'District at a Glance' available at <http://chamoli.nic.in/pages/display/68-district-at-a-glance> (last visited 25-5-2012)

<sup>320</sup> A Baseline Survey of Minority Concentration Districts of India: Haridwar (2008) Institute for Human Development available at [http://www.icsr.org/Haridwar\\_Final.pdf](http://www.icsr.org/Haridwar_Final.pdf) (last visited 25-5-2012)

<sup>321</sup> See for example <http://newindianexpress.com/states/karnataka/article1280898.ece?service=print> (last visited 25-5-2012)

<sup>322</sup> 'Domestic Violence: It isn't easy for the kids' Source – Express Newline, available at <http://www.lawyerscollective.org/domestic-violence/case-laws.html> (last visited 25-5-2012)

S. No	State	District	Rationale For Selection
		Devanagere	It is predominantly rural at 67.6% and with low female literacy at 69.3%
		Raichur	It is a predominantly rural (74.68%) region, with female literacy of 49.5% and receives grants from the Backward Regions Grant Fund Programme.
		Mysore	It is the second largest city in Karnataka – with 41.35% of the population in urban areas. Sex ratio is 973, and average female literacy is 66.5%.
		Bidar	Sex ratio is low at 952 and low female literacy at 61.6%
4	Gujarat	Ahmedabad	It is the State Capital. It has a high rate of crimes against women. <sup>323</sup>
		Kachh	A number of NGOs are present working on D.V.
		Surat	Surat has a very low sex ratio at 788.
		Junagarh	Low female literacy of 67.59%, and sex ratio of 952.
		Jamnagar	Jamnagar has a Muslim population of 14.19% as per 2001 Census.
		Rajkot	It has a high rate of crimes against women. <sup>324</sup>
5	Himachal Pradesh	Chamba	High Scheduled Tribe population, low literacy levels with female literacy at 62.14%. The sex ratio is 999, and it is predominantly rural (93.2%).
		Kangra	It is the most populous district, and numerous NGOs work on domestic violence in Kangra. The sex ratio is high at 1013, and female literacy is 80.6% It is predominantly rural (94.2%) <sup>325</sup> Dharamshala is the district headquarters.
		Kullu	Low female literacy rate of 71.01% and sex ratio of 950.
		Shimla	It is the State Capital, and the State Legal Services Authority is situated here and also the Himachal Pradesh State Women's Commission.
		Solan	Low sex ratio of 884 and female literacy rate of 78.02%
6	Punjab	Muktsar Sahib	Muktsar Sahib was analysed in the 2010-2011 time period, but the analysis was not used due to delay in the analysis. It was analysed in the present time period (1.4.2011 to 31.12.2011) to check any changes in trends.
		Ludhiana	Possibility of NRI domestic violence cases. It has shown improvements in the sex ratio from 824 in 2001 to 869 in 2011.
		Jalandhar	Possibility of NRI domestic violence cases
		Patiala	Low sex ratio and low female literacy rate at 853 and 70.90 respectively.

<sup>323</sup> See for example <http://www.ahmedabadmirror.com/index.aspx?page=article&sectid=3&contentid=20110329201103290247067001d264848>

<sup>324</sup> See for example <http://www.ahmedabadmirror.com/index.aspx?page=article&sectid=3&contentid=20110329201103290247067001d264848> (last visited 25-5-2012)

<sup>325</sup> Kangra 'About Us' available at <http://hpkangra.nic.in/index.html> (last visited 25-5-2012)

S. No	State	District	Rationale For Selection
7	Haryana	Jhajjar Sonepat	Jhajjar and Sonepat are two districts with the lowest sex ratio in the country; Jhajjar at 861 and Sonipat at 853 Jhajjar has the lowest sex ratio in India in the 0-6 age group at 774. State visit was conducted in Sonepat by Lawyers Collective Women's Rights Initiative.
		Gurgaon	Many reports of violence against women have been reported from Gurgaon recently. It has a high growth rate and is predominantly urban (68.82%)
		Yamuna Nagar	Low sex ratio of 877 and female literacy rate of 72%
		Jind	Low sex ratio at 870 and female literacy rate of 61.60%
		Hisar Rohtak Kurukshetra	The women and child department of Haryana has started radio jingles on PWDVA in these areas. <sup>326</sup> A State visit was conducted in Rohtak by the Lawyers Collective Women's Rights Initiative.
		Karnal	Sex ratio is low at 886, and female literacy is 68.30%
		Panipat	Sex ratio is low at 861 and female literacy at 68.20%
		Bhiwani	Sex ratio is low at 884 and female literacy at 64.80%
		Faridabad	It is a largely urban area (79.4%) which has shown improvements in female literacy from 2001 (65%) to 2011 (75%) and in the sex ration which is now 871 (from 826). A State visit was conducted in Faridabad by the Lawyers Collective Women's Rights Initiative.
8	Kerala	Thiruvananthapuram	It is the State Capital with presence of NGOs working on domestic violence
		Ernakulum	Kerala High Court and State Legal Services Authority is present in Kochi, Ernakulum
		Marlapuram Pathanamthita Kannur Thissur	High crime rates against women <sup>327</sup>
		Idukki	Most literate district in Kerala with female literacy at 95.67% and sex ratio at 1040. It was selected to check high female literacy affects PWDVA cases.
		Kotayam	Female literacy is high at 95.67%
		Kozhikode	High female literacy of 93.16%.
		Wayanad	Sex ratio is high at 1035 but female literacy is low as per the State average at 85.94%
9	Uttar Pradesh	Lucknow	It is the State Capital. The U.P. State Legal Services Authority is located in Lucknow.
		Allahabad	The High Court of U.P. is located in Allahabad.

