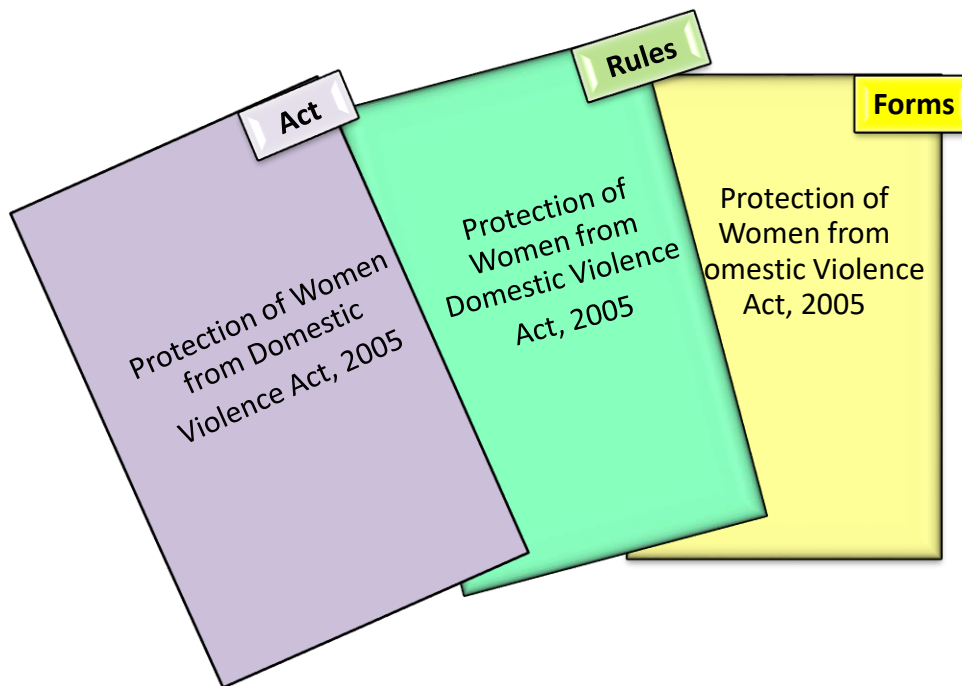


MANUAL 3

Protection of Women from Domestic Violence Act, 2005

ROLE OF THE PROTECTION OFFICER

ASSISTING A DOMESTIC VIOLENCE SURVIVOR



Author: Prasanna Invally

Women's Studies Centre
ILS Law College,
Pune.

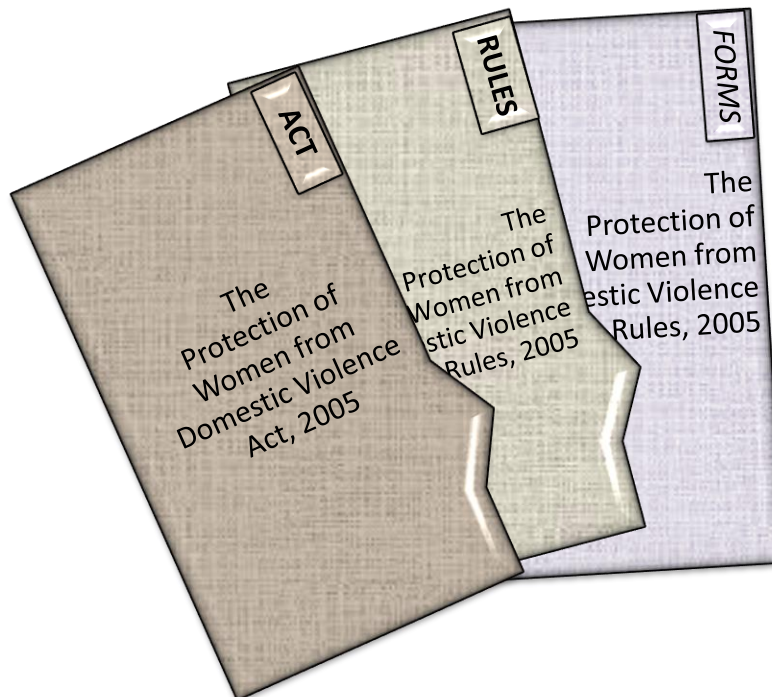


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**The Protection of Women from Domestic Violence Act, 2005.
(PWDVA)**

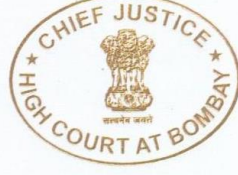
The seven manuals for stakeholders appointed/ notified under PWDVA to provide assistance and services to women (and children) suffering domestic violence are as follows:

Manual 1	Gender and Domestic Violence	Milind Chavan
Manual 2	Role of the Magistrate	Jaya Sagade
Manual 3	Role of the Protection Officer	Prasanna Invally
Manual 4	Role of Lawyers	Rama Sarode
Manual 5	Role of the Medical Facility	Sangeeta Rege Padma Deosthali Sujata Ayarkar
Manual 6	Role of the Police	Medha Deo Trupti Panchal
Manual 7	Role of the Service Providers	Prasanna Invally

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23.12.2019

The message dated 16th Oct 2018 from the then Chief Justice of the Bombay High Court, Hon'able Shri Naresh H. Patil



संदेश

कौटूंबिक हिंसेपासून स्त्रियांच्या संरक्षणाचा कायदा, २००५ हा दिवाणी स्वरूपाचा महत्वाचा कायदा आहे. हया कायद्याची परिणामकारक अंमलबजावणी होण्यासाठी अनेक घटकांवर जबाबदारी टाकलेली आहे. त्यातील न्यायाधिश आणि न्याययंत्रणा हा एक महत्वाचा घटक आहे.

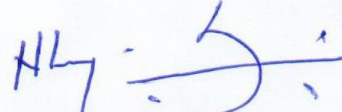
कौटूंबिक हिंसेची समस्या गंभीर, गुंतागुंतीची आहे. पुरुषप्रधान आणि पितृसत्ताक समाजरचनेत, लिंगभावाधीष्ठीत होणारी हिंसा (शारीरिक, मानसिक, लैंगिक, आर्थिक, शाब्दिक) स्त्री-पुरुषामध्ये भेदभाव निर्माण करते. ही हिंसा स्त्रीच्या मानवी हक्कांचे आणि राज्यघटनेने दिलेल्या मूलभूत हक्कांचे उल्लंघन करते. हया पार्श्वभूमीवर कौटूंबिक हिंसेपासून स्त्रियांच्या संरक्षणाच्या कायद्याखालील येणाऱ्या प्रकरणांमध्ये न्यायालयांचा दृष्टीकोन अधिक संवेदनशिल असणे अपेक्षित आहे असे माननिय सर्वोच्च न्यायालयाने कृष्णा भटाचारजी वि. सारथी चौधरी (क्रिमिनल अपिल नंबर.१५४५/२०१५ निर्णय दिनांक २० नोव्हेंबर, २०१५) या न्यायनिर्णयात नमूद केलेले आहे.

कौटूंबिक हिंसेपासून स्त्रियांच्या संरक्षणाचा कायदा, २००५ हा कायदा स्त्रियांच्या हितासाठी केलेला आहे. त्यामुळे कायद्यातील तरतुदीचा अन्वयार्थ लावताना एकापेक्षा जास्त अर्थ निघत असतील तर कायद्यांच्या उद्दिष्टाला पूरक असा अर्थ निवडला पाहिजे. स्त्रियांना तो त्यांना जास्तीत जास्त न्याय्य कसा ठरेल हयाचा विचार व्हायला हवा.

आयएलस विधी महाविद्यालयाच्या स्त्री अभ्यास केंद्राने पुढाकार घेउन दंडाधिकाऱ्यांच्यासह संरक्षण अधिकारी, पोलीस, वैद्यकीय अधिकारी, सेवा देणाऱ्या संस्था आणि वकील हयांच्यासाठी तयार केलेल्या मार्गदीपिकांचे मी स्वागत करतो. या सर्व मार्गदीपिका कौटूंबिक हिंसेपासून स्त्रियांच्या संरक्षणाचा कायदा, २००५ मधील तरतुदींबाबत सर्वसमावेशक आहेत. विशेष म्हणजे 'लिंगभाव आणि कौटूंबिक हिंसा' हयाविषयावरील स्वतंत्र मार्गदीपिका सर्व संबंधित घटकांना उपयुक्त ठरेल असा मला विश्वास वाटतो.

सर्व हितसंबंधाना माझ्या शुभेच्छा !

१६ ऑक्टोबर २०१८


(न्यायमुर्ती नरेश ह. पाटील)

English translation of the message dated 16th Oct 2018 from the then Chief Justice of the Bombay High Court, Hon'able Shri Naresh H. Patil

:

Message

The Protection of Women from Domestic Violence Act, 2005, is a very important law that is civil in nature. The responsibility for its effective implementation has been put on several stakeholders, including the Magistrates and the legal system.

The issue of domestic violence is serious and complex. Gender-based violence (physical, mental, sexual, economic, verbal) that is prevalent in a male dominated patriarchal society creates inequality between men and women. This violence results in violation of women's human rights and her fundamental rights enshrined in our constitution. In such circumstances, the Hon'able Supreme Court, in the case of *Krishna Bhattacharji vs. Sarathi Chaudhary (Criminal Appeal no. 1545/2015 order dated 20th November 2015)*, has noted that Magistrates/ Courts dealing with cases under the Protection of Women from Domestic Violence Act need to be extremely sensitive.

The Protection of Women from Domestic Violence Act, 2005, has been legislated for the benefit of women. Although its provisions may have several interpretations, one needs to interpret the provisions in such a manner that it fulfils the objective of the law and be just to the woman.

I welcome the initiative that Women's Studies Centre, ILS Law College, Pune, has taken in preparing manuals for Magistrates as well as for Protection Officers, Police, Medical Facilities, Lawyers, Service Providers. These manuals comprehensively address all provisions under the Protection of Women from Domestic Violence Act, 2005. Especially, the independent manual on the topic of 'Gender and Violence', I believe, would be extremely useful.

I extend my best wishes to all stakeholders!

Sd/-

(Justice Naresh H. Patil)

26th October, 2018

Message dated 23/12/2019 from Dr. Hrishikesh Yashod, former Commissioner, Women and Child Development, Maharashtra Government, Pune.

महिला व बाल विकास आयुक्तालय

महाराष्ट्र शासन

२८, राणीचा बाग, जुन्या सर्किट हाऊस शेजारी, पुणे- ४११००१

फोन : ०२०- २६३३००४० Email : commissionerwcd@ymail.com



क्र. : मबाविआ/ ६२०५

दिनांक : २३/१२/२०१९

"संदेश"

महाराष्ट्र राज्याने महिलांच्या विविध प्रश्नांवर व त्यांच्यासाठी करण्यात आलेल्या उपायांवर अनेक योजनांवर प्रगत पाऊले उचलली आहेत. राज्यपातळीवर कौटुंबिक हिंसेपासून महिलांचे संरक्षण अधिनियम २००५ ची अंमलबजावणी महिला व बाल विकास विभागामार्फत सुरु आहे. या कायद्याच्या प्रभावी अंमलबजावणीसाठी संरक्षण अधिका-यांच्या नियुक्त्या करणे, त्यांचे प्रशिक्षण, त्यांच्या कार्यालयांना सोयी सुविधा पुरविणे, कायद्याच्या सनियंत्रणासाठी मुल्यांकन पध्दती विकसीत करून सांख्यिकी माहिती जिल्हा व तालुकास्तरावर अदयावत ठेवणे इ. अनेक महत्वाची कामे विभागामार्फत पार पाडली जात आहेत.

PWDVA २००५ कायद्याची अंमलबजावणीची जबाबदारी जरी विभागाची असली तरी या कायद्यांतर्गत निश्चित केलेले सर्व स्टेकहोल्डर्स / सहभागी यंत्रणा यांची ही तितकीच महत्वाची जबाबदारी आहे. आय एल एस विधी महाविद्यालयाच्या स्त्री अभ्यास केंद्राने सर्व सहभागी यंत्रणा / स्टेकहोल्डर्स जसे की, संरक्षण अधिकारी, वकील, पोलीस, वैद्यकीय सेवा देणारे, सेवादायी संस्था आणि मा. न्यायदंडाधिकारी यांच्यासाठी तयार केलेल्या मार्गदर्शिका ह्या अत्यंत उपयुक्त असून त्याचा वापर सर्व स्टेकहोल्डर्सनी स्वतःच्या दैनंदिन कामात करणे आवश्यक आहे. जेणे करून पिडीत महिलेला लवकरात लवकर सर्व सेवा देणे शक्य होईल.

या मार्गदर्शिकेमध्ये दैनंदिन कामातही उदाहरणे देऊन टप्प्या टप्प्याने सर्व स्टेकहोल्डर्सच्या / सहभागी यंत्रणांच्या भूमिका व जबाबदा-या अधिक स्पष्ट करून सांगण्यात आल्या आहेत व त्या प्रत्येकासाठी उपयुक्त आहेत.

याबद्दल आय एल एस विधी महाविद्यालयाच्या स्त्री अभ्यास केंद्राचे विशेष आभार व PWDVA २००५ या कायद्याच्या अंमलबजावणीसाठी काम करणा-या सर्व सहभागी संस्था / यंत्रणा यांना पुढील वाटचालीसाठी शुभेच्छा !

(डॉ. ह्रीषीकेश यशोद)

आयुक्त

महिला व बाल विकास

महाराष्ट्र राज्य, पुणे

English translation of the message dated 23/12/2019 from Dr. Hrishikesh Yashod, former Commissioner, Women and Child Development, Maharashtra Government, Pune.

Date: 23/12/2019

The Maharashtra Government has taken several steps to find solutions to the various women's issues and formulate progressive schemes. The Protection of Women from Domestic Violence Act, 2005 is being implemented by Department of Women and Child Development. For its effective implementation, the Department has appointed Protection Officers, conducted their trainings, provided their offices with the necessary facilities; developed monitoring and evaluation methods through which statistical data at the district and the taluka levels is gathered; and undertaken other such important tasks.

Although the responsibility of implementation of PWDVA, 2005, lies with the Department, all stakeholders recognised under this law are equally responsible for its effective implementation. The manuals for stakeholders such as Protection Officers, Police, Medical Facilities, Service Providers and the Hon'able Magistrates that the ILS Law College has prepared are extremely useful and should be used by all stakeholders in their day-to-day practice so that the aggrieved woman is able to get all appropriate services.

The manuals clearly elaborate the roles and responsibilities of all stake holders step-by-step and are substantiated with examples from the day-to-day experiences. They are therefore useful for every stakeholder.

Thanks to the Women's Studies Centre, ILS Law College for this and best wishes for the future progress to all stakeholders!

Sd/-

(Dr. Hrishikesh Yashod)
Commissioner
Women and Child Development
Govt. of Maharashtra, Pune

Acknowledgments

We thank SWISSAID for the financial support in preparing the user manuals for stakeholders under PWDVA and also for the assistance it extended in developing the conceptual framework.

We are also grateful to the then Chief Justice of Bombay High Court Hon'able Justice Shri Naresh Patil for his message regarding the manuals.

We are also thankful to the then Commissioner, Department of Women and Child Development, Government of Maharashtra, for his message about the manuals.

We also thank the following participants of this project, with whose cooperation we successfully completed it:

Authors:

- Manual on 'Gender and Domestic Violence' – Milind Chavan, gender trainer, Pune.
- Manual on 'Role of the Magistrate' – Dr. Jaya Sagade, former Director, Women's Studies Centre, ILS Law College, Pune.
- Manual on 'Role of Lawyers' – Adv. Rama Sarode and her colleague Asim Sarode, 'Sahayog', Pune and its other lawyers.
- Manual on 'Role of the Protection Officer' – Prasanna Invally, former coordinator of Womens's Studies Centre, ILS Law College, Pune and currently an independent consultant on women, gender and law. Special thanks to the Women and Child Development Commissionerate, Pune and the Protection Officers, appointed in cities as well as the rural areas who shared their experiences, provided the required information and also gave their suggestions and comments on the draft manual.
- Manual on 'Role of the Police' – Medha Deo and Trupti Panchal, Tata Institute of Social Sciences, Mumbai, and its RCI-VAW department and its personnel – Nandakishore Dahale, Sheetal Deosthali and Sunita Pawar.
- Manual on 'Role of Medical Facility' – Sangeeta Rege, Padma Deosthali, Aarthi Chadrashekhar, Sujata Aryakar from CEHAT, Mumbai; and Chitra Joshi, Mrudula Sawant and Sanjana Chiklekar from 'Dilaasa Centre'.
- Manual on the 'Role of Service Providers' – Prasanna Invally currently an independent consultant on women rights issues.

Translation support:

Sushama Deshpande, Tejali Shahasane and Adv. Nandini Shahasane

Administrative support:

Manavlok, Ambajogai, Dist: Beed, Maharashtra, for the administrative support that it provided in preparing the English versions of the seven manuals.

Coordinator:

Prasanna Invally for coordinating the process of preparing the manuals English versions of the manuals

Other assistance:

Ashok Malwade, Yogesh Sonawane, Shubhangi Puranik, Pramod Rane, Haribhau Dodake, Chandrakant Dhume and Venkat Ghatkar from ILS Law College, Pune

Printer:

Jalaram Copiers, Pune

Once again, our sincere thanks to all!

To begin with...

a few thoughts to share...

Violence against women is a serious social issue prevalent not only in India, but also across the world. Domestic violence, not only has serious consequences on women's lives, but also on their families as well as on the society in the long run.

Until the year 2005, in India, the issue of domestic violence was addressed only through the criminal law that punished the perpetrators woman, with imprisonment. These perpetrators were in fact her own family members. As a result, the woman who had filed such a criminal case drifted further and further away from the family. It was therefore difficult, or rather impossible for her to live with her own family and that too without facing violence, even if she genuinely wished so. Hence, women's organizations across the country, came together and voiced their demand for a civil law that would get her certain reliefs and benefits. The NGO - 'Lawyer's Collective' took the initiative in drafting such a law that would provide women the necessary protection from domestic violence. It held country-wide consultations with various women's organizations, made appropriate changes in the said draft and presented it to the Government. Subsequently, the draft was approved in both the houses of the parliament and the 'Protection of Women from Domestic Violence, 2005, (PWDVA) came into being. The Rules were then formulated and on 26/10/2006, the law was enforced.

The law has several special features; one of them being the implementation machinery built in it. This machinery consists of the following key personnel (stakeholders) – the Magistrates, Protection Officers, lawyers, medical professionals, service providers and the police.

To bring better clarity about their roles, responsibilities and duties, Women's Studies Centre, ILS Law College, Pune, had conducted several training workshops for these personnel with the financial support of SWISSAID, India. A dedicated session on the topic of 'Gender' was held in every such workshop. At that time, several organizations across the country were also conducting such workshops. They had even prepared training manuals for each of the stakeholders. However, such manuals were not available in Marathi (in the context of Maharashtra). Also, in such manuals, an exhaustive explanation was required, such as - details regarding the steps that a stakeholder needs to undertake during the various stages of a case for ensuring justice to the woman suffering domestic violence, the precautions to be taken, and other such efforts. Hence, Women's Studies Centre, ILS Law College, Pune, with the support of the grants from SWISSAID, undertook a project for preparing separate user manuals in Marathi for each of the following stakeholders - 1. **Magistrates**, 2. **Protection Officers**, 3. **Lawyers**, 4. **Medical Facility**, 5. **Police** and 6. **Service Providers**.