<sup>326</sup> 'A brief note on special cells for women and children: Haryana' [http://wcdhry.gov.in/special\\_cell.pdf](http://wcdhry.gov.in/special_cell.pdf) (last visited 25-5-2012)

<sup>327</sup> Kerala Police Crimes against women 2011 available at [http://www.keralapolice.org/newsite/crime\\_against\\_women\\_2011.html](http://www.keralapolice.org/newsite/crime_against_women_2011.html) (last visited 25-5-2012)

S. No	State	District	Rationale For Selection
		Ghaziabad Faizabad Mathura Rampur	Listed as most backward districts in U.P. according to the Human Development Report (2006)
		Agra Meerut	Listed as unsafe cities according to National Crime Records Bureau data. <sup>328</sup>
		Chitrakoot	Presence of NGOs working on D.V
		Azamgarh	High sex ratio at 1017 but low female literacy rate of 62.65%.
		Ballia	Low sex ratio of 933 and low female literacy rate of 61.72%.
10	Tamil Nadu	Theni Chennai Thirunelveli Madurai Cuddalore	These are districts reported as having a high prevalence of crimes against women according to Tamil Nadu police data. <sup>329</sup>
		Vellore	High sex ratio at 1004 but low rates of female literacy at 72.43%.
		Coimbatore	A number of NGOs work on D.V in Coimbatore. A help line has been established specifically for women victims of domestic violence <sup>330</sup>
		Erode	Low sex ratio at 992, and low rate of female literacy at 65.07%.
		Karur	High sex ratio at 1015 but low rate of female literacy at 67.05%.
11	Maharashtra	Amravati	This is one of the backward districts according to the Ministry of Panchayati Raj Report, 2009.
		Aurangabad	Constitutes the highest Muslim population within the state as per the 2001 census. It is one of the six districts which have a sex ratio of less than 925, i.e., average sex ratio for the whole state.
		Mumbai	It is the capital city of Maharashtra. As per 2011 census, it has recorded lowest sex ratio in Maharashtra but literacy rate is very high. As per the Crimes in Maharashtra 2010 data, it accounts for nearly 8.4 % to the total crimes against women in Maharashtra. Presence of Dilasa- Hospital based Crises Centre which closely works with women facing violence. Active participation of NGOs noted.
		Nagpur	Bhandara, Chandrapur, Gadchiroli, Gondia, Nagpur, Wardha were selected based on 'Backward Regions of India Report' conducted by the Ministry of Panchayati Raj in 2009. Wardha is reported to have all women panchayats in existence.
		Nashik	Ahmednagar, Jalgaon and Nandurbar selected for high rates of crimes against women and high proportion of Scheduled Caste/ Scheduled Tribe population in Nandurbar at 68.7%

<sup>328</sup> Referred in Human Development Report, U.P (2006) available at <http://planning.up.nic.in/apd/hdr-2006/chapter-6.pdf> (last visited 25-5-2012)

<sup>329</sup> Tamil Nadu Police, Crimes Against Women (2011) available at [http://www.tnpolice.gov.in/pdfs/CIT2011/WRITEUPS\\_11/WRITEUP7\\_11.pdf](http://www.tnpolice.gov.in/pdfs/CIT2011/WRITEUPS_11/WRITEUP7_11.pdf) (last visited 25-5-2012)

<sup>330</sup> See for example <http://www.hindu.com/2009/07/29/stories/2009072950800200.htm>

S. No	State	District	Rationale For Selection
		Pune Division	Sangli and Solapur were chosen in these two areas. However in Sangli, Devadasi system is prevalent, and female literacy is low at 74%. In Solapur, there are all women panchayats in existence.
12	Andhra Pradesh	Hyderabad	It is the State Capital. State visits were conducted in Hyderabad by Lawyers Collective Women's Rights Initiative. High rate of crimes against women as per 2010 National Crime Records Bureau data. <sup>331</sup>
		Nellore	Low sex ratio of 972 and low rate of female literacy at 78.37%.
		Ranga Reddy	A State visit was conducted by the Lawyers Collective Women's Rights Initiative in Ranga Reddy.
		East Godavari	A large number of orders (102) were received from East Godavari. There is presence of NGO's working on Domestic Violence in this area.
		Mahbubnagar	It is a backward district according to the Ministry of Panchayati Raj 2009 Report. It has a low female literacy rate of 45.65%.
		Guntur	Low female literacy of 54.27%.
		Vijaywada	High prevalence of crimes against women as per 2010 National Crime Records Bureau data. <sup>332</sup>
		Warangal	Sex ratio of 994, but low female literacy rate of 49.49%
		Anantpur	Low female literacy of 54.31% and sex ratio of 977.
		Kurnool	Low female literacy of 50.81% and sex ratio of 984.
13	Rajasthan	Jaipur	It is the State Capital and the State Legal Service Authority is located in Jaipur. State visits were conducted in Jaipur
		Jodhpur	The High Court is located in Jodhpur. State visits were conducted in Jodhpur
		Pali	Pali has a low female literacy rate at 48.3%
		Chittorgarh	Very low female literacy at 46.98% and sex ratio of 970

<sup>331</sup> National Crime Records Bureau, Crimes in India, 2010

<sup>332</sup> Ibid