PWDVA has been formulated from a feminist perspective so as safeguard and promote a woman's fundamental rights and human rights. Since domestic violence violates a woman's right to live with dignity and creates inequality between women and men, there arises a need for understanding the domestic violence issue through a gender lens/perspective. Obviously, therefore, a conceptual clarity on 'gender' and how it operates

in a relationship and day-to-day living is absolutely necessary. Therefore, it was decided that a separate manual on ‘**Gender and Domestic Violence**’ be prepared.

We decided to request experts who have worked intensely with each of these stakeholders with respect to PWDVA, to write these manuals. Accordingly, we approached the organization ‘Sahayog’ to prepare the manual for lawyers; CEHAT (Mumbai) for Medical Facility; and Tata Institute of Social Sciences, Mumbai, for the Police. For preparing the manual on ‘Gender and Domestic violence’ we requested Milind Chavan, a specialist in conducting training on the topic of ‘gender’. The experts readily accepted our request. Women’s Studies Centre decided to prepare the manuals for the Magistrate, Protection Officer and Service Provider, in-house.

Subsequently, in 2019, the Commissionerate, Department of Women and Child Development, Government of Maharashtra, Pune, through a Committee appointed for reviewing these manuals, approved them. A few revisions, as suggested by the Committee, were made in the process. The said manuals have been currently published on its website <https://www.wcdcommpune.com/dvact-module.php>.

Further, several government and non-government organizations requested for the English version of these manuals for the use of non-Marathi speaking stakeholders. Hence, the NGO – Manavlok, Ambajogai, (in Dist: Beed, Maharashtra) a field based partner of SWISSAID, undertook the administrative responsibility for preparing the English versions of these manuals. The financial support for this was extended by SWISSAID. ILS Law College as well as the authors readily gave their consent and also made the necessary revisions to the original versions of the manuals. They were then reviewed by experts and finalised.

We are thankful to Manavlok, Ambajogai for providing the administrative support for preparing the English versions of the manuals and the financial support from SWISSAID.

With great pleasure, we now present the seven manuals in English. We trust that these manuals would be useful to stakeholders as well as to trainers. These manuals may be used freely, with due acknowledgment to the ‘Women’s Studies Centre, ILS Law College, Pune; the individual authors of the manuals and SWISSAID.

Dr. Jaya Sagade
Former Hon. Director
Women’s Studies Centre
ILS Law College, Pune

Prasanna Invally
Former Coordinator
Women’s Studies Centre
ILS Law College, Pune

10th Dec, 2022

Manual 3
Protection of Women from Domestic Violence Act, 2005
Role of the Protection Officer

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Manual 3
Protection of Women from Domestic Violence Act, 2005
Role of the Protection Officer

1.0 INTRODUCTION

The Manual 1 on ‘Gender and Domestic Violence’ of this series, discusses the meaning of ‘gender’ in our patriarchal society and how ‘gender-power relations’ that emerge out of it are primarily responsible for perpetuating domestic violence (DV). To reiterate, power politics of the patriarchal system that sanctions power to men (as male gender) to exercise control over ‘women’ is at the root cause of domestic violence. It is therefore important to note, that DV is not merely a demonstration of aggression or anger by one person on the other, but use of violence to control the other.

Global as well as national level surveys on DV establish the vulnerability of women to DV. A 2018 analysis of prevalence data from 2000-2018 across 161 countries and areas, conducted by WHO on behalf of the UN Interagency working group on violence against women, found that worldwide, nearly 1 in 3, 30%, of women have been subjected to physical and/or sexual violence by an intimate partner or non-partner sexual violence or both. In India, the National Family Health Survey -5, 2019-2021, records DV at 31.2% (one in three ever married women in the age group of 18 to 49 years have faced DV).

Domestic Violence is therefore recognized as a ‘gender-based violence’. International Human Right Treaties and Conventions, such as the Convention on Elimination of all forms of Discrimination Against Women (CEDAW) regards DV as a gross human rights violation and discrimination of women.

Going by this understanding of DV as a ‘gender based violence’, we as ‘Protection Officers’ (officers of the court under PWDVA), need to sensitively address the vulnerabilities of the woman aggrieved by DV (herein referred to also as the ‘DV survivor’) who has come to us for help, including her fear, anxiety, anger, sadness, her uncertainties, her confusions about her self-identity and her life, and such other issues.

If we are sensitive we will **NOT make statements such as:**

*“Oh! Little quarrels here and there happen in every family – so what if he has used **bad words or slapped you out of anger once in a way?** Isn’t he loveable otherwise? Look at the positives and adjust. ”*

*“After all he is working hard for earning money, you are **in the house doing nothing but only house work**, so why should you complain if he refuses to give you money for things he does not approve of? After all he is not depriving you of food, a house to stay, clothes to wear etc. Why can’t you adjust a little and **keep him happy, so that he will treat you well?**”*

*“Why don’t you **ask him before you go to meet your parents?** If you do so, it will make him feel that your loyalties are more with him than with your parents. He may then treat you well.”*

*“He hasn’t beaten you and neither has he starved you. If you make a complaint and take legal recourse for **such trivial differences/ conflicts**, your relationship can get even worse. Isn’t there a family member who can mediate and help you sort it out?”*

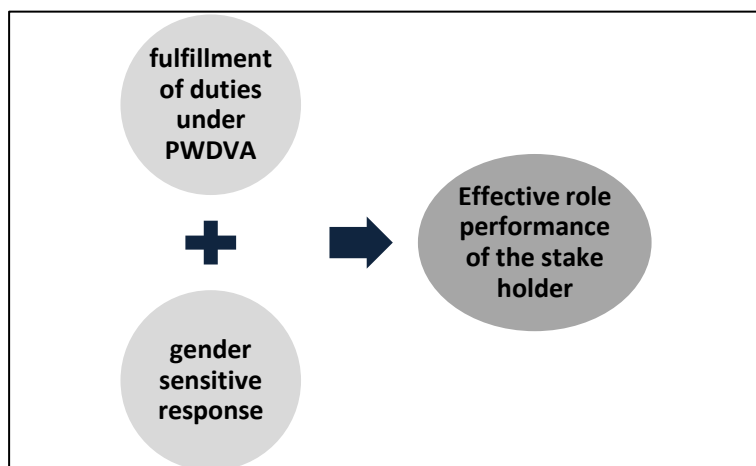
In other words, if we are sensitive, and consider ourselves as important stakeholders who are out to eliminate domestic violence, we would never justify violence, would not mock at a woman’s ‘unpaid’ labour that she extends in the house, we would not question her fundamental right to freedom of movement, we will not trivialize any act of violence as observed in the examples above.

The act of DV, we should note, need not be life-threatening or result in death for it to be considered serious and worthy of a complaint under law.

On the other hand, as sensitive stakeholders, in responding to the woman who is informing us about the violence and grievances, we would respect their opinions, listen to their experiences, understand their anxieties/ worries/ anger and make them feel welcomed and trustworthy. We would try to understand their experiences as being ‘women’s experiences’ and identify vulnerabilities in the context of gender-power politics, so that we would be able to respond gender sensitively. (We have discussed it at great length in part 1 of this series of manuals.)

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) was formulated considering DV as a form of gender-based violence. Therefore, its provisions are gender-responsive and sensitive to the vulnerabilities of the ‘woman’ being. It addresses the ‘immediacy’ need for stopping violence through a ‘protection order’ of the court. It also provides a single window for seeking reliefs through various kinds of court orders as well as assistance of officially recognized personnel, institutions/ organizations to support and assist the DV survivor – the woman¹. Only a woman (and her children) can seek redress with the help of this law. It is therefore regarded as a ‘beneficial legislation’.

In other words, we may say that PWDVA provides the legal space for all stakeholders who are expected to assist her (including Magistrates, Protection Officers, Service Providers and other) to respond ‘gender-sensitively’ to DV survivor, so that the violence stops and she gets justice. If all such stakeholders fulfill the duties and responsibilities laid



¹ PWDVA defines ‘aggrieved person’ as a **woman** who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

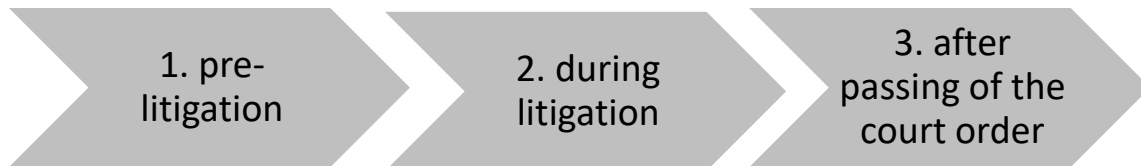
down in the Act meticulously and in a gender sensitive manner, we may say that the Act has been implemented in letter and spirit. It would in effect also mean that a stakeholder has performed her/his role appropriately.

As we know, PWDVA was formulated in 2005 through consultations with DV survivors themselves, members of the women’s movement, and several groups that work for women’s rights and on the domestic violence issue. The Act has thus taken into consideration the factors in our current patriarchal society that deprive women of their rights and accordingly formulated provisions in the PWDVA (presented in the table below).

Protection of Women from Domestic Violence Act, 2005	
Takes cognizance of the following	Provides for the following
Women’s vulnerability and gender power relations in our patriarchal society	Only women can seek redress under PWDVA. Provides for protection from DV to all women in domestic relationships with perpetrators. [sec.2(a)]
Need for stopping DV immediately	Provides for interim and <i>ex-parte</i> orders (protection orders and other reliefs) [sec. 23] and a single window for seeking / getting reliefs such as monetary, for residence, for custody and for compensation, together with protection orders.[Sec. 19, 20, 21, 22 and 18 respectively]
Right to residence and right to reside in a the shared household	No woman can be removed from or dispossessed of the shared household even if the woman is a respondent/perpetrator [Sec.19(f) proviso]
The meagre resources that a woman suffering DV has in order to overcome multi-faceted consequences of DV	Provides for appointment/ nomination of special services of Protection Officers, Service Providers, Medical Facility, shelter homes, Counsellors, legal aid cell and services of the police. to assist the woman suffering DV [Sec. 8, 10, 7, 6, 14, 5 respectively]
Need for an ongoing support to the woman suffering DV during her journey for seeking redress under PWDVA (before litigation, during the period of litigation and after passage of the court order)	Provides for appointment of a cadre of special officers – Protection Officers, who are expected to handhold with the woman through her entire journey of seeking redress under PWDVA. [Sec.8]
The situation of every woman is unique and therefore the manner in which she would need support of the law to protect herself and her rights is unique (differs for every woman)	The Court has been granted the power to lay down its own procedure for deciding the DV cases and granting the protection orders and the various reliefs. [Sec.28(2)]

In this manual, we would discuss in detail the Protection Officer’s role by deliberating on her/his duties as well as on the gender-sensitive response to aggrieved women while performing these duties.

The law, we may say, takes an ‘aggrieved person’ – the DV survivor (and her children) through three stages –



The role of the Protection Officer as a co-traveler with the aggrieved woman has been described through these three stages in this manual.

We would refer to and discuss the provisions of PWDVA (2005) and its rules PWDVR (2006) in detail as we move along.

Please note:

In this manual, the term ‘section’ and ‘rule’ should be read as ‘provisions under Protection of Women from Domestic Violence Act, 2005 (PWDVA)’ and ‘Protection of Women from Domestic Violence Rules, 2006 (PWDVR)’ respectively, unless otherwise any other name of a law is specifically mentioned.

Let us begin by understanding the identity that the law gives to a ‘Protection ‘Officer’.

2.0 WHO IS THE PROTECTION OFFICER?

The Protection Officer, as the name suggests, is the key authority appointed under the PWDVA, with a duty to protect or prevent recurrence of domestic violence on the *aggrieved person* – the woman survivor of domestic violence and her children

Her/his role is to empower the woman who faces DV – referred to in the law as *aggrieved person*, to realize her rights under PWDVA so that she is able to live a dignified life, free from domestic violence.

A Protection Officer is therefore required to assist the aggrieved person

- to gain access to PWDVA
- at all stages of the legal process, wherever required
- to take all measures to stop and prevent violence as laid down in PWDVA and PWDVR

The Protection Officer is also required to assist the Magistrate as per her/his directions.

Under the provisions of PWDVA and PWDVR the protection officer is:

- Deemed ‘public servant’ (Section 30 PWDVA, Section 21 IPC)
- Assistant of the aggrieved person - for the woman’s and her children’s protection and preventing recurrence of violence (Rule 8(2))
- Assistant of the Magistrate (Section 9(1)(a)) who is trying a case under PWDVA and is under her/his direct control and supervision (Section 9(2))
- Protected from any legal liability for any action taken in good faith, but that may have caused damage (Section 35)
- Liable to be punished if s/he does not discharge duties as directed by the Magistrate without any sufficient reason, with imprisonment up to 1 year and/or with fine up to Rs.20,000/- (Section 33)

The Protection Officer’s role within the contours of PWDVA is best described as being a co-traveler with the aggrieved person, in her legal pursuit towards a non-violent and dignified family life and relationships.

The Protection Officer is authorized to and duty-bound to assist the woman facing DV if and when she approaches her/him for assistance at any stage of the legal proceedings, and even before she files an application u/s 12 PWDVA before the Magistrate and also after the orders are passed.

3.0 ROLE OF PROTECTION OFFICER AT THE PRE-LITIGATION STAGE

The Protection Officer is bound to assist the ‘aggrieved person’ - a woman and her children facing DV, even before she has gone to the court, irrespective of whether or not she would litigate later.

Described below is a step-wise guideline – beginning with what a Protection Officer should do after s/he receives information of DV on a woman and/or her children, until the time she decides to file an application in the court to begin the litigation process.

Steps to be taken by the Protection Officer at the pre-litigation stage:

- 3.1 Step 1: To take cognizance of information s/he receives about DV on a woman and/or her children
- 3.2 Step 2: To receive the Aggrieved Person and help her make informed choices in using provisions of PWDVA
- 3.3 Step 3: To receive the complaint and record it as a ‘Domestic Incidence Report’ (DIR)
- 3.4 Step 4: To help Aggrieved Person gain access to multiple services – mobilize appropriate resources
- 3.5 Step 5: To take all immediate measures for her safety to minimize violence

3.1 STEP 1: TAKE COGNIZANCE WHEN THE PROTECTION OFFICER RECEIVES INFORMATION ABOUT DV ON A WOMAN AND/OR HER CHILDREN

INFORMANT MAY BE **THIRD PARTY** OR **AGGRIEVED PERSON HERSELF**

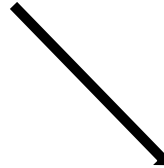
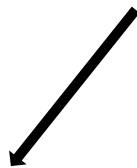
Information maybe received through phone, e-mail, in person, etc. section 4



TAKE COGNIZANCE

Check whether DV –‘has been’, ‘is being’, or ‘is likely’ to be inflicted

CHECK IF THERE IS AN EMERGENCY



If ‘YES’ follow PWDVR rule 9:

- a. seek police assistance to go to the site,
- b. take immediate safety measures – rescue, medical aid etc.
- c. file *Domestic Incident Report* and Application under section 12 to the Magistrate for protection

Note: Whenever emergency arises, before, during or after period of litigation, follow this rule 9

If ‘NO’ emergency follow PWDVR rule 4:

- a. Take information in writing and signed by informant – a third party or the Aggrieved Person
- b. Give copy of information recorded to informant free of cost
- c. If taking information in writing is not possible, keep record of identity of informant
- d. Preserve a record of this information.



What is an ‘emergency’ situation? How can court orders be sought in such situations?

Any situation in which there is an immediate threat to life or limb is an ‘emergency’ such that it calls for quick and urgent action. A woman facing DV is always under threat of losing her life or risk of getting injured during which an ‘emergency’ might arise. Below are a few examples of such situations:

- she is locked inside the house/room and unable to come out or she is tied up such that she cannot move
- being thrown out of the house in the middle of the night
- she is kept starving, denied life-saving medicines, she is in an unconscious state and left unattended, she is unable to move
- she has been poisoned or burnt by others or herself (attempted suicide) and her life is in danger
- she is unable to move because of physical or sexual attack on her
- all her communication channels with the outside world have been shut off (mobile phone confiscated etc.)
- she has been threatened with dire ‘punishments’ if she does not fulfill the abuser’s wishes
- it is impossible for her to come out of the threatening situation without somebody’s help
- her life is under threat because she has planned to commit suicide or is/has attempted to commit suicide

In such situations as she is not in a position to lodge a formal complaint or seek help, she would require ‘emergency’ help and intervention. The Protection Officer may receive information of the emergency from a third person telephonically or in person or through any other channel.

Under Rule 9 PWDVA “Action to be taken in cases of emergency”, it is **mandatory** for the Protection Officer to seek immediate assistance of the police who must accompany the Protection Officer to the place of occurrence and record the Domestic Incidence Report (DIR) and without delay present it to the magistrate for seeking appropriate orders under PWDVA.

Please note: the courts/Magistrates and the Protection Officer need to work out arrangement to seek orders if there are emergencies in situations when the court/ magistrate is not in session.

While submitting the DIR to the Magistrate, the Protection Officer may also make a simple application for seeking appropriate orders that would protect the woman and prevent the continuation of DV. As per section 151 CPC, the Magistrate can accept such application and pass orders immediately.



What does violence “is likely to be committed” mean?

This term may be interpreted as a situation where there have been differences between the woman and the family member/s and therefore the violence is likely to occur. It can also mean that there has been a history of violence and likelihood of it being committed again.

Here are two examples –

- 26 year old Asha declares her wish to marry a man of a religion other than hers. After much resistance from her family and mediation by her well-wishers, the family invites Asha’s husband to their house to meet them, and Asha feels that there is risk to his life and hers. In such a situation she can approach the Protection Officer for advice assistance and necessary action.
- 33 year old Shamim who went to her natal home due to violence by her husband and in-laws two years ago, is returning back to her matrimonial home after a family settlement. She has never filed a case of domestic violence against them in the past. She is at risk of violence and her uncle informs the Protection Officer about the risk and seeks advice and assistance of Protection Officer.

In both the above cases, the Protection Officer is bound by law to assist her in preventing violence. Protection Officer would provide information as per section 5 and prepare with her an appropriate safety plan, fill up the DIR and take any other steps that the woman at risk may require within the context of PWDVA.



How would the Protection Officer know whether the woman is eligible to file a case under PWDVA?

Seek answers to the following questions:

- a. Is the woman being or has she been subjected to ‘*domestic violence*’ in which the respondent’s conduct harasses harms, injures, endangers, and/or threatens the woman physically / psychologically / emotionally / sexually / economically?
- b. Is she in or has she been in a ‘*domestic relationship*’ with the ‘*respondent/s*’?
- c. Is she or has she lived in the ‘*shared household*’?

If the answer to these questions is ‘Yes’ then it falls within the ambit of PWDVA

In Manual 1 of the series of 7 manuals, we have already discussed about what constitutes *domestic violence* under PWDVA. Now before we proceed further let us understand the important definitions – such as *domestic relationship*, *respondent*, *shared household* etc.

Some important definitions under PWDVA

What is 'domestic relationship'?

A '*domestic relationship*' is when

- Two persons in a relationship are related by consanguinity (blood relations), marriage or through a *relationship in the nature of marriage*, and adoption
- The two persons who live or have, at any point of time, lived together in a shared household
- or are family members living together as a joint family (section 2(f))

Who is a 'respondent' under PWDVA?

- As per definition under section 2(q) PWDVA, a *respondent* means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought reliefs under this Act
- However an adult female can also be a *respondent*, but only within marital or marriage-like relationships, if this female is a relative of the husband or the male partner. (proviso of section 2(q))
- Also, through a recent case law², any woman in a domestic relationship with the Aggrieved Person can also be a *respondent*, whether or not she is related to the respondent husband or male partner.

What is a 'shared household'?

Section 2(s) PWDVA, defines *shared household* as a household in which the DV survivor lives or at any stage has lived in a domestic relationship either singly or along with the perpetrator. It includes:

- Owned or tenanted by either or both the perpetrator and survivor
- Whether or not either person or both have any right, title, interest or equity

Household that may belong to the joint family of which the perpetrator is a member whether or not either of them has any right, title or interest in it.

What is a 'relationship in the nature of marriage'?

A "relationship in the nature of marriage" has been understood in law as being akin to common law marriage. Also case law (Supreme Court judgments) has spelt out certain conditions for recognizing a *relationship in the nature of marriage*. Some of these conditions are as follows:

- the community around them recognises them as a husband-wife as if they are spouses
- they have voluntarily cohabited for a significant period of time.
- they are adults of marriageable age.
- they must be otherwise qualified to enter into a legal marriage, including being unmarried
- if the woman is unaware or was unaware at the time when they began to cohabit that the man is married.

The above mentioned conditions have to be proved by evidence, for seeking the benefit under PWDVA.

² Hiral P Harsora and ors Vs. Kusum Narottamdas Harsora & Ors
([https://indiankanoon.org/doc/ \(114237665decided by SC on 6th Oct 2016](https://indiankanoon.org/doc/(114237665decided%20by%20SC%20on%206th%20Oct%202016))

3.2 STEP 2: RECEIVE THE AGGRIEVED PERSON AND HELP HER MAKE INFORMED CHOICES IN USING PWDVA

The woman is a vulnerable person who has come to a Protection Officer with great hope and expectation. “First impression is a lasting impression” goes the famous saying. Hence, **a warm reception filled with concern, empathy and a sensitive response from a person in authority of law, would aid in establishing a trustworthy and professional relationship.**

Why is a trustworthy and professional bond between the protection officer and the aggrieved person (the DV survivor) is necessary?

It has many advantages:

- It strengthens the collaborative journey of the two towards stopping domestic violence.
- It opens up the space for using PWDVA (a beneficial legislation) to address vulnerabilities from a gender sensitive lens.
- The aggrieved person would feel free to ask questions about the law and thus help her make informed choices.
- It creates an enabling environment for the aggrieved person to participate fully in chalking out a safety plan/measures with the protection officer. This would help reduce her feelings of helplessness and will prompt her take responsibility for her own safety.
- The protection officer who is duty-bound to provide all necessary assistance to the aggrieved woman would be able to perform the role more effectively.
- Such a relationship would be mutually satisfying - to both, the protection officer and the aggrieved person.

3.2.1 How to establish a professional working relationship of trust, sensitivity and empathy:

Below are a few tips to follow while receiving the aggrieved woman

- **Do not start filling technical details** such as the DIR form or any other form as soon as she comes. Filling such forms without talking to her only ritualizes the process of receiving the aggrieved woman.
- If the Protection Officer is busy and the aggrieved woman needs to wait for her turn, provide her material to read - about DV, various ways in which she can seek assistance and services of various organizations/ persons, and her rights under PWDVA – i.e. a simpler version of Form IV³ under PWDVR. Persons accompanying her would also be educated.

³ Please refer Appendix 1 for Form IV of PWDV Rules

- While talking to her, **give full attention and time**. Keep all other things, papers/ documents aside and avoid phone calls (unless urgent).
- **Maintain eye-to-eye contact** with her, and with concern and attention enquire about her complaints.
- **Empathize** with her –
 - Understand her **vulnerabilities** as a woman and as a person,
 - Interact with her with conviction that she is a human being worthy of **dignity and respect**
 - Understand that she may have **in the past tried several means to stop the violence** on her, but has not fully succeeded.
 - Identify and **understand her emotions** which may be of – anxiety, fear, pain, sorrow/grief, anger, self-blame, guilt, feelings of worthlessness and failure, hopelessness, insecurity, depression, etc.
 - **Express empathy** - validate her feelings, and assure assistance to the best possible extent
 - **Understand her practical difficulties** – poverty/ financial difficulties, homelessness, facing danger to life, etc.
 - Understand her feelings of hope and expectation from the Protection Officer and the law and acknowledge her **demand for wanting quick relief**
 - **Never justify violence**
 - **Never blame her** or say she took “*wrong*” decisions
 - **Never thrust Protection Officer’s personal opinion** on her (e.g. – do not say – “*why do you want to stay with your husband if he is so violent*” when she means to want a reconciliation)
 - Treat her as a **unique individual** and accept her as a person who is what she is now, but has **potential to grow and change** herself for the better
 - **Do not be judgmental**. Be aware of one’s own biases and the patriarchal influence on her/his values and attitudes – for example, do not say – “*being a mother, how can you leave your children behind with your husband*”
- **Listen carefully** to what she is saying, and actively ask her intermittent questions about incidents and her feelings about them
- **Read any documents** she may have brought with her, thoroughly and carefully
- **Enquire about her expectations** from the Protection Officer and PWDVA. This will enable the Protection Officer to assess her knowledge about the Act and other laws, so as to bring clarity in her expectations
- **Clarify her expectations that the Protection Officer and PWDVA can and cannot address, so that she is able to make an informed choice of whether or not to use law.**

3.2.2 How to help the aggrieved woman make an informed choice?

A person's choice may said to be an "informed choice" when -

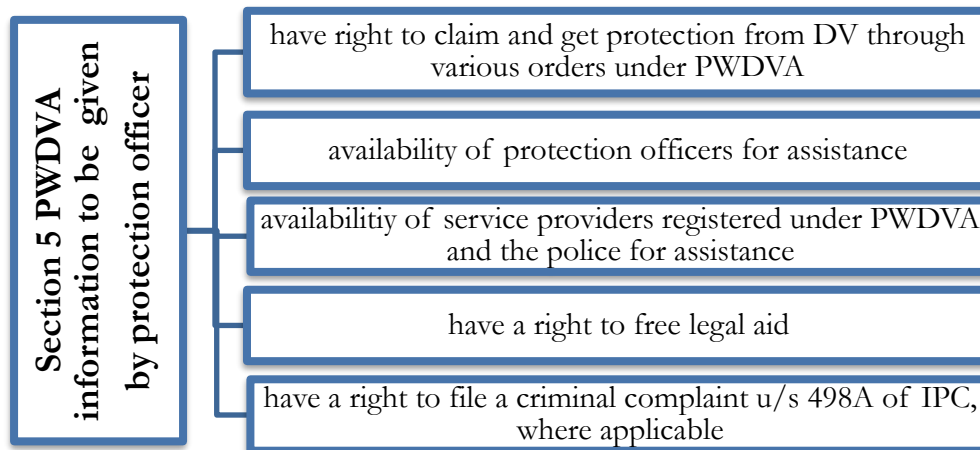
1. She has information about –
 - a. her rights
 - b. the options for seeking redress and
 - c. various resources/services available under PWDVA
2. She is aware of the probable consequences of the options/ choices she would make
3. She is willing to face/ deal with the consequences of that choice

Going by the above understanding, the Protection Officer in order to assist the woman make an 'informed choice' should do the following:

1. Provide information about PWDVA

What information to provide?

PWDVA believes in the aggrieved woman's right to make informed choices and decisions. It therefore **puts the duty on the Protection Officer** (and others) **through section 5 to inform** her of her and her children's rights as represented in the diagram below.



How to inform her about her rights and resources as per section 5 of PWDVA?

The Protection Officer may -

- Use Form IV⁴ under PWDVR to provide the information
- Explain contents of Form IV to her in the language that she understands.
- Enquire whether she has any doubts or questions and clarify them

⁴ Refer appendix 1

In addition, the Protection Officer may also -

- Brief her about the stages and the time limits set in the Act, as well as the practical delays that can take place in legal proceedings
- Ask her what she expects from the Protection Officer and the law and assess whether her expectations are reasonable and within the frame work of the PWDVA
- Clarify what the law and Protection Officer has to offer – example -
 - o what the Protection Officer is authorized to do, and cannot do (e.g., that the Protection Officer is not authorized to call upon the respondent and attempt reconciliation)
 - o what the PWDVA can and cannot do – (e.g. the law can provide her with a protection order, but not a police person 24x7 to protect her, and that she would have to take initiative for taking certain safety measures and at the same time seek protection orders. The Protection Officer can help her chalk out the safety plan)
 - o inform her that breach of protection order is an offence under PWDVA (section 31) for which criminal proceedings will be instituted against the respondent
- In states like Maharashtra, the District level Department of Women and Child Development, has prepared booklets that provide information on the PWDVA, contacts of Protection Officers in the area, and names and addresses of services of shelter homes, counselling centers and other service providers, police stations etc. Protection Officers may share such booklets with the women who approach them for help. Protection Officers who use these booklets should ensure that information in them is updated.

2. Help her think about the consequences of the actions she may take under PWDVA and how to face these

For example – Discuss....

- What will happen when the respondent comes to know that she has made a complaint or filed an application under PWDVA? Is the violence likely to escalate? And if so what safety measures can be taken?
- What will happen if she asks for particular orders – such as an order of residence in the shared household? What options under right to residence give her better safety and are most suited and why?
- Under what circumstances can she avail services of shelter home, legal aid, counselling and of other Service Providers?
- And many more questions that are unique to the aggrieved woman and her situation

This process will help her make appropriate choices.

Remember, she is the best judge of her situation. The Protection Officer may discuss her fears about filing a case in the court, its consequences on her so that she may overcome them, etc. However, the Protection Officer should not thrust her/his opinion on her or give her over-assurance of any sort.

This kind of discussion will also render the Protection Officer as being an approachable and trustworthy person who she can go to whenever she faces a dilemma or when in trouble.

Although making informed choices is discussed in this section on ‘Pre-litigation’, it is a continuous process made at almost every stage of the legal proceedings. The Protection Officer needs to assist her to make informed choices whenever she needs/desires.

A woman may approach a Protection Officer for the first time at any stage of the legal proceedings. However, the principles of reception will remain the same, and so will the process of helping her make choices. Protection officer may provide relevant information about law and support services.



There is a lot of talk about women ‘misusing’ law. Should the Protection Officer ascertain that the information that the Aggrieved Person is providing is correct?

All that a woman would be asking and is entitled to under PWDVA is protection, we must recognize. Nobody would deny that a woman should be protected from DV. The Protection Officer’s duty as demanded by the law is to record the complaint (as a ‘Domestic Incident Report’ – Form I) and not investigate into the ‘truth’ of what she is saying. It is the role of the Magistrate/ Court to decide whether the allegations that the aggrieved woman is making are true or false. The Protection Officer’s job is not that of an ‘investigator’ unless directed so by the magistrate.

3.3 STEP 3: RECEIVE COMPLAINT AND RECORD IT AS ‘DOMESTIC INCIDENT REPORT’ (DIR)

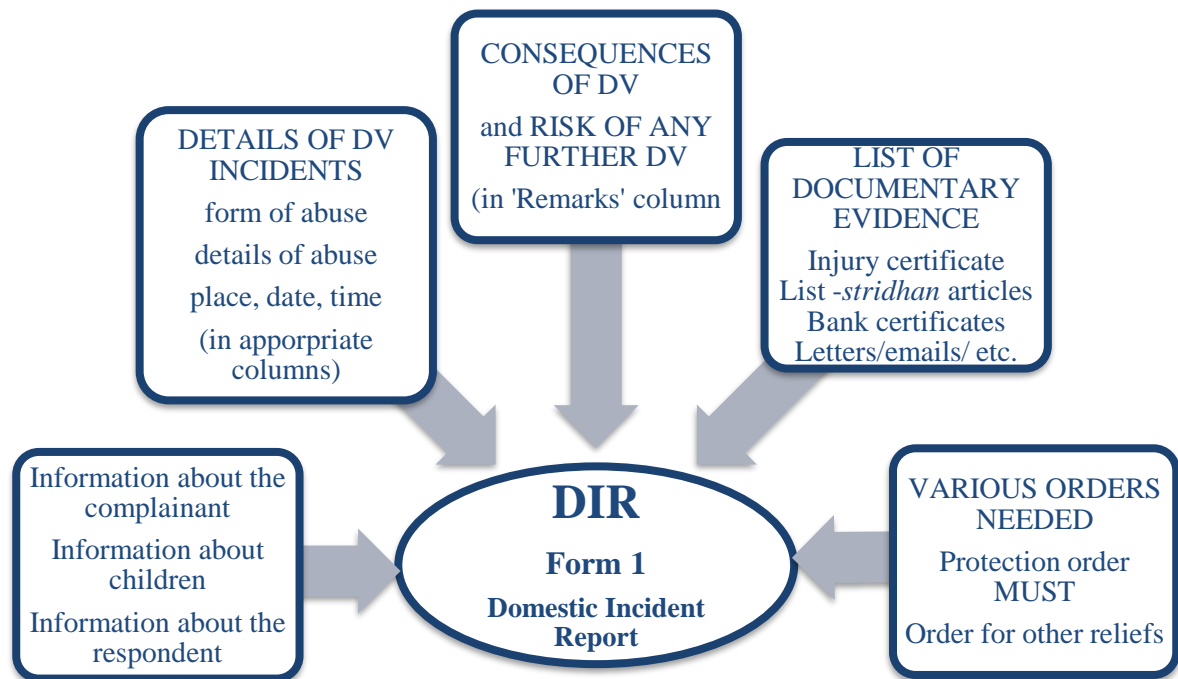
The aggrieved woman may approach the Protection Officer with an oral or written complaint. In either case, the complaint has to be recorded as a Domestic Incident Report (DIR) (section 9(b)PWDVA)

3.3.1 What is Domestic Incident Report (DIR)?

<u>WHAT IT IS</u>	<u>WHAT IT IS NOT</u>
<ul style="list-style-type: none"> • Record of DV complaint of aggrieved woman to the Protection Officer (or a Service Provider) • It is to be made in ‘Form I’ provided in the PWDVR 	<ul style="list-style-type: none"> • It is not a report of an investigation conducted by the Protection Officer • It is not a document that would begin the litigation process in the court.

3.3.2 What is to be filled in Form 1 – the Domestic Incident Report (DIR)?

The diagram below represents the contents of the DIR



THE DIR PROVIDES A HOLISTIC PICTURE OF THE AGGRIEVED WOMAN AND HER SITUATION

3.3.3 How to prepare a DIR

Inform the aggrieved woman :

- about what is DIR, nature of its contents
- its importance in impressing upon the Magistrate the seriousness of the DV she is facing
- that the copies of DIR will be submitted to the Magistrate, Police and the relevant Service Provider (as required) in the jurisdiction where the DV incident is alleged to have occurred.

Be accurate:

- Ensure to fill the DIR on the basis of what the aggrieved woman tells about her experience. **Do not make assumptions**, but get facts clarified before noting down incidents of DV.
- Fill Form I given in the PWDVR

How to fill the DIR Form I

(Please refer DIR Form I in appendix 2.)

- **Fill Items 1, 2, 3** as indicated in the form
 - **Fill Item 4:** as indicated in each column for each form of violence physical, sexual, verbal or emotional economic, dowry-related and other acts of DV
 - use the ‘Remarks’ column to highlight information that needs to be brought to the notice of the court – example the consequence that the particular incident has had on the woman or its severity, its frequency or the risk to life or about the allies in the incident etc.
 - In item 4 subsection ‘v’ – ‘any other information regarding acts of DV’ write about violent acts – such as those on children, the aggrieved person’s parents, supporters etc. that are to be brought to the notice of the court. In the ‘remarks’ column write impact of violence on children’s – emotional health, school performance, physical health etc. and other such information
 - **Fill item 5:** as indicated in the form
 - **Fill item 6:**
 - Under column 2 - ‘orders that you need’, **across Protection Order under sec.18 always write ‘YES’**
 - Under column 4 ‘any other’, specify the kind of order
- Example:
- Across Protection Order - specify from which form of violence – whether economic/ emotional/ sexual/ physical abuse - the AP needs the protection order: such as “Protection from economic and emotional abuse” etc.
 - Across residence order – specify whether payment of rent, or use of portion of shared household or other etc.
 - Across maintenance order - specify the amount and for whom
 - Across custody order – specify the child/ children whose custody Aggrieved Person wants or visitation rights that she may want
- **Fill Item 7:** “Assistance that you need” as indicated in the columns and ensure to specify the nature of assistance

Please note: If the Magistrate has directed the Protection Officer to prepare the DIR after the aggrieved woman has filed the application u/s 12 PWDVA⁵, the following precautions should be taken:

- Read the Application u/s 12 (petition) carefully.
- If certain information that the woman is providing seems contradictory, clarify with her again and then make the DIR entry.
- Ideally the DIR and Application (petition) should be in sync.
- The information in the DIR may be additional and supplementary to that in the Application.

⁵ ‘Application’ under section 12 PWDVA is an application to the Magistrate that an aggrieved woman is required to make for seeking protection and reliefs from DV.



What if the woman does not remember the date, time, place of the incidents of DV that have occurred in the past?

- Write details about which she is sure
- The woman may remember the details of latest incident, but not the past ones. In that case, write the details of incident she is sure about, and in the remarks column mention the approx. frequency of such violence or how many times it has occurred in the past.



Is it mandatory for a Protection Officer to prepare a DIR if a woman has only informed the Protection Officer of DV on her and the Protection Officer has provided her the information as per Rule 4 (as explained in step 1 above)?

- Differentiate between the information she has provided on DV (Section 4) and the ‘complaint’(Section 9(b)). Under PWDVA, DIR in Form I consists of the complaint only.
- If the woman does not want to file a complaint, her choice/decision should be respected (as per Rule 8(i)). How to help her make an informed choice has already been explained above (in the Step 2). Remember, mere information given to a Protection Officer does not initiate any kind of litigation or legal action in the court of law.
- However, it is a good practice to keep a record of when such a woman approached the Protection Officer, her name, address and her DV experience in short. A separate register may be maintained for this purpose.

3.3.3 What to do after filling the DIR Form I?

- **Read the DIR** over again to ensure that the aggrieved woman/ complainant has understood and consents to all the written contents.
- Ensure that the aggrieved woman or complainant has **signed the DIR** and the Protection Officer has countersigned.
- **Inform** the aggrieved woman/complainant **the copies of DIR would be submitted** to the Magistrate, Police and Service Provider, and their details.
- Give a **copy of the DIR to the Aggrieved Person free of cost**, and advise her to show the copy if and when she feels the need of approaching the Police and/or Service Provider
- **Submit copies of DIR** to Magistrate through the Registrar or judicial clerk of the Court, and also to the Police and the Service Provider in the jurisdiction where the DV incident is alleged to have occurred.

Even if the aggrieved person has not filed / or does not want to file an application u/s 12 PWDVA, the copy of DIR is required to be submitted to the Magistrate, the Police and Service Provider in the jurisdiction where violence has occurred.

- If a DIR has been filled, it is **not mandatory for the woman to file an Application under section 12**. Meaning, if the woman does not wish to file an Application to the Magistrate under section 12, the Protection Officer should not force her to do so.
- However, even if an Application under section 12 has not been made but a DIR has been prepared, it is **mandatory for the Protection Officer to submit the DIR copies to the Magistrate, Police and Service Provider** in the jurisdiction
- Take an **acknowledgement/ receipts of having received the DIR** from the woman and the above mentioned authorities and keep record of it
- **Preserve copy of DIR along with copies of related documents in separate files for every aggrieved woman**
- **assure the woman of help/ assistance at any point of time**
- **Maintain a record of all DIRs⁶ received** in a register or on the computer – as per the table below:

Table 1: DIR record keeping format

Date	Name of Officer	Details of Woman	Complaint against	Violence	Referral	No. of the DIR Filled
		Name, address and contact no.	Husband/ inlaws/ children/ parents/ Brother/ live-in partner, others specify	Physical, sexual, economic, verbal/ emotional	Specify if referred to Police, medical/shelter/ legal aid/ court	



The woman has independently filed an application under section 12 in the court without the assistance of the Protection Officer. She approaches her/him for the first time after filing the application. Should the Protection Officer prepare the DIR?

- If the woman approaches the Protection Officer with a court order directing her/him to prepare DIR, it is mandatory to prepare it and submit to the magistrate, the police and the Service Provider.
- If the woman approaches the Protection Officer without a court order to prepare DIR, its is her/his duty is to attend to her concerns of safety. Only if there has been a fresh incidence of violence after the application u/s 12 has been filed, the Protection Officer may prepare a DIR submit it to the Magistrate and other concerned authorities.
- If the woman has safety concerns, it is a good practice to take an application from the woman in which she can mention the risk she faces and accordingly, the Protection Officer may provide her the information/ advice and relevant support. (However preparing the DIR is not mandatory for the Protection Officer in such case.)

⁶ Government of Maharashtra, under MOHIM, Protection of Women from Domestic Violence Act, 2005- Handbook on Protocols, Best Practice and Reporting formats, 2014



What is the purpose of submitting copies of DIR to Police and Service Providers?

DIR copies are required to be submitted to the police and service providers primarily to keeping records that would help retrieve any history of DV on a woman. This information would enable them to extend the required help/ assistance to the Aggrieved Person whenever she approaches them later on - such as during an emergency, to lodge an FIR or when she needs shelter, legal aid, counselling and other. It is therefore important to have and abide by a good and easily retrievable DIR record maintenance system.



Some courts use a standard format that directs the Protection Officer to - “investigate the case and submit to report to the court”. How should s/he investigate? What should s/he exactly do?

- The Protection Officer may request clarification from the Magistrate about whether ‘report’ means a DIR.
- If it is not the DIR, then ask the Magistrate what ‘investigation’, why and how it should be conducted. Seek for correct directions in writing from the Magistrate.
- At times the Magistrate may ask for such “report” during service of notice. If so, again ask for clarification – whether it is a home-visit report, for assessing financial status or any other reason, and what and how investigation should be done. It is the duty of the Protection Officer to follow any directions that the Magistrate has given in writing - Refer Rule 10 PWDVR.



It happens at times, that the aggrieved woman in her cross examination during the trial contradicts information that she has provided in the DIR. Should the Protection Officer be held responsible for that? What should the Protection Officer do?

- The best way is to prevent such a situation. First of all, DIR should be filled carefully based on what the Aggrieved Person (woman) is disclosing to the Protection Officer about violence, and nothing more. The Protection Officer should not make her/his interpretations or assumptions about the DV that the woman is narrating. Every detail should be clarified and the DIR filled accordingly.
- Also, prior to her examination – whether chief or cross, it is best for the Protection Officer and the woman to go through the DIR and the Application. It is likely that her memory may fade over a period of time, and she may not be able to recall certain incidents, especially when she is under pressure of appearing before the Court and the defense lawyer. The Protection Officer can play an important role in allaying her fears and help her get used to the court environment.



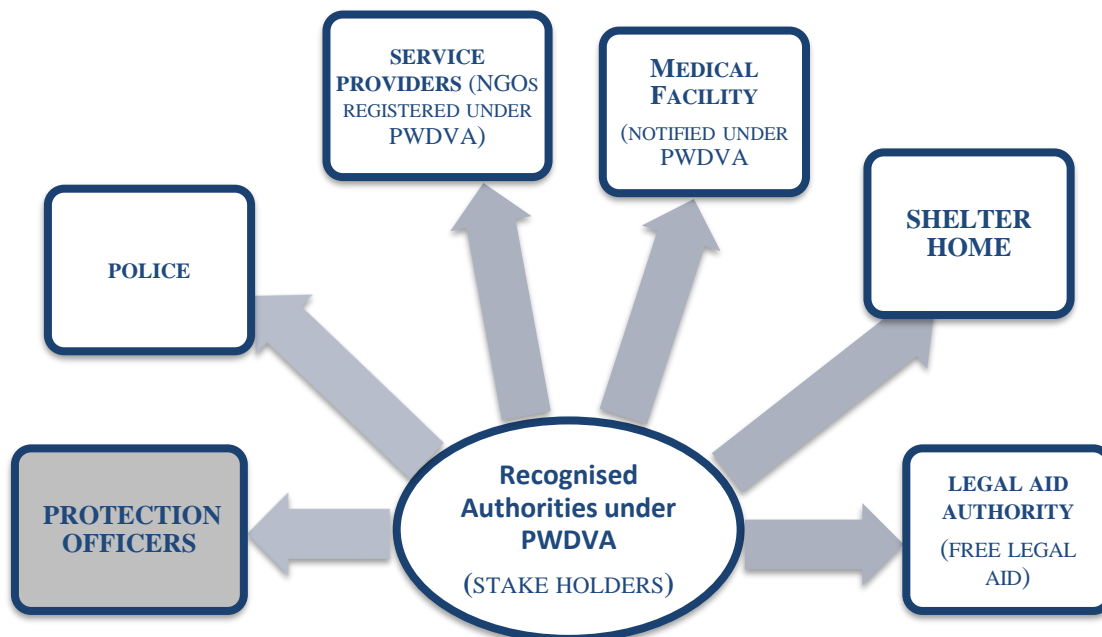
Often it is experienced that Courts do not accept DIRs without the Application under section 12 (Although PWDVA states that DIR once prepared is to be submitted to the Magistrate). In such case what should the Protection Officer do?

- These are practical issues that need to be sorted out at the level of the State Governments and the concerned Departments with the respective High Courts to seek for issuing the necessary directions to the respective lower courts. Keeping records of DIR is to be used for retrieving history of DV whenever the woman wants to seek judicial intervention, especially during emergency situations.
- Until these issues are resolved, the Protection Officer may ensure maintenance of DIR records in her/his own office.
- Also, Magistrates have the authority to take *suo moto* action in cases where a DIR prima-facie indicates serious form of criminal offence or threat to life.

3.4 STEP 4: MOBILIZE THE SERVICES OF THE MULTI-AGENCY SUPPORT SYSTEM

3.4.1 What is the multi-agency support system?

The figure below presents the plethora of services that PWDVA recognizes for providing support and assistance to an aggrieved woman who faces domestic violence.



This means the Act recognizes that women who face domestic violence (DV) are vulnerable in many ways. To be able to counter the violence meted on them, they need support and a coordinated response from multiple agencies as indicated in the figure above.

PWDVA puts responsibility on the Central and State Governments to register/ appoint Protection Officers, Service Providers, Counsellors and notify Medical Facilities and

Shelter Homes to provide assistance and support to a woman facing DV. For the purpose of this manual, they are referred to as ‘stakeholders’.

3.4.2 Specific responsibilities of the Protection Officer with respect to the various stakeholders

The following are Protection Officer’s responsibilities laid down in PWDVA and the Rules with reference to stakeholders

- Liaise between the aggrieved person, police and service providers. Rule 8 (1)(xiii)
- Inform all Service Providers that their services may be required. Rule 8 (1)(viii)
- Scrutinise applications for appointment of counsellors; prepare and keep updated a list of counsellors Rule 8 (1)(ix) & 8(1)(x)
- Maintain a proper record of Service Providers, medical facilities and shelter homes. Rule 8 (1)(xiv) and Rule 11(4)
- Facilitate access to legal aid. Section 9(d) and Rule 8 (1) (v)
- Maintain a list of all Service Providers providing legal aid. Section 9(e)
- Make available a safe shelter home. Section 9(f)
- Have the aggrieved person medically examined. Section 9(g)

As per the law, each of the stakeholders have a duty to perform in assisting the aggrieved woman. Let us understand in what way and when the Protection Officer can mobilise the stakeholders of this multi-agency support system.

3.4.3 How and when does the Protection Officer assist the aggrieved woman in accessing the resources of the multi-agency support system?

The Protection Officer, after due assessment of the aggrieved woman’s circumstances, may refer or assist her in accessing any of the partners in this system. Having this ready-made and approved system is advantageous to the Protection Officer because it aids her/him in fulfilling the duty under rule 8(2) PWDVR of protection and prevention of violence recurrence.

It is the Protection Officer’s duty under PWDVA to connect with the various stakeholders and assist the aggrieved woman in the following manner –

a. Medical Facility

The Protection Officer, under section 9(g) PWDVA, is required to assist the aggrieved woman seek medical intervention from a Medical Facility, if she is injured or physically hurt, or psychologically unwell.

The Medical Facility is a facility notified so under PWDVA by the State Government through a Government Resolution and a Circular directing the Medical Facility to operate as per provisions of the PWDVA.

It is the Protection Officer's duty to do the following:

- The Protection Officer may either go personally with the woman and/or give a reference letter stating clearly that the Medical Facility assists/examines her as per section 7 PWDVA (refer Rule 17 (1))
- Assist in providing transportation to get to the Medical Facility (Rule 8(vi))
- Get the aggrieved woman medically examined at the medical facility if she is physically hurt and has injuries.(Section 9(1)(g))
- Obtain the medical report of such examination; this can be used as evidence.(Rule 17(4))
- Forward a copy of the medical report to the police station and Magistrate in the jurisdiction where the DV has taken place (with the consent of aggrieved woman), so that they may take appropriate action. (Section 9(1)(g))
- Ensure that the aggrieved woman is treated for the injuries

Please note:

1. If a Protection Officer receives a DIR prepared by a medical facility, the Protection Officer's duty is to keep a copy of DIR in her/his records and assist the aggrieved if she comes to her/him in person.
2. An aggrieved woman may need medical intervention at any stage of the legal procedure, even after court orders have been passed. The Protection Officer is duty-bound to provide the required support at any point of time, as and when required

b. Shelter Home

Section 2(t) defines "shelter home" under PWDVA as a shelter home **notified by the state government under the Act**. It is left to the state government to decide the criteria for notifying a Shelter Home under the Act.

If the aggrieved woman needs and wants shelter, the Protection Officer may request the person in charge of a notified shelter home to provide shelter to her.

- The said request may be made in writing, stating clearly that it is being made under section 6 of PWDVA.
- A copy of the DIR be given to the Shelter Home.
- A written request and a copy of DIR are not compulsory (Rule 16(1) and 16(2) proviso). A Shelter Home is bound to provide shelter in either case
- Inform the aggrieved woman that a report of her being lodged in the Shelter Home is required be submitted it to the Magistrate and the police station in the jurisdiction of the Shelter Home as per Section 9(1)(f).
- This report is useful if the Application under section 12 is pending before the Magistrate, indicating the need for quick orders for protection and reliefs.
- However as per Rule 16(3) if the aggrieved person desires that her identity not be disclosed or her lodging in the Shelter Home not be communicated to the respondent/ accused, and especially if it concerns her safety, such reporting need not be done.

c. Police:

The Protection Officer may seek police assistance in any of the following ways:

Pre-litigation stage	<ul style="list-style-type: none"> ➤ submit a copy of the DIR, seek acknowledgement receipt, and inform the police that they may help the woman when/ if she approaches them (section 9(a) PWDVA) ➤ help the woman file a NC or FIR – if offence is cognizable and the woman wants to do so, as a safety measure ➤ seek assistance in emergency cases (Rule9) ➤ help the aggrieved woman access special services within police system like Mahila Suraksha Samiti (PS Level), Women's Cell, Special Cell for Women and Children, Mahila Sahay Kaksh (SP Office), Mahila Dakshata Samiti etc. if required, for the sake of safety
during the period of litigation	<ul style="list-style-type: none"> ➤ help aggrieved woman file NC/ FIR if there is incident of violence ➤ seek police assistance in Service of notice -if directed by the court, and/or if the Protection Officer expects violence during service of notice ➤ seek police assistance in confiscation of weapon involved in the DV (Rule 10(1) (f)) ➤ refer/ assist aggrieved woman in lodging a complaint with the police under Section 31 if the interim protection order has been violated ➤ share the safety plan with the police, and steps Police need to take for her and her children's safety. ➤ Protection Officer may involve the police in preparing the safety plan. ➤ help AP seek police assistance for <i>Stridhan</i> recovery – upon orders from court
After passage of final order	<ul style="list-style-type: none"> ➤ in enforcement and execution of Court Orders as per instructions of the Court ➤ refer/ assist the aggrieved woman in lodging a complaint under Section 31 if the protection orders have been violated, and follow-up - to ensure that the respondent is arrested, produced before the magistrate, and criminal proceedings have begun ➤ assist the woman to file FIR under other criminal law provisions where incidents of violence continue despite court orders under PWDVA

Remember, DV is an ‘offence’, and PWDVA is a law that is civil in nature - one that provides reliefs to the Aggrieved Person. Trials under PWDVA along with trials under other laws (498A, POCSO and other criminal laws) can run simultaneously either in the same court or in different courts.

d. Legal Aid Authority

With reference to Legal Aid, it is the Protection Officer's duty to -

- inform aggrieved woman about her right to free legal aid, under the 'Legal Services Authorities Act, 1987'
- ensure that the woman gets legal aid under the Legal Services Authorities Act, and make available- free of cost- the prescribed form for obtaining such aid
- be informed about Service Providers (registered under the PWDVA) that provide legal aid, including services of advocates, and refer the woman to these if required

e. Service Providers

In recognition of work that community-based and non-governmental organizations did in the past in supporting and helping DV survivors, the PWDVA provides scope for appointing such 'voluntary associations' as 'Service Providers' by virtue of section 10 of the Act. Through a process of application (using Form VI⁷, PWDVR), they are required to register under PWDVA with the state government as 'Service Providers'.

In keeping with the spirit of the role assigned to the Protection Officer in PWDVA, s/he is expected to be a highly resourceful person, who is able to reach a host of appropriate services that would help the aggrieved woman (and her children) stand up again and realize their rights to violent-free domestic life and relationships.

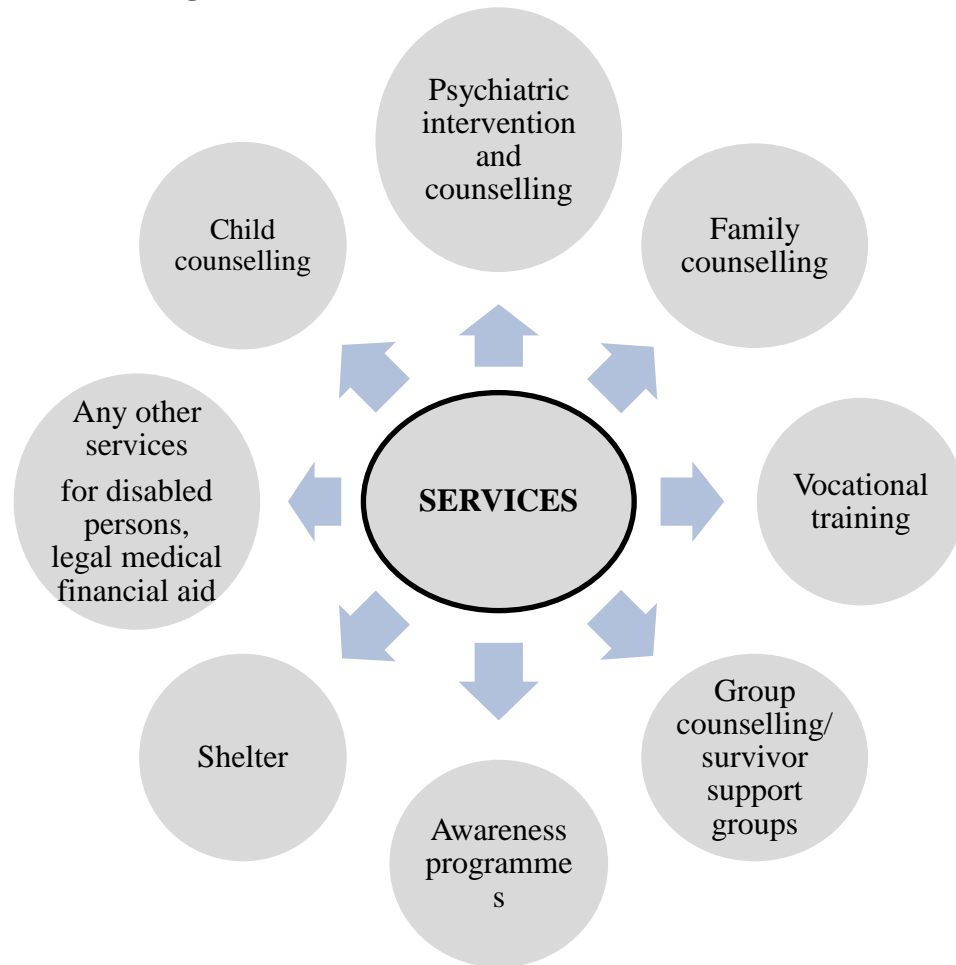
For this purpose, the Protection Officer, first of all, must know who the Service Providers are in her/his area of operation and what kind of services they provide.

Therefore, PWDVA assigns duties to the Protection Officer to:

- Maintain a proper record of Service Providers, medical facilities and shelter homes. Rule 8 (1)(xiv) and Rule 11(4)
- Maintain updated list of Service Providers. List has to be revised at least once every three years and forwarded to the concerned Magistrates/ courts (Rule 8 (1)(x))
- Inform all Service Providers that their services may be required. Rule 8 (1)(viii)
- Liaise between the aggrieved person, police and service providers. Rule 8 (1)(xiii)
- Scrutinise applications for appointment of counsellors; prepare and keep updated a list of counsellors Rule 8 (1)(ix) & (x)

⁷ Please refer Appendix 6 for Form VI of PWDVR

The range of services that can be useful to the woman



Please Note: not all of these services may be ‘registered’ under PWDVA as ‘Service Providers’. In such cases, the Protection Officer may **proactively** call upon them to register with the state government for recognition under the Act

A Protection Officer can proactively do the following

1. refer the woman to an appropriate Service Provider whose expertise would help her deal with the adverse impact of DV on her and her children, at the pre-litigation stage or at any time during the litigation stage
2. recommend to the Magistrate to direct Service Providers to assist the woman, if she so desires
3. call upon voluntary associations whose services may be useful for women facing DV, to register with the state government as Service Providers so that their services can be availed under PWDVA. *For example, child counselling or child welfare organizations or even boarding schools for children, etc. may not have registered as service providers under the Act, but their services are needed to help children who have witnessed DV or have themselves face DV.*
4. maintain a list of experts – such as those working with disabled persons - the hearing impaired, the blind, mentally challenged, physically disabled, child counsellors etc. The Protection Officer can provide information of these experts to

the Magistrates in appropriate cases, so that the Magistrate may call upon them to advise the court or assist it. *For example- for communicating with a woman who is deaf, for advising about the best services and costs for a mentally challenged child of a woman who has applied for maintenance, for advising on rehabilitation of a physically disabled DV survivor, and such other matters.*

5. Maintain a follow-up of women referred to Service Providers as may be necessary.

The Protection Officer should be aware that Service Providers (registered under PWDVA) are:

- authorised to prepare DIR,
- required to send a copy of the DIR to the Protection Officer. In such case, the Protection Officer should keep the DIR in her/his records. If Aggrieved Person seeks the Protection Officer's assistance, she/he has to provide it within the scope of PWDV Act and Rules.
- authorised to refer the Aggrieved Person to the Protection Officer
- are exempt from liability for action taken in good faith under the Act (Section 10(3)).

Please note: The Act does not bar/ ban/ prevent other voluntary associations/ NGOs/ groups/ collectives who are not registered as Service Providers under the Act, to provide their services to women facing DV as per their own institute's aims and objects.

f. Counsellors

PWDVA defines a 'Counsellor' is a member of a Service Provider to whom the Magistrate directs the respondent or the aggrieved person, either singly or jointly, for counselling. The Counsellor is qualified to be a 'Counsellor' under PWDVA as per the criteria laid by the state government⁸.

If the Magistrate directs a respondent or/and aggrieved person to a counsellor, this *Counsellor* is required to work under the supervision of the Court or the Protection Officer or both for that particular case. (section 14, rule 14(1))

Once the cases are in litigation, the Protection Officer CANNOT on her/his own accord refer the aggrieved person/ respondent to such 'Counsellors' for 'counselling'. This authority lies only with the Magistrate. However, if the woman needs psychological counselling for mental health (even if there is no mental illness) or any other kind of psychological counselling, the Protection Officer can inform the woman of availability of such services.

The Protection Officer also cannot and should not undertake counselling herself/himself; doing so is beyond the scope of her/his duties.

⁸ For example, as per the Govt. of Maharashtra, the criteria include: qualifications - a degree in social work or psychology, at least 2 years of experience in working on women's and family issues, counsellors may be women or men (as per PWDVR - rule 13(3), a counsellor should, as far as possible, be a woman.

With regard to *Counsellor* services, the Protection Officer has the duty to

- Invite applications from Service Providers seeking particulars of the professionals whom they wish to register as counsellors under the Act (Rule 8(1)(vii))
- Scrutinise applications for appointment of counsellors
- If they fit into the criteria laid down by the state government and as per rule 13, prepare the list of such counsellors and forward the list to the Magistrate
- Revise this list every three years by going back to the Service Providers for confirming availability of counsellors, including new counsellors, and forward it to the Magistrate.
- Protection Officer may also provide general supervision, if directed so by the court, to the Counsellor in counselling cases sent by the Court

The Counsellors have to follow procedures prescribed under Rule 14 that emphasize priority to safety of the aggrieved woman and her children. **This goal of safety is over and above the option of saving the family.** In other words, the goal of counselling is to ensure safety of the woman, even if it means that she would have to break from the family, and not return to the violent home.

3.5 STEP 5: PREPARE A SAFETY PLAN

The Protection Officer is duty-bound to take appropriate steps for the protection of the aggrieved woman and take all reasonable measures to prevent recurrence of domestic violence on her and her children, in accordance with the Act and Rules. (Refer Sec 9(1)(i) Rule 8(2))

The Safety Plan in Form V of PWDVR is a tool that the Protection Officer and the aggrieved woman can use in order to assess risk, especially the dangers she is likely to face because she has made a complaint under PWDVA, and device safety measures.

3.5.1 What is a safety plan?

Safety planning is a common practice among organizations and counsellors, who work with DV survivors.

It has two components -

1. There is a risk assessment component that identifies dangers involved in the woman's situation.
2. There are concrete and feasible strategies/ measures for safety that are worked out with the woman, so that she is able to follow them. Seeking Protection Orders is a legal measure for safety.

Safety plan is important as it helps develop a sense of control and motivation for self-protection. **It is based on the belief "my safety is my responsibility also".**

Technically under PWDVA, the “Safety Plan” is prepared in Form V in consultation with the aggrieved person. It is used to identify and note down -

1. the ways in which the aggrieved person can protect herself during a violent incident or when she anticipates a violent incident and reduce the risk of harm.
and
2. the court orders she should pray for so that she is protected from recurrence of DV

In Form V details under each of the 5 columns – A to E, as in the figure below, are to be written. (Please refer appendix 3 for the entire Form V)

A	B	C	D	E
Violence by the Respondent (various forms)	Consequences of violence mentioned in column A suffered by the aggrieved person	Apprehensions of the aggrieved person regarding violence mentioned in column A	Measures required for safety	Orders sought from Court

How to prepare the Safety Plan in Form V

➤ **Information in Columns A, B, and C facilitate risk assessment.**

How to make a risk assessment?

Column C is where the risk is to be noted

Few indicators for risk of violence are as below:

- Frequency of violence
- Escalation of violence and its severity over the past years
- Violence extended not just to aggrieved woman but also to children and other supporters of aggrieved woman over time
- Use of objects or weapons
- The aggrieved woman has attempted suicide; She is in depression, has lost all hope, is extremely angry and talks of committing injury/ hurt to self or others
- Respondent has attempted or threatened suicide
- Threat to murder, or attempts to murder in the past
- Past experiences of being locked in house, or thrown out of the house even at odd hours
- The time and place of violence - whether violence happens during night time and or when nobody is around when drunk or even when sober etc.
- Respondent is in the habit of throwing objects, creating a ruckus, and injuring animals

➤ **In column D safety measures to be taken are to be chalked out and written.**

How to decide safety measures?

Column D aids the aggrieved person and the Protection Officer to discuss and decide the kind of measures she can take for safety from the perpetrator/s at the anticipated site of violence – whether she is living with the perpetrator/s or not.

Examples of some strategies that can be planned with the aggrieved are as under:

- Believe in your instincts, and be alert if you anticipate violence
- Keep important documents in safe place
- Keep handy, or memorize contact numbers of person/s who she can approach for help during such emergency, including the closest police station
- Keep mobile phone handy, if available
- Keep some money handy, - for travel to safe place, food etc.
- Inform immediate neighbours/ friends/ family who are supportive and take their help –e.g. shout loudly for help when the abuser threatens violence
- Identify a safe place to go, even if temporarily, in event of expected violent episode
- Keep away easy access to any weapon or substance that can be used to harm/hurt - such as knives, sickle, kerosene etc.
- Plan about what the woman should do in case she needs to leave the site of violence for her safety – whether or not to take her children, her documents, clothes, the timing, etc.

➤ **Column E aids the aggrieved woman and the Protection Officer to think of and decide the orders to be prayed for to the Court for her safety.**

These orders are to written here in column E.



Is the safety plan required to be submitted to the Magistrate?

- It is not mandatory to submit the safety plan to the Magistrate. Once submitted to the court, it becomes accessible to the perpetrator (because the case has been filed). If he comes to know of personal safety measures she would be taking (written in column D of Form V), for example of keeping the mobile handy, or taking help of neighbours, or hiding objects that can be used as weapons, he is likely to misuse this information and do everything to foil her plan. If the safety plan is to be submitted to the Magistrate, such information should not be noted.
- Safety Plan in the Form V can be used for impressing upon the Magistrate the severity of violence and the pressing need and urgency for certain specific orders for preventing DV. Few illustrations of its use are given below.

Important points to remember about the safety plan

- The Safety Plan is not a pre-condition for obtaining orders under the PWDVA.
- The safety plan need not be compulsorily submitted to the Magistrate; it is primarily for the use of the aggrieved person and Protection Officer.
- However, the Protection Officer may submit such the “Safety Plan” in Form V to impress upon the magistrate the necessity and urgency of particular kind of orders.
- **Safety plan can be prepared at any time – before and during litigation or even after orders are passed**

Below is an example about how the Protection Officer made use of safety plan Form V during the period of litigation:

Sunita, who was working in a rural hospital as an ANM, approached the Protection Officer for protection and remedies under PWDVA after an episode of violence from her husband.

Since then, for sake of safety, she along with her 5 year old child, had begun to live separately from her husband. She did not want to break the marriage; she only wanted the violence to stop. She filed the DIR and Application u/s 12, along with which she prayed for interim protection orders and maintenance for child.

After she started living separately, her husband began to stalk her, and tell her colleagues in the hospital and even the tea stall owner that she has a loose character.

The hearings had begun, and during the hearings the Protection Officer brought the stalking to the notice of the court and pressed for interim orders. However, the interim orders were not passed.

*The Protection Officer then helped Sunita fill form V – Safety Plan, and submitted it to the Magistrate. **The risk she faced emerged clearly out of this safety plan and the Magistrate without delay passed interim protection orders restraining the husband from stalking her or visiting her place of work.***

There are also instances wherein the Magistrate has directed the Protection Officer to prepare a safety plan, so as to justify passing of quick protection orders. An example of such referral is presented below:

Meena and Rajendra's was an inter-caste marriage and against the wishes of either of the families. Within a period of seven years, Rajendra died in an accident leaving behind Meena and three young children. Meena tried to negotiate with her in-laws for staying in the joint-family household in which Rajendra had a rightful share.

*However, the in-laws soon began to harass and threaten her and her children of dire consequences if she ever tried to enter the house. **Meena filed a case under PWDVA for protection and residence orders.***

*While the case was being heard, the **Magistrate directed the Protection Officer to prepare a safety plan for Meena and her children.***

*Based on the details of violence and risk noted in the safety plan of emotional violence, economic violence and dispossession of shared household, and threats to life, the Magistrate directed Protection Officer to make a home visit to check possibility of granting a separate portion of the joint family household for Meena's use. With the help of the Protection Officer's report, the **Magistrate passed the Residence Order** in which the in-laws were directed to provide two rooms on the first floor for use of Meena and her children. Along with this order the **Magistrate passed a Protection Order** that directed the respondents against committing any form of violence.*

The Protection Officer, after a four years follow-up has reported that Meena not only got the possession but is also now living peacefully.

These are two real-life examples (with names of persons changed), in which Safety Plan doubly justified the necessity and urgency of protection orders, the specific orders for reliefs and other related reliefs.

3.5.3 Who can prepare the Safety Plan in Form V?

The Protection Officer, the Police Officer or Service Provider can prepare the Safety Plan in consultation with the Aggrieved Person (woman) and with her consent.

The Protection Officer may share the Safety Plan with other stakeholders for improving the coordinated effort in preventing DV or recurrence of DV.

It can also be prepared by the Aggrieved Person herself (or her lawyer) and she can submit it to the court if she so desires. If Aggrieved Person has not filled columns C and D, the Court can refer her to the Protection Officer for completing the Safety Plan.

3.5.4 When can the Protection Officer prepare a Safety Plan?

Safety plan can be made at any stage of the case proceedings, when there is likelihood of danger. Although Rule 8 (1)(iv) PWDVR states that it should be prepared at the time of filing the application in the court, it does not prevent the Protection Officer from preparing it before or at any stage after the Aggrieved Person (woman) has filed the application.

It can be prepared -

- while/ immediately after preparing the DIR,
- while filing the application (used for seeking specific orders with details ways of ensuring protection)
- while seeking emergency orders and interim orders,
- after passage of protection orders,
- after execution of orders, but yet there is risk to life/harm
- if there is breach of protection order or any other relief order and a complaint is being made to the court or the police
- when she decides to file a criminal case against the perpetrator/s

POINTS TO REMEMBER AT PRE-LITIGATION STAGE

1. **Do not trivialize the aggrieved woman's complaint.** Whatever is the severity or nature of violence – especially subtle forms like *putting restrictions on the clothes she wears, to whom she should talk or be friendly with, what she should eat, etc.* are worthy of being covered under the DV Act.
2. “Not-so-severe” forms of violence are an **opportunity for preventing severe forms.** Remember, with time violence escalates. Interpret / use section 4 “likely to occur” and ask for Protection Order under sec 18 PWDVA
3. Recall the myths about DV, such as – “now-a-days women do not want to adjust” etc. explained in Part 1 of this Manual – **violence is ‘violence’, it cannot be justified what-so-ever.**
4. Since DV definition includes all forms of violence and therefore **calls for protection from all forms of DV**, emphasize so by stating specifically the forms of violence in item 6 column 4 – ‘any other’ of the DIR Form I
5. **Preparation of DIR by itself does not activate the judicial process.** For this, an application to the Magistrate under sec 12 is necessary.
6. **A DIR is not mandatory** for activating PWDVA, meaning that a woman can directly file an application under section 12 without a supportive DIR in order to initiate action
7. **More than one DIR can be prepared.** Separate DIRs can be made if woman alleges new facts/ episodes – even if it is during litigation period – after she has filed application in court
8. **Court has the powers to initiate suo moto action** if DIR reveals a cognisable offence
9. Copies of prior DIRs that are prepared by Protection Officer and submitted to the court can be **used as evidence** in subsequent cases.
10. A DIR might be useful to the aggrieved person in **accessing other forms of support services**
11. In cases where the woman approaches the Court directly, and where the Court directs the Protection Officer to record and submit a DIR, s/he must read the Application under section 12 PWDVA filed by the AP. **Ideally both DIR and Application should be in sync.**
12. In case a new incident has occurred, but not recorded in the Application, the Protection Officer may **record the new incident in the DIR** along with some proof or basis that the incident has occurred, and a note to that effect can be written in the ‘Remarks’ column in item 4 of Form I of the DIR.
13. Help **access appropriate partners in the multi-agency support system**
14. **Ensure that a safety plan is in place** where necessary.
15. **If submitted to the court** it helps the Magistrate understand the urgency of the situation and pass quick orders.

4.0 ROLE OF PROTECTION OFFICER DURING LITIGATION

During the period of litigation, the PROTECTION OFFICER's role is to do the following:

Step 6: If aggrieved woman so desires, assist her in making an Application to the Magistrate under section 12 PWDVA

- Seek protection orders and interim orders in the Application
- Seek *ex-parte* orders, if necessary, through an affidavit in Form III PWDVR, as a measure to immediately stop the DV
- Arrange for legal aid for the aggrieved woman under Legal Services Authority Act, 1987

Step 7: Assist in making an application / affidavit for interim and/ or *ex-parte* orders

Step 8: Serve notice to the Respondent as per the directions of the Magistrate

Step 9: Assist the Magistrate as per her/his directions

The judicial procedure/ litigation process gets activated only after the filing of the Application under section 12 PWDVA with the Magistrate, referred to as step 6 of the process.

Section 12 (1) PWDVA states:

An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the Act:

Provided that before passing any order on such an application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or Service Provider.

4.1 STEP 6: ASSIST THE AGGRIEVED WOMAN TO PREPARE AND FILE THE APPLICATION UNDER SECTION 12 OF PWDVA

The Protection officer may assist the aggrieved woman to prepare the Application if the woman so desires. Form II of PWDVR⁹ can be used to prepare the Application.

If the Protection Officer assists the woman to prepare and file the application or files it on her behalf, it has to be accompanied with the DIR. (If the DIR has been prepared,

⁹ Please refer appendix 5 for Form II of PWDVR

but the woman does not want to file an Application under section 12 PWDVA, the Protection Officer has to submit the DIR to the concerned officer in the Magistrate's Court)

The aggrieved woman can file the Application even without the DIR. The DIR is not mandatory¹⁰, although it is preferred. If the Magistrate, feels that a DIR is necessary in a particular case, she/he can direct the Protection Officer to prepare the DIR.

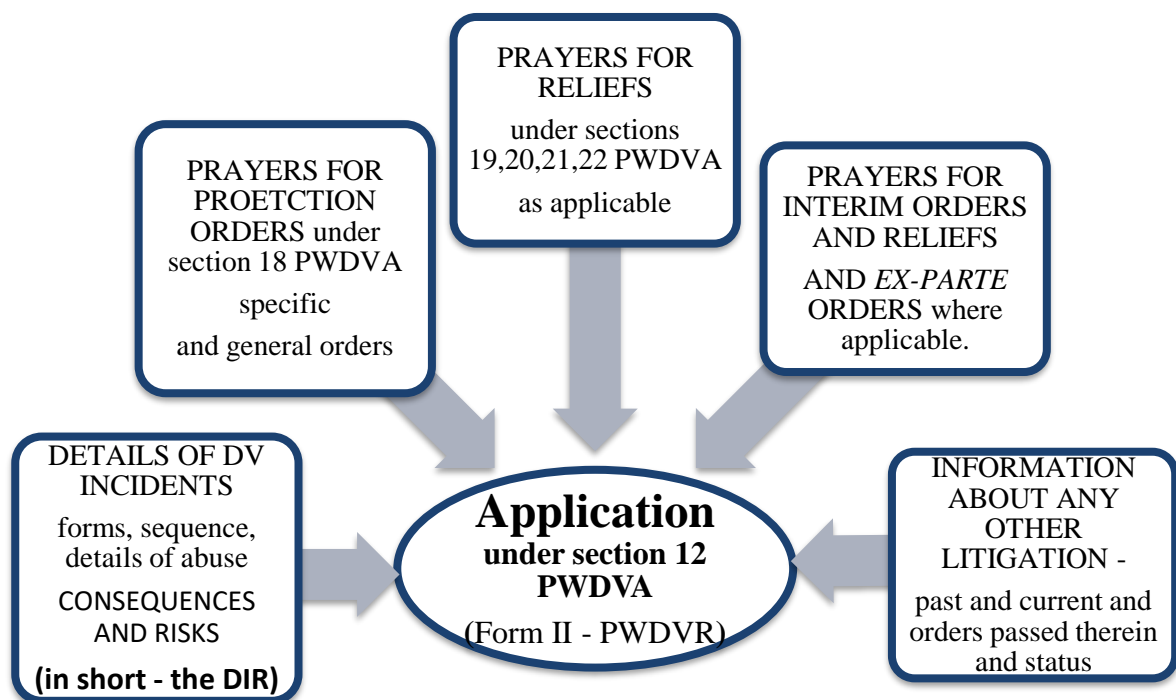
The aggrieved woman has the option of engaging a lawyer for preparing and filing the Application, without assistance of the Protection Officer. Any lawyer - whether private or one deputed to her under Legal Services Authority Act, 1987, can do so.

4.1.1 What is an Application under section 12 PWDVA?

In order to initiate/ activate the legal process, the aggrieved woman has to file the Application under section 12 of PWDVA.

This Application has the following important components presented in the diagram below:

Major components of the Application made under section 12 of PWDVA



The following documents are attached along with the Application:

1. the DIR (if the Protection Officer or service provider has prepared it),

¹⁰ Amar Kumar Mahadevan v/s Kartiyayini MANU/TN/9632/2007 – Order of the Madras High Court

2. any documentary evidence in support of allegations, and an affidavit¹¹ to say that all contents of the Application are true and for praying for interim and *ex-parte* orders, are to be attached with the Application.

4.1.2 Which is the competent court where the application can be filed?

Section 27 provides that an Application under section 12 PWDVA can be filed before either a Judicial Magistrate of the first class or a Metropolitan Magistrate (in metropolitan areas) within local limits where:

- (i) The Aggrieved Person resides (either permanently or temporarily) or carries on business or is employed
- or
- (ii) The respondent resides or carries on business or is employed
- or
- (iii) The cause of action has arisen, - meaning the place where the acts of domestic violence are alleged to have taken place.

This means that an aggrieved woman is provided with ample choice as to where she can file an application. She may choose either of the above three options.

The Application is to be submitted to the Registrar of the Court. The Registrar allocates the case to the appropriate Magistrate Court as per the jurisdiction. The verification is done here on the affidavits, following which begins the procedure for service of notice to the Respondent.

4.1.3 When can an Application under section 12 of PWDVA be filed?

- There is no time limit within which an aggrieved person must file a case under PWDVA.
- This means that the aggrieved woman can file an application for domestic violence acts on her that happened in the past; **even in the distant past**.
- She can also file an application if she thinks/ feels that DV is ‘likely to be committed’ based on her past experiences.

This is because PWDVA uphold the belief that domestic violence – whether subtle or overt, happens over a period of time, that each form of violence is interconnected and that it is “continuing” violence. For example, if there has been physical abuse in the past, even distant past, and it ceased because the woman left the abuser’s house, she continues to face its psychological effects because her rights, such as right to reside in the household etc. are being violated. She might even face social stigma - for example in Maharashtra, a deserted woman is addressed as a “thrown away” woman.

¹¹ More about the affidavit is explained further down in this manual

The Application should therefore clearly state the impact of current and past DV that has /is having on her now. If DV is likely to occur if she claims her rights under any law (PWDVA or otherwise), this should also be clearly stated.

Here is an example of continuing violence

Laxmi, through a divorce by mutual consent about 10 years back, holds custody of her daughter who is now 16 years of age. The consent terms included a permanent alimony of Rs. 5 lakhs for both of them and a promise to support Deepali's higher education when required. Laxmi now needs extra funds for her daughter's higher education, which her ex-husband refuses to pay. He accuses them of mismanaging the alimony amount and of being money minded and greedy. This means that economic violence is taking place on Deepali and her daughter, and so is emotional violence.

4.1.4 How to prepare the Application?

If the Protection Officer is preparing the application, s/he may use Form II as per instructions in it and without fail attach the DIR with it.

Note: Application under section 12 PWDVA can be made in any other format as well, so long as it contains details about the DV that has, is being or is likely to occur; and the prayers for orders under PWDVA. However, one should ensure that the contents of the DIR are in line with the Application and do not contradict it.

4.1.5 How to fill Form II:

- **Item 1:** The Application in Form II is under section 12 PWDVA.
When Protection Officer is assisting Aggrieved Person to prepare the Application, tick against 'Aggrieved Person' option only.
In an emergency case wherein the woman is not in a position to read/write, Protection Officer would file the application 'on behalf of' and append her/his signature.
- **Item 2:** requests the court to take cognizance of the DIR (Form I). Form II should be submitted along with the Form I (DIR) primarily because the contents of Form II do not mention details of the DV.
It also lists out the various orders that the court may pass with reference to the DIR. The Protection Officer in item 2 may add a line to draw attention of the Magistrate to item 6 of DIR- 'orders needed' – saying "*Kindly also refer DIR point no.6*".
Remember, in each and every case, without fail, to pray for protection orders u/s 18.
- **Item 3:** Orders required: Sub-item (i) to (vii) are orders to be prayed for by selecting appropriate details of orders listed in this item. Ask for *ex-parte* interim orders under Section 23(2), if protection and relief is required urgently.

Some points to remember/ follow while writing item 3 – ‘orders required’:

- **Item 3(i)** – specifies the kind of **Protection Orders required**. Use the option “Any other order, please specify” to ask for “*prohibiting the respondent from committing economic violence (abuse) /physical abuse/ emotional abuse/ sexual abuse*” as may be relevant, because these constitute the definition of domestic violence.

Remember, breach of only the ‘Protection Order’ would call for invoking section 31, in which, the testimony of the woman is sufficient for initiating criminal proceedings against the respondent and attract punishment with imprisonment of up to 1 year and/or fine up to Rs.20,000/-.

Even when there is threat of DV, protection order can be prayed for.

- **Items 3(ii), 3(iii), 3(iv)**, tick-mark orders that are relevant, and use the option – “Any other order, please specify” to detail out specific orders.

For example – *in a residence order if the aggrieved woman asks for order for entry into the house, also pray for orders for providing police protection to gain the entry, and that if she finds the house locked, permission to break the lock and enter.*

For example – *for an order for monetary relief, if feasible, one may ask for a total amount to be paid monthly into a particular account of the aggrieved woman.*

- **Item 3(vi)** – compensation order: Do not disregard this item. Help the woman to arrive at a compensation amount and ask for it. In addition to monetary reliefs u/s 20, compensation for damages for injury, mental torture and emotional distress caused due to DV can also be claimed u/s 22.
- **Item 3(vii)** – any other orders, please specify: Under this item, ask for orders not covered in the application earlier such as
- for interim and *ex-parte* orders, by claiming urgency for it
 - for regaining possession of *stridhan* and important documents, assets etc. (section 18(e))
 - any other order – to be specified

Significance of the various orders is explained further down in this manual.

- **Item 4:** PWDVA can be used in addition to any other law (section 36). Hence details of any previous litigation involving the respondent are to be given under this item after enquiring with the woman. Example - whether maintenance or compensation has been claimed, whether respondent was sent to judicial custody (and length of time), and order obtained and/or enforced in any other litigation against the respondent.
Such information has to be disclosed, which if withheld can amount to misdirecting the court and will weaken the case.
- **Signature:** Application has to be signed by the aggrieved woman though the lawyer if assigned, with a verification statement signed by the woman – the ‘deponent’. If there is no lawyer, it will be signed only by the Aggrieved Person.
If Protection Officer assists in making the Application in Form II it has to be signed by her/him as well, with date.
- Assist the woman in preparing the affidavit in Form III if interim and *ex-parte* orders are prayed for. It has to be signed and verified by the aggrieved person (deponent) who is filing the Application.

4.1.6 File the Application in the court

Prepare number of sets of Application copies as required, along with the DIR and relevant documents; and the affidavit in Form III¹², where applicable – for the Magistrate, the aggrieved woman, the respondent/s and the Protection Officer.

When these sets of application are submitted to the court, a court case number is assigned on every copy. One remains with the Magistrate, one is to be given to the woman and one is for the Protection Officer

Once the application is filed, the Protection Officer may request the Magistrate to arrange legal aid for the Aggrieved Person or otherwise facilitate the Aggrieved Person’s to seek legal aid.

4.1.7 How to prepare the aggrieved person for filing the Application under section 12 PWDVA

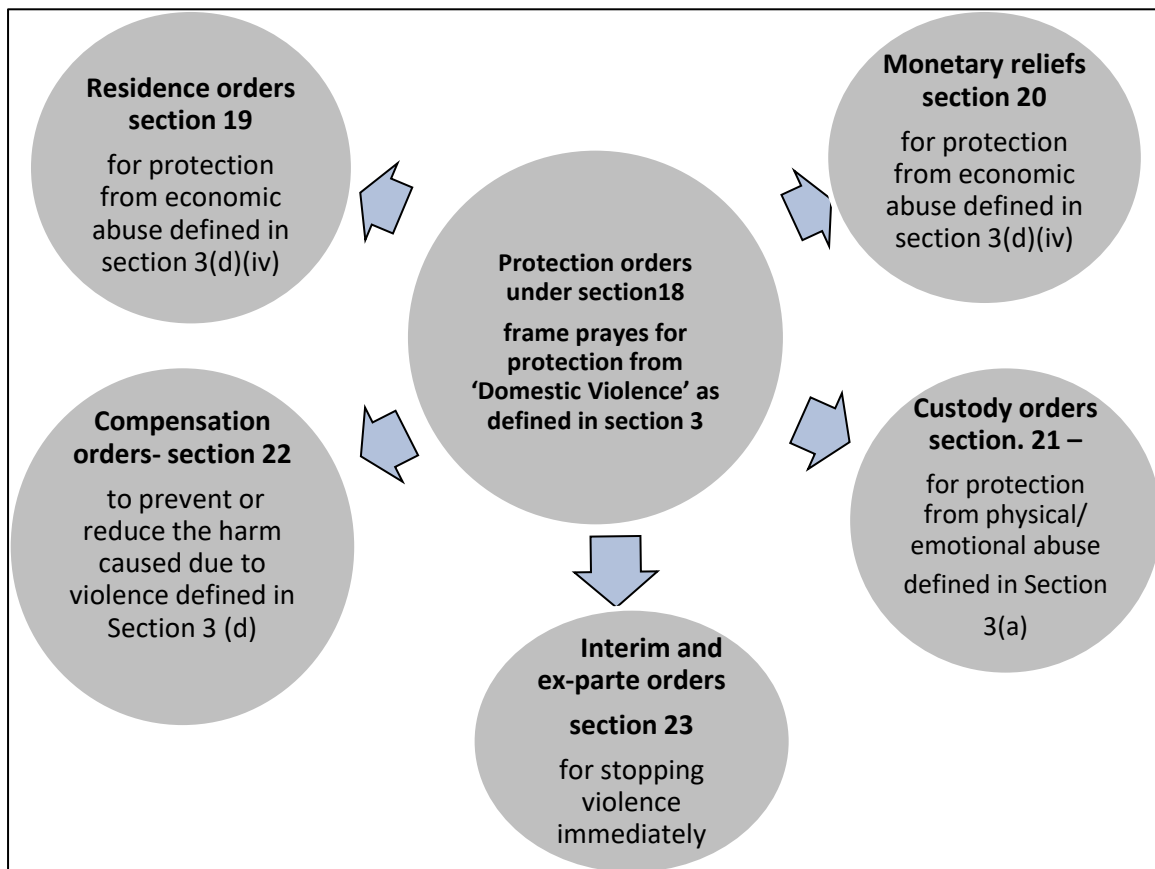
- ensure that the process for helping the aggrieved woman to make an informed choice, as explained in the earlier part of this manual, has been followed
- inform the aggrieved woman that the set of Application (including other documents) that would be submitted to the Magistrate
- inform the aggrieved woman that emphasis in the Application is on seeking the appropriate orders
- fill items in Form II only after discussing with the woman about what orders are to be prayed for.

¹² Refer appendix 7 for the format of the affidavit – Form III of PWDVR

- ensure that the woman has understood all the contents of the Application and agrees with its contents as being true
- also inform the woman that a Protection order (passed under section 18) is valid or in force until she applies to the Magistrate for a discharge or alteration
- accompany or arrange for escorting the woman to the court to file/ present the Application under section 12 PWDVA to the Magistrate, if required
- familiarize her with the court infrastructure – the people, place and the formalities. The Protection Officer can suggest that she sits in any Magistrate’s court to see how proceedings happen, how people speak in the court, show her where the chart/ board for the day is available, etc.

THE SIGNIFICANCE OF THE VARIOUS ORDERS THAT CAN BE SOUGHT UNDER PWDVA

The orders that can be sought for under PWDVA are presented in the figure below. Protection orders are “stop violence” orders under section 18 are the soul of the PWDVA. All other orders sought under sections 19 to 21 are reliefs or remedies to ensure that the DV does not continue, occur or recur.



Interim and *ex-parte* orders can be sought for protection as well as reliefs under sections 18 to 22

Protection orders –Section 18 PWDVA

- **Protection orders are the “stop-violence” orders;** i.e. to stop any of the following forms of violence, be it physical, emotional, sexual, or economic.
- They are not just about stopping violence that is currently occurring but also stopping the recurrence/ occurrence of any form of violence.
- The Magistrate can grant any of the orders as specified in section 18; some of which are also listed in item 3(i) of Form II.
- Orders specific to the act of violence and not listed in item 3(i) can be asked for in the “any other order”.

Tip: Please refer to the section 3 PWDVA – and use definition of Domestic Violence to frame the prayers. This will ensure protection orders for all forms of violence and justify the reliefs that are prayed for.

Some examples of prayers that can be added to the list already provided:

- *A general order of ‘Prohibiting the respondent from committing any form of domestic violence’ may be prayed for.*

Certain specific orders also can be prayed for -

- *Prohibiting the respondent from committing economic abuse that deprives the AP of household necessities and her right to maintenance*
- *Preventing the respondent from emotional abuse caused due to continuous criticism over household work by the respondent/s and verbal abuses to AP’s parents*
- *Ordering the parents for stopping the marriage that they are forcing on their daughter*

Six reasons why a Protection order is a must for every case of DV:

1. A Protection Order (passed under section 18) is valid or in force until the aggrieved person applies to the Magistrate for a discharge, meaning that it applies until the woman feels/ thinks that the perpetrator’s violent behaviour/ actions have ceased and she is feeling safe.
2. It helps promote or reinforce the belief that
 - a. DV is something that should not be tolerated,
 - b. that a woman (and her children) have a right to violence free, peaceful and dignified life, and for which she can claim remedies under PWDVA
3. The aggrieved woman wants the violence to stop. And the Respondent, who is directed to stop violence by a supreme authority, is likely to conform.

4. Breach of 'Protection Order' makes it an offence under section 31 PWDVA that attracts a punishment with imprisonment of up to 1 year and/or fine up to Rs.20,000/-.
5. This is the only law that has provided for punishment through section 31 for having breached a court order
6. Testimony of the aggrieved person is sufficient for invoking section 31, if protection order is breached.

Residence orders – section 19 PWDVA

Section 17 of the PWDVA recognizes right of every woman in a domestic relationship to reside in a shared household whether or not she has any right, title or beneficial interest in it.

When a woman is not allowed entry to the shared household, it amounts to economic abuse, and this is Domestic Violence - Refer Section 3(4)(c).

This section recognises that most titles – to the households whether owned or leased are in the name of the head of the family, mostly males. As per property laws, this head has the option of allowing or restraining any member of the household who do not hold any stake in it. In such circumstances, women become most vulnerable, and the law is sensitive to this fact.

Through section 17 PWDVA, the law provides a legal stake to the DV survivor in the shared household because of the domestic relationship with the respondent. If she or even her husband (respondent) do not hold any title in the house, yet she has the right to reside in it. She cannot be evicted from it or excluded from it or from any part of the shared household.

It further provides that no woman in a domestic relationship can be evicted from the shared household; implying that even if the respondent is a woman, she cannot be evicted or restrained from entering the house. This provision is significant because it upholds the right of every woman to reside in the shared household, assuming that all 'women' in a patriarchal set up are vulnerable.

It is imperative that right to residence can be exercised meaningfully and she will be able to reside in the house (the respondent's own house or rented house – as per residence order) only if she is not subjected to violence. Therefore, together with residence orders the woman (DV survivor) ought to ask for and get Protection Orders. As we know, if protection order is breached it becomes an offence punishable u/s 31 PWDVA.

For the purpose prevention of or protection from DV, some of the residence orders that can be sought are as follows:

1. **Restraining orders:** Restraining the respondent and/or his relatives from one or more of the following -
 - Dispossessing or disturbing possession of the DV survivor from the shared household, whether or not the respondent legally owns/ rents or otherwise (19)(1)(a)
 - From entering any portion of the shared household where the DV survivor resides(19)(1)(c)
 - Alienating or disposing off the shared house or encumbering it(19)(1)(d)
 - Renouncing his rights from the shared household(19)(1)(e)
2. **Orders directing the respondent to remove himself** from the shared household. (19)(1)(b). The law being sensitive to women's status in society prohibits removal of any woman who may also be a respondent from the shared household (19)(1) proviso
3. **Other orders**
 - to execute a bond with or without sureties for preventing the respondent from committing DV
 - directing the Police for providing protection or assisting woman (DV survivor) or person on her behalf in implementation of residence orders
Tip: In her application she could specify the need for such directions to be given to the police, including the direction to assist her in breaking open the lock of the residence, if found locked, etc.
 - directing the Police in implementing the protection order
 - any other orders that put additional conditions for protection and safety of the DV survivor and her children while claiming their right to residence
4. **Other orders that enable the DV survivor to claim her right to residence in the shared household** include
 - Directing the Respondent to find an alternate accommodation, similar to that of shared household for the DV survivor, and paying rent for it where required (19)(1)(f)
 - Imposing obligations on respondent for paying rent, or other payments for fulfilling financial needs and resources

Monetary reliefs - Section 20 PWDVA

Domestic Violence has immediate monetary implications for the survivor; the family in the short run; and the community, the state and the nation in the long run.

Important points to note

- PWDVA recognises that monetary losses are incurred due to DV.
- Explanation I under Section 3 defines economic abuse as a form of ‘Domestic Violence’. It includes deprivation of economic/ financial resources that she is entitled to, disposal of or alienation of household facilities or assets, and prohibition/ restriction to enjoy resources of the shared household.
- In order to protect the aggrieved person and her children from economic abuse (form of Domestic Violence), monetary reliefs are granted.
- The aggrieved woman should therefore pray for an order for ‘*protection from economic abuse*’ under section 18, in the Application made under section 12

PWDVA grants power to the Magistrate to direct the respondent to provide monetary relief towards –

- medical treatment of the aggrieved person,
- loss of earnings because the aggrieved woman is unable attend employment
- losses because of destruction, damage, of property
- monetary losses due to removal of any property from the control of the aggrieved woman
- expenses incurred in taking safety measures – such as travel to safe place, or expenses for lodging herself in a hotel, for phone calls, etc.
- maintenance for aggrieved woman and her children under PWDVA even if she has been granted maintenance under section 125 CrPC or any other law, including personal laws
- any other losses or expenses incurred by the aggrieved woman and her children due to DV

Keeping this in mind, **at the stage of preparing the Application, the Protection Officer may ask for any of the above monetary reliefs**

Section 20 **values the standard of living** of the aggrieved woman and her children and empowers the Magistrate to decide

- the **quantum** of relief based on the standard of living
- **how maintenance is to be paid** - whether in lump-sum or monthly payment
- the specific **period** within which the monetary relief should be paid

The Magistrate can accordingly pass orders for monetary relief specifying the quantum, the manner of payment, the time line, and other details.

In case the Respondent does not pay or comply with the monetary order, the Magistrate has the power to direct Respondent's employer or debtor to directly pay to the aggrieved woman out of the wages/ salary or the credit of the respondent.

Custody orders – Section 21 PWDVA

Section 2(b) of PWDVA defines “child” to mean any person below the age of eighteen and includes in its definition adopted, step and foster children of the aggrieved person.

Upholding the vulnerable position of women in our society, Section 21 PWDVA provides for custody orders for the following reasons:

- i. to protect the children from domestic violence
- ii. to ensure that they are not used as pawns to coerce the woman to stay in a violent domestic relationship

Custody orders under section 21 grant temporary custody of children to the aggrieved woman. For permanent custody (in case of dispute) the aggrieved woman or the Respondent would have to access the Guardianship and Wards Act or the Personal Law that is applicable to them.

The Magistrate also has the power to grant visitation and specify arrangements for visit of the child/ children by the respondent. However, if the Magistrate is of the opinion that such visitation is harmful - in the best interests of the child, s/he can refuse to allow such visits.

In deciding a case for temporary custody, it is a good practice for a Magistrate to consider what are in the best interests of the child/children. Criteria for ‘best interest’ need to focus more on factors conducive for the healthy psycho-social care and growth of the child rather than economic or material factors. Manual for Protection Officers prepared and published by Lawyer's Collective, New Delhi, have listed the following questions to assess the ‘best interest’ of the child:

- Who would have better care and consideration for the welfare of the child;
- Where is the child more likely to be happy;
- By whom the mental and physical development and comfort of the child can be better looked after;
- Who has the desire, determination, concept and capacity to provide for better education and round-the-clock nursing of the child; and
- Who would be available by the side of the child when the child needs love and affection, care, counselling and protection

Compensation orders – Section 22 PWDVA

PWDVA recognises that the aggrieved person has a right to be compensated for the pain that she had to undergo/tolerate due to physical injury, mental torture and other emotional distress.

Section 22 recognises that losses to a woman facing DV are much beyond the actual material expenses she has incurred due to DV. Hence compensatory orders under this section are different from monetary orders under section 20.

In other words, a compensation order is over and above monetary orders granted under PWDVA.

It can be applied for in addition to any other claim that she may have made under any other civil law.

If she has received compensation in other civil cases, the Protection Officer must make sure that it is disclosed to the court under item 3(iv) of the Form II.

The amount of compensation is determined by the Magistrate after assessing the facts and circumstances of the case and the extent of injuries sustained.

Interim and *ex-parte* orders – Section 23 PWDVA

These are extremely important orders that address the urgency to provide immediate orders to the respondent to stop-violence and urgent reliefs as necessary to a woman at the risk of DV.

In other words, the provision for such orders ensures an immediate halt to DV and is a quick preventive measure.

It helps the aggrieved woman to proceed with the litigation in a less threatening or non-threatening environment. More about this provision is explained below as Step 7 of the procedure.

4.2 STEP 7: APPLICATION FOR INTERIM ORDERS AND *EX PARTE* ORDERS S.23 PWDVA

4.2.1 What is an interim order?

An interim order is an order that is passed during the period of trial, prior to passing of the final order. The final order is the outcome of the entire trial given at the end. Under PWDVA, which is a law civil in nature, provision for interim orders is primarily to prevent DV that can harm the aggrieved woman and her children further, during the period of trial.

4.2.2 When can an interim order be prayed for?

If the circumstances of the aggrieved woman call for immediate relief from violence or for preventing recurrence of violence, interim orders – for protection and along with which other reliefs such as monetary relief, custody, residence orders as necessary can be sought for under section 23 PWDVA.

4.2.3 How can an interim order be obtained?

The risk or the threat to the aggrieved person who is being subjected to violence needs to be clearly written in the Application itself as made under section 12, and interim orders can be asked for. No separate application is required¹³.

Interim orders can also be passed on the basis of affidavits and/ or oral arguments. The format of Form III can be used to seek interim orders as well. How to fill Form III is explained further in this document.

4.2.4 When can the Magistrate pass an interim order?

An interim order can be passed any time during the trial period.

If the Magistrate on her/his own finds that immediate relief is required, s/he may pass an interim order, even the aggrieved woman has not prayed for it.

On the basis of an affidavit (in Form III) which if submitted along with the Application under section 12, an interim order may be passed even before the notice is served on the respondent or even before the respondent appears in court. This is termed as an *ex parte* interim order

4.2.5 What is an *ex-parte* order?

An *ex-parte* order is one that is granted without prior notice to the respondent or in the absence of the respondent. *Ex-parte* orders may be granted when the aggrieved person's application *prima facie* shows that the respondent is committing or is likely to commit domestic violence, and where the risk is serious/high.

These orders may also be granted when the respondent fails or refuses to appear in Court despite written notice being served.

Ex parte orders can be either interim or final in nature.

4.2.6 How can *ex-parte* orders be sought?

For applying for an *ex-parte* order (interim / final) Affidavit in Form III as prescribed in PWDVR Rule 6(4), signed by the aggrieved person or other person on her behalf who has made and application u/s12 PWDVA as the 'DEPONENT¹⁴' should be used.

¹³ Vishal Damodar Patil vs. Vishakha Vishal Patil 2009 CrLJ 107, Bombay High Court order

¹⁴ The 'Deponent' is the aggrieved person, or any person on her behalf if the woman is not in a position to sign because of physical or mental trauma. A verification statement that the contents of the affidavit are true to the best knowledge of deponent is also to be made.

Note: Section 28(2) empowers the Court to lay its own procedure. It can use these powers to grant *ex-parte* orders and also direct the Protection Officer about the manner in which it is to be enforced.

4.2.7 How to fill Form III for obtaining interim and *ex-parte* orders?

An affidavit under section 23(2) of PWDVA and Rule 6(4) and 7 of PWDVR is to be made in Form III.(Please refer appendix 7 for Form III)

An affidavit is a statement given to the court on oath by the ‘deponent’. (Deponent is the person who has filed Application under section 12.)

It must be addressed to and submitted to the same court where the Application u/s 12 has been filed.

The details filled in Form III should be consistent with statements made in Forms I and II.

- **Item 1:** Fill as indicated
 - **Item 2:** the aggrieved person, if she is the mother of the children, can put her own name as the guardian of minor children.
 - **Item 4:** should mention the address where the deponent had been living or is living with the Respondent – whichever is appropriate, along with the period.
 - **Item 5:** Refer to the Application and point 6 of the DIR and detail out the orders or reliefs sought or prayed for, and write the relevant section numbers
 - **Items 6, 7, 8** are self-explanatory
 - **Item 9:** is very significant in seeking *ex-parte* interim orders. The following points should be written precisely and accurately:
 - Fears of the aggrieved person about DV being repeated, escalated, fear of injury, etc. and the possibility of adverse consequences
 - The cause of fear – such as threats from respondent about hurting the woman and/or her parents/ supporters/ children, and/or experiences of Respondent’s violent behavior in the past in response to the woman’s complaints to the police/ NGO/ family member
 - Details of possible nature of violence apprehended may also be written - such as physical violence, sexual assault, throwing her out of the house, verbal abuse, creating nuisance at her workplace, stop giving her money to run the house, and such other
- Tip:** Filling up the safety plan (Form IV) may help in recording item 9 accurately

The Protection Officer may accompany the aggrieved woman while she files an affidavit and appears before the Court to press upon the Magistrate the urgency of such an order.

4.3 STEP 8: SERVICE OF NOTICE

Section 13 puts the duty on the Protection Officer to get the notice served on the respondent and on any other person, as directed by the Magistrate.

4.3.1 What does the ‘Notice’ that is to be served on the Respondent contain

The court may issue notice in Form VII - PWDVR, or in any other format.

It contains the following:

- Names of the respondent/s and complainant
- Address of the place where the notice is to be served
- Details that facilitate identification of the person/ place
- The section under which the application is filed
- The date and time of when the respondent should appear before the Court

4.3.2 Time limits in serving notice

- within two days from the date of filing
- or under certain circumstances any reasonable time as allowed by the Magistrate—for example, if the respondent does not live in the same city or if the respondent’s whereabouts are unknown

The intent of the PWDVA is to provide immediate and quick relief, and therefore Section 12(4) provides that the Magistrate fixes the first date of hearing within three days of receipt of the Application from the aggrieved person (section 12(4)).

4.3.3 Who can serve the notice

- Protection Officer’s duty is to get the notice served, once it is given by the Magistrate
- Protection Officer can herself/himself serve it
- Protection Officer can direct any other person serve the notice (Rule 12(2)(a)). If so, it should be done under her/his supervision. For example, a Protection Officer may delegate this duty to any office staff available to him/her, and ensure that the notice is served
- Protection Officer can request the Magistrate to issue orders to the police or the process server for serving notice
- Protection Officer can request the Magistrate to issue orders to the police to assist her/him if violence from the respondent or his family is anticipated

4.3.4 Where can notice be served

- Place of residence or where he ordinarily resides
Or
- Place of employment
- In practice, one notice for each address is prepared, and the Protection Officer may use her/his discretion as to where it can be served at the appropriate time/day.

Check list for the Protection Officer before serving the notice

- Get the complete name/s and addresses of respondents and other details that facilitate their identification
- This address where the notice is to be served should appear on the notice. It can be served at the respondent's place of residence or place of employment or any other where he is likely to be present.
- Ensure that a copy of the application and the DIR is enclosed along with the notice. Both these documents provide details on the nature of violence alleged and the relief/s sought
- In case the Protection Officer requires that the police should accompany, seek their help in writing
- Having local contacts of persons who can be of support to the Protection Officer in searching the address or locating the respondent and other such information is helpful

4.3.5 How to declare service of notice

- The notice would be deemed as being served only if the Protection Officer gives such a declaration in writing. The declaration should be accompanied with a report that contains details of when, where, to whom and how the notice was served.
- The Protection Officer can also make an oral statement on the date fixed for the appearance of the respondent and mention the means by which notice was served (Rule 13(3)), and/or also submit a report in writing, so that it helps the Magistrate to pass interim orders (using powers under section 28) if she/he thinks it necessary.

Formats of declaration and the report of that the notice has been served is presented below

The declaration about service of notice

To
Hon'able Judicial Magistrate First Class
Court no....., ...Place....

Subject: service of notice to respondent*name*.....
Reference: Case no. , case filed under PWDVA

As per service of notice order, bearing outward no....., the notice has been served at
.....*the address*....on ...*date*.... at*time*..... The report of the service of notice is
enclosed

Name of Protection Officer and signature
Date.....

The Report about service of notice

The notice was received by*name*..... respondent himself / person on behalf of the
respondent who is the*relation*..... of the respondent.

Or

The address where the notice was served was not traceable despite all efforts to trace it.
(some details on why it was not traceable be mentioned)

Or

Protection Officer enquired withwho informed that the respondent does not reside/
employed at the address given

Or

The notice was stuck on theof the given address, as no person was available
(photograph enclosed)

Or

Respondent/ person on his behalf refused to accept the notice

Or

the Protection Officer visited the address where the notice was to be served thrice, but
respondent was not available. The neighbours*name*....informed that the respondent
does come off and on to the given address. It was therefore it was stuck on the door.

Or

It has been sent by email as per the order. The email has not shown delivery failure, and
hence deemed to be received by the respondent and served.

4.3.6 How to serve notice in various circumstances

Situation 1: If Respondent is in Protection Officer's jurisdiction, but not available either wilfully or otherwise

- Deliver a copy of the notice to the “person in charge of the place”, (according to Order V CPC, Chapter VI CrPC), meaning -
 - an adult male family member if the notice is being served at his/her residence
 - the respondent's employer if the notice is being served at the place of employment
- Paste a copy of the notice at a conspicuous place on the premises if the “person in charge” refuses to accept the notice, or house is locked, e.g. on the door
- To avoid delays it is advisable for the Protection Officer to enquire thoroughly with the neighbours and other people if the respondent is staying in the said premises, and then paste it.
- Take a photograph of the notice that has been pasted or take the signatures of the neighbours as having witnessed the notice being pasted on the door/wall/other and submit a report to the Magistrate that the notice has been served.
- Paste a copy of the notice at a conspicuous place on the premises where the respondent is employed if the employer refuses to accept the notice.

Situation 2: Respondent is not residing/ working in the Protection Officer's jurisdiction.

- Notice may be sent to the respondent at the address given in the notice by post, courier, fax, email or any other means provided for with the permission and direction of the court. Some High Courts, such as the Delhi High Court have formulated Rules on the different ways of serving notice.
- The Protection Officer may request the Court to serve the notice through the Magistrate in whose jurisdiction the respondent is residing/ working (whether permanently or temporarily)
- The Protection Officer may send the notice to the Protection Officer in the jurisdiction where the respondent is currently staying for getting it served – whether in other districts of the same state or in other states (a sound network of POs across states needs to be built up for this purpose)
- If the respondent resides or works in a foreign country, then notices may be served through the Indian Embassy of the High Commission of that particular country. (Order V Rule 26A of the CPC).
 - Seek endorsement of the officer authorised by the Indian Embassy which shall be deemed to be evidence of service

Situation 3: If Protection Officer feels unsafe in going to the given address for serving the notice

- The Protection Officer can request the police to accompany her/him if there is likelihood of violence from the respondent or his family.
- S/he can request the Magistrate to issue orders to the police to accompany and assist her/him if violence from the respondent or his family is apprehended
- S/he should ensure that s/he carries her/his identity card issued by the state government stating that s/he is an officer of the court and appointed as the ‘Protection Officer’ under PWDVA.
- Show the card to the respondent or the person-in-charge of the place

4.3.7 Consequences of the Failure to Accept Notice

Rule 12(2)(d) specifies that failure or the refusal to accept notice shall entail the same consequences as provided under Order V of the CPC and Chapter VI of the CrPC.

If the provisions of the CrPC are followed, then the Magistrate can

- issueailable warrants in the first instance
- non-ailable warrants in the second instance.
- pass an *ex-parte* order against the respondent under Section 23(2) of the PWDVA, if the situation demands so.



What should the Protection Officer do if there is a delay in receiving notice from court?

Delay in receiving the notice should be prevented as any delay defeats the intent of PWDVA. Causes of delay need to be probed into and measures be taken to rectify it. If need be, the Protection Officer with the help of higher authorities of DWCD meet up with the judicial officer in charge and other court officers, if the delay is due to poor coordination. The Protection Officer may intimate so to the court in writing, with reasons for the delay and request the court to extend the date.



What to do if there the Protection Officer does not serve the notice as per schedule?

The Protection Officer may intimate so to the court in writing, with reasons for the delay and request the court to extend the date. The reasons should be genuine, because otherwise, the court can take action against the Protection Officer under section 33 PWDVA with imprisonment of up to 1 year and/or fine up to Rs.20,000/-.

LET'S REVISE

- The Application under section 12 must contain a prayer for protection order
- The Application under section 12 may also contain a prayer for an interim order
- Once the application is filed, the Court issues notice to the respondent to appear before the Court on the date mentioned in the notice and respond to the allegations made in the application.
- A copy of the application and DIR accompanies the notice
- PO's responsibility is to ensure that notice is served as per Rule 12(2) PWDVR.
- The notice is to be served within two days from the date of filing or any reasonable time allowed by the Magistrate
- The respondent's attendance in Court provides him/her the opportunity of a fair hearing prior to the grant of any orders against him.
- On filing an affidavit in Form III along with the Application, the Court may grant *ex parte* interim orders at this stage provided that the application *prima facie* shows that domestic violence has either been committed or is likely to be committed.
- The *ex parte* order can be served along with the notice or any time after. However, this order becomes applicable as soon as it is passed, even before the respondent may actually receive it.
- For serving notice provisions of Order V CPC and Chapter VI CrPC as far as practicable are to be followed (Rule 12 (2)(c))
- Once notice is served upon the respondent, the Protection Officer has to make a declaration of service of notice and the means of service to the Magistrate. It is deemed as proof that notice has been served upon the respondent.
- If the respondent refuses to accept the notice or wilfully absconds, the court can issue non-bailable warrants
- The Court has the powers to adopt its own procedure in serving the notice (using powers under section 28(2))

4.4 STEP 9: ASSIST COURT AS DIRECTED BY IT

For this please refer Sec 9(1)(a), 9(2) PWDVA; Rule 10(1), 10(2) PWDVR

It is the duty of the Protection Officer to assist the Magistrate as directed by her/him in the following matters:

1. The Magistrate may direct (order) the Protection Officer **in writing** (Rule 10(1)) to:
 - i. **Conduct a Home Visit** of the shared household premises and make preliminary inquiry, in order to consider granting of an *ex-parte* interim order.
 - ii. **File a report on the financial status of the respondent** after making appropriate inquiry, as directed by the Court
 - iii. **Restore to the aggrieved person the possession of her personal effects**, including gifts, jewellery
 - iv. **Restore possession of the shared household**
 - v. **Assist the aggrieved person to regain custody of her children or visitation rights** under the Protection Officer's supervision, as directed by the court
 - vi. **Assist the court in the enforcement of orders granted** under the PWDVA in a manner directed by the Magistrate.
 - vii. **Take the assistance of the police**, if required, in confiscating any weapon involved in the alleged domestic violence
2. Magistrate may assign certain **duties to her/him for effective use/ implementation** of the provisions of PWDVA and its Rules.
3. Magistrate may issue directions to the Protection officer in a particular case or any other **directions relating to general practice for better handling of cases**.

4.4.1 Conduct Home Visit

The Protection Officer is permitted to make a home visit only if the Magistrate directs her/him to do so.

For what reasons can the Magistrate direct the Protection Officer to conduct Home Visit?

1. **To ascertain or verify facts/ information**
 - a. stated in the Application under section 12 PWDVA or in affidavit in Form III for passing *ex parte* interim orders
 - b. that is alleged or disputed by the litigants
 - c. about where the aggrieved person is currently residing, in cases where Residence Order is claimed
 - d. about patterns of living arrangements, the nature of the shared household (whether joint family), etc. This information would be useful for the Protection Officer in preparing a site plan in cases of Residence Order that requires the woman to live in the shared household, but with separate arrangements
 - e. about the aggrieved person being dispossessed from the shared household

2. To inquire into/ about

- a. the standard of living of the litigants
- b. income of the respondent.
- c. the environment of the home in cases where custody orders are sought and where the “best interest of the child” are to be determined

Tips for conducting home visit

Remember – A Protection officer’s identity is that of an ‘**Officer of the Court**’ and therefore, the Magistrate is required to direct the Protection Officer in writing for making the home visit.

Tips for conducting home visit

- **Seek/ request specific directions from** court such as
 - exact purpose of the visit
 - what exactly to enquire into – e.g. preparing a site plan in case of residence orders, standard of living, presence of other members living in the shared household etc.
 - who all to speak to – e.g. family members, neighbours, or whether discretion can be with the Protection Officer;
 - request the Magistrate to issue order to the police to accompany the Protection Officer
 - request the Magistrate to issue directions to a the Service Provider in the area, or a counsellor or welfare expert to assist the Protection Officer in conducting the home visit
 - by which date the home visit report is to be submitted to the Magistrate
- **Seek proper address with landmarks** such as shops, tea stalls, etc.
- **Schedule the home visits** – especially if long distances are to be travelled, the Protection Officer can club visits of that area, including those for serving notices
- **Organize the home visit**, e.g. Protection Officer may inform the persons at the home of visit to keep certain documents ready, be at home, etc. where appropriate
- **Prepare a check list of what all the s/he will enquire about** and refer to it at the end of the visit to make sure all of it has been covered
- **Make sure that the aggrieved woman is safe** during discussions that can lead to heated arguments. For this the Protection Officer should be firm, non-threatening in communication, and present herself/himself as a court official.
- **Seek police assistance if she/he has any concerns about safety** or request the court to issue directions to the Police to assist her/him.
- **In case the environment becomes hostile and unsafe, leave the place** and report the same to the Magistrate
- **Do not accept any offerings** such as food items, articles (gifts), but explain that accepting these is unethical as it may be regarded as a creating bias



Sometimes during Home Visit respondents might become aggressive and reluctant to provide information. What should the Protection Officer do?

In such situations the Protection Officer may do the following:

- S/he should remain calm.
- S/he should listen to what the family members are saying.
- S/he should not ask provocative confrontational questions, but persist questioning in keeping with the objective of the visit.
- Observe the physical environment, the body language of the family members, the words they use and other non-verbal expressions. These would help the Protection Officer to assess some of the factors proposed to be verified/ inquired into during the Home Visit.
- However, during the course of the visit if, s/he feels unsafe, tone down the discussion, leave the place immediately and report the same with all details to the Court.

4.4.3 Prepare report of home visit

The Protection Officer is required to prepare a Home Visit report after completion of the visit and submit it to the Court within a given date provided by the Magistrate. It should contain details of facts that have been verified by her/him, and her/his opinions – such as the impact of violence, safety or well-being of children, physical set-up of the house and safety of the aggrieved woman in case of residence order, and such other.



Is the home visit report shared with all parties?

- Technically, because the Home Visit report is submitted to the Magistrate, it is accessible to the aggrieved woman and the Respondent/s. However, the Magistrate has the discretion to keep the report confidential under extraordinary circumstances such as - when the report reveals child sexual abuse, or for any other reason that the Magistrate may think fit.
- Any party that is aggrieved by the Home Visit Report can challenge it. The Magistrate, in such situations may permit an examination of the Protection Officer on her/his Home Visit report.

File a Financial Status Report

The Magistrate, as per Rule 10(1)(b), can direct the Protection Officer to inquire into the emoluments, bank accounts, assets and other documents and to submit a report of the same. This inquiry is used for verifying the assets of the parties and assessing their financial status. Such inquiry is particularly important in cases an order restraining the respondent from selling/ giving away his assets or the shared household is prayed for.

The Magistrate can order investigation into the financial status at any stage of the legal proceedings.

A format for home visit report for the purpose of observing the respondent's financial status and responsibilities prepared by one of the courts in Maharashtra is presented below

Home visit report of respondent's financial status and responsibilities

Name of Respondent:

Date -

Address -

Case no.

Mobile no. -

Sr.No.	Observations about financial status vis-a-vis Responsibilities	Report
1.	Place of employment/ business	
2.	Monthly income from employment	
3.	Monthly income from business	
4.	Size of agricultural land/ farm	
5.	Type of agriculture - बागायती, जिरायती	
6.	Monthly income from farming	
7.	No. of members in the household	
8.	No. of earning members in the household	
9.	Type of housing	
10.	No. or rooms in the house and approx. size of the rooms	
11.	Has the house been rented out? If so, the amount of rent collected	
12.	Total income earned from the property	
13.	Details of the members who are dependent on the respondent	



How to conduct an enquiry into emoluments, bank accounts, assets and other documents?

- Only on the directions from the court, would the Protection Officer have the right to enquire into financial emoluments, bank accounts, assets and other documents.
- Even if the Protection Officer holds such an order, it may be very difficult to get the above information. Observation is one way out done through home visits and presenting such report to the court (a sample of which is presented above.) It would also be a good practice to request the Magistrate to pass an order directing the employer of the respondent and/or the bank and/or the revenue officer to provide details to the Protection Officer. S/he may then carry the order when s/he visits the bank/ employer etc.

4.4.5 Restore Possession of the Aggrieved Person's Personal Effects

The Magistrate may direct the Protection Officer under Section 19(8) of the PWDVA, to restore possession of *stridhan* or any other property such as certificates, articles, insurance policies, Fixed Deposit Receipts and such other.

Tips for the Protection Officer to follow in cases of restoration of personal effects:

- | |
|---|
| <ol style="list-style-type: none">1. Before taking any action, ensure availability of (or seek from the Magistrate), a list of items belonging to the woman that are to be restored, and the order for such restoration2. If the list of items is not prepared, the Protection Officer may prepare the list.3. It is advisable to present the Court order along with the 'list of items' at the police station in the jurisdiction where s/he would visit for restoring the items, and take an acknowledgement. This will protect the Protection Officer from allegations of trespass or theft that the respondent/s may make.4. If the Protection Officer anticipates violence, request police assistance or request that the Magistrate for an order directing the police to provide assistance to her/him.5. It is possible that the aggrieved woman may remember certain items to be hers when she sees them, which are not in the listed items. In such case, these may be added at the site if there is no dispute.6. If there is a dispute on certain items and does not get resolved, inform the respondents that the same may have to be presented before the court. (In common experiences of Protection Officers, gold /ornaments are the contention of dispute). Report of disputed items is to be given to the court.7. It is also advisable to inform the police about items that are restored, in writing, to seek an acknowledgement on the copy. |
|---|

4.4.6 Assist the aggrieved person with Custody Issues

Magistrate may direct the Protection Officer under Section 21, Rule 10(1)(d), to assist the aggrieved woman to regain custody of her children. In such as case also, it is advisable that the Protection Officer informs the police of the order issued by the Magistrate before attempting to remove children from the respondent's custody. The Protection Officer may also seek Police assistance if there is likelihood of violence on the Protection Officer and Aggrieved Person during their visit to the shared household.

OTHER QUESTIONS THAT A PROTECTION OFFICER MAY HAVE REGARDING HER/HIS ROLE DURING THE LITIGATION PERIOD



Is the Protection Officer bound to or allowed to follow-up or reach out to the woman after the application has been filed?

- It is not binding under law for the Protection Officer to follow up or reach out to each and every one who has filed Application under section 12 PWDVA.
- S/he may do so if directed by the Magistrate.
- S/he can definitely inform those who have approached her/him, that the Protection Officer's services are available any time. Protection officer may provide her with telephone/ mobile number.



Should Protection Officer attend court on every date given to the woman?

No, Protection Officer need not attend each and every court hearing.



What to do if an aggrieved woman, after filing the Application under section 12 approaches Protection Officer for assistance directly without such directions from the Magistrate?

In such cases, whether the final order has been passed or not, it is the duty of the Protection Officer under Section 9(1)(i) and Rule 8(2) to provide all assistance to stop and prevent recurrence of violence. In such cases, the Protection Officer may -

- Study the application, DIR and any other documents that the woman has
- In case of urgency, can take the case on board (a request for which is made to the judicial clerk) and bring it before the Magistrate for any immediate orders or directions to the Police or Protection Officer for necessary action.

To understand better Let us take the following example of Hilda's case in which interim maintenance order for her and her 3 year old son has been passed

Hilda due to sudden attack of appendicitis is hospitalized and her son is being taken of by her parents. Hilda's husband forcibly takes away her son, abusing her parents terfering in their family matters. Hilda reports the matter to the Protection Officer ediatly. She had approached the Protection Officer for the first time.

In this case, the Protection Officer prepared another DIR, took the case on board for quick hearing and sought urgent orders from the Court. The Magistrate directed the police to help Hilda, or in her absence her parents (and the Protection Officer), to take custody of her son and to produce the Respondent (Hilda's husband) before the court.

- Help the woman prepare a safety plan and accordingly provide assistance for implementing it.
- Provide information as per section 5 PWDVA, and make formal referrals to
 - registered service providers who provide shelter, financial aid, legal aid, counselling, and medical aid including psychiatric / psychological intervention;
 - free legal aid under Legal Services Authority
 - other relevant resources that she can access
- Inform her, where required, that she can file case under criminal law (e.g. section 498A IPC) or under any other family law for maintenance, divorce, property, etc., which can run simultaneously with her current case under PWDVA.

5.0 ROLE OF PROTECTION OFFICER AFTER COURT ORDERS ARE PASSED

The Role of the Protection Officer after the Magistrate passes the final order is as follows:

Step 10: Assist in enforcing the orders

Step 11: Take action if there is a breach of orders

Step 12: Assistance if required with respect to alteration of orders under section 25

5.1 STEP 10: ENFORCEMENT OF ORDERS

Enforcement or implementation of court orders is very crucial in determining the achievements of the objects of PWDVA as stated in its preamble. Protection Officers find enforcement or implementation of orders the most challenging part of the entire process. This part of the manual tries to address these challenges and provide suggestions in overcoming them.

Under Rule 10(1)(e), the Magistrate can direct the Protection Officer in writing to assist in the enforcement of the following orders:

Protection Orders

Residence Orders

Orders for monetary relief

Custody Orders (these are orders for temporary custody only)

Compensation orders

The above orders can be got as Interim and *ex-parte* orders and after completion of hearings the final orders.

Significance of each of these orders has already been explained in the Step 6 in the earlier part of this manual

Any resistance in enforcement of the orders of the Court by the respondent or his representative is deemed to be a breach of protection order or interim protection order (Rule 15).

5.1.1 Role of Protection Officer in enforcing the Protection orders

The Protection Officer may receive a copy of the Protection Order from the court, or the aggrieved woman may bring her copy to show to the Protection Officer. As best practice s/he may do the following:

Best practice

- If the Court has directed the Protection Officer to take action on the Protection Order it **must** be done – such as serving the order on the respondent if it is an *ex parte* order, or a follow-up home visit after a period of time/ periodically, or pertaining to supervision of counselling if the respondent has been directed to seek counselling, etc.
- Even if there are no directions from the Magistrate for the protection officer, yet it is her/his duty to take steps, as permitted under PWDVA for her protection and prevention of DV recurrence
- Ensure that the local police have received a copy of the order from the Magistrate
- Preserve the copy of the Protection Order in the appropriate file

The Protection Officer's role if there is a breach of protection order is very significant, and is discussed further down in this manual.

5.1.2 Role of Protection Officer in implementing orders for Monetary Reliefs

Monetary reliefs are granted for the purpose of

- meeting expenses incurred by the aggrieved woman and children due to domestic violence - such as loss of earnings, medical expenses, destruction of property, expenses due to dispossession from shared household, etc.
- maintenance of aggrieved woman and her children (in addition to maintenance order under section 125 Cr.PC, if any), consistent with the woman's standard of living – to be paid monthly or lump sum

The Protection Officer has a significant role to play when the Respondent does not obey orders for monetary. In such cases, the Protection Officer may guide the aggrieved woman to file maintenance recovery applications in the Court.

Magistrate may also direct the Protection Officer to recover the amount in any of the following ways (The Protection Officer too may proactively suggest the same to the Magistrate)

- Magistrate may direct the Protection Officer to serve/ handover such court order to the employer in person directing the employer of the Respondent to debit from the wages or salary, and to credit it to the bank account of the woman
- Magistrate may direct the Protection Officer to seize certain property of the Respondent/s if he/they has failed to pay the maintenance amount, in order to recover it through auctioning¹⁵ or selling it.
- Magistrate may use any other procedure by using its powers under section 28 for recovering the amount granted as monetary relief

5.1.3 Role of the Protection Officer in enforcing Residence Orders:

Some tips that have emerged out of the experience of Protection Officer's in execution of an order for residence, especially in the shared household, are as follows:

Tips in enforcing Residence orders

- Approach the concerned police and give them a copy of the residence order
- Request the Police to accompany the Protection Officer and the woman to the residence
- Explain the contents of the order to the respondent/s and other persons in that household (including the protection orders)
- Even if the respondent is not present, note down the names of persons whom the Protection Officer has met and how they are related to the respondent
- If the residence order specifies the room which the woman would occupy in the shared household, explain the same to the persons present. See to it that the woman seeks physical possession of the said room (she would keep her belongings there)
- Take in writing from the Respondent or the persons present in the house that the woman has been given possession of the residence/ room
- Take in writing from the woman that she has received the physical possession of the residence
- If the house is locked, seek help of police to break the lock. It is helpful if the Magistrate has passed such order of breaking the lock, at the time of passing the residence order itself. Else, take the case on board (as it is urgent) and seek such order from the Magistrate

¹⁵Auction needs to be done as per CPC Order 21(43)(54) or CrPC section 421, 431. The Magistrate would need to educate the Protection Officer as to how such auction is to be done and give the directions in writing. If the Magistrate has not given any such directions, the Protection Officer may request the Magistrate to do so, and also seek advice from lawyers (of the state/ district legal aid authority)

- | |
|---|
| <p>➤ If the persons show resistance and do not allow the woman to enter the house, it can technically amount to ‘breach of order’ if there is a protection order within residence order. It can be tried under section 31 PWDVA</p> |
|---|

5.1.4 Role of the Protection Officer in implementing Custody Orders

Custody orders under section 21 PWDVA are orders that grant temporary custody of children to the aggrieved person.

For securing permanent custody (in case of dispute) the aggrieved person or the Respondent would have to access the Guardianship and Wards Act or the applicable Personal Law.

When directed by the Magistrate under Section 21, Rule 10(1)(d), the Protection Officer should assist the woman to regain custody of her children.

- In such as case also, it is advisable that the Protection Officer informs the police of the order issued by the Magistrate before attempting to remove children from the respondent’s custody.
- The Protection Officer may also seek Police assistance if there is likelihood of violence on the Protection Officer and Aggrieved Person during their visit to the shared household.

Remember: the Protection Officer has to only accompany the Aggrieved Person and facilitate the custody, and not take custody himself/herself in absence of Aggrieved Person

A declaration of the order having been executed has to be submitted to the Magistrate.

Maintain all documentation related to such orders and the procedure that Protection Officer has adopted in executing this order as per directions of the Magistrate – such as –

- names/identity of persons present in the house when custody was taken,
- names of police if accompanied,
- postal acknowledgement (such as RPAD) if letters were sent before the visit,
- where possible a declaration from the Respondent that custody has been handed over to the aggrieved woman and such other details.
- Seek a declaration also from the woman that she got physical custody of the child.

If the child is not found in the place where from the custody was required to be taken, such declaration and report containing information provided by neighbours on whereabouts of child etc. should be submitted to the Magistrate.

At times, the Magistrate may serve notice to the Respondent to produce the child in the court, in which case s/he may direct the Protection Officer to hand over the notice for such appearance to the Respondent.

5.1.5 Some of the challenges pertaining to enforcement of orders and tips to overcome them

1. Protection Officers do not receive the order that is passed by the Magistrate from the court directly.

Many times the woman comes to the Protection Officer with the copy of the order in which there exists a direction for the Protection Officer to assist the aggrieved person in implementing/ enforcing the order. Section 24 that provides for giving copies of the orders free of cost to the parties, the police, and the Service Provider, excludes mention of the Protection Officer. This may be a pen mistake during drafting, but can be overcome in the practice.

Often the aggrieved woman comes to the Protection Officer only with the copy of the order and nothing else. In such cases the Protection Officer has to go back to the court to retrieve/see the relevant documents she has submitted or call the woman again with all the relevant documents/ information.

In order to overcome this lacuna,

- the Protection Officers can **proactively** build a rapport with the respective Courts/ Magistrates, and suggest making it a practice to give copies of orders passed to the Protection Officers directly, along with other documents.
- It is also advisable for the Department of Women and Child Development – the nodal agency that appoints Protection Officers, to send a written request to the courts to send copies of orders directly to the respective Protection Officers in cases where her/his assistance is required.

2. The orders are vague or the directions about the manner in which orders are to be enforced are not provided to the Protection Officer (as per Rule 10(1)(e))

Section 28(1) and Rule 6(5) provide that the enforcement procedure under Section 125 CrPC can be used. The procedure laid down in the CrPC, particularly under Section 125 CrPC, is to be applied in the enforcement of Court orders.

Section 9(1)(h) obligates a Protection Officer to ensure that orders for monetary relief are complied with and executed in accordance with the procedure prescribed under the Code of Criminal Procedure, 1908 (CrPC)¹⁶. The Protection Officer should know what these procedures are and assist the aggrieved woman accordingly.

The law do not provide a specific enforcement mechanism and therefore, as best practice it would be ideal for the Magistrate to provide as instructions/ directions to

¹⁶ For procedure under section 125(3) and 128 of CrPC please refer appendix 4

stakeholders (the Protection Officers, Police and any other) on the nature of assistance required and the manner in which it is to be provided, along with the copy of the order.

For this purpose, Magistrates can use Section 28(2) that empowers the Court to lay its own procedure in disposal of the Application under Section 12 or under 23(2) in granting *ex-parte* orders.

If such directions are not provided or are vague, the Protection Officer has no other option but to revert to the Court and request for directions. Else, s/he may write down how s/he plans to assist enforcement of orders and revert to the court for approval and then seek appropriate directions in writing.

3. Enforcement of order is outside the jurisdiction of the Court that has passed it and outside the jurisdiction of the Protection Officer who is directed to assist the aggrieved person in enforcement of the order.

It may be enforced by any Magistrate in any place where the party against whom the order is to be enforced is. For example, an order passed in favour of an aggrieved person can be enforced by the Magistrate in whose jurisdiction the respondent resides or is gainfully employed. In such cases, either of the Magistrates (i.e., the Magistrate passing the order and the Magistrate in whose jurisdiction the respondent is in) can issue written directions to the Protection Officer within their jurisdiction to render assistance.

5.2 STEP 11: TAKE ACTION IN BREACH OF PROTECTION ORDERS

5.2.1 The consequences of breach of protection orders

Breach of Protection orders or interim Protection orders is an offence under section 31(1) of PWDVA, and is punishable with imprisonment for a term up to one year and/or fine up to Rs.20,000/- .

It is a cognizable and non-bailable offence.

The offence is to be summarily¹⁷ tried preferably by the Magistrate who had passed the protection order that has been breached.

The Magistrate has the powers to frame charges under sections of IPC that are relevant to the case e.g. 498A IPC, and also under other Acts such as Dowry Prohibition Act, or POCSO Act etc., while framing charges for breach of protection orders.

¹⁷ What is a 'Summary trial'? A summary trial is a type of trial in which matters are resolved quickly, the procedure is shortened, and the proceedings are recorded quickly. Summary trials aim to uphold the legal concept that "justice delayed is justice denied." Sections 260-265 of the Code of Criminal Procedure contain legal provisions for summary trials.

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

Any resistance in enforcement of the orders of the Court by the respondent or his representative is deemed to be a breach of protection order or interim protection order (Rule 15).

5.2.2 Action to be taken if breach of protection order is reported to the Protection Officer

- Listen and understand what the aggrieved or the informant is saying about the breach of protection order and make a quick risk assessment
- If she is in crisis or her safety is at stake or she is in a life-threatening situation, with the help from the local police station rescue her (using rule 9 PWDVR), and assist her in lodging a report of breach with the local police authorities
- Take report of breach of protection order or an interim protection order in writing from the informant and duly signed by her. Remember, the informant may be the aggrieved woman or any other person.
- Report breach of order in one or more of the following ways
 - immediately to the local police station. It should be dealt with as a cognizable offence
 - and/or
 - submit to the concerned Magistrate who has passed the protection order, the report of breach along with a copy of the protection order that has been breached for seeking appropriate orders.
 - or
 - submit the complaint of breach of Protection Order to the Magistrate (JMFC) in whose jurisdiction the breach has occurred. Remember, it could be different from the Court that had passed the Protection Order.
- Bring to the notice of the Magistrate the risk to the aggrieved woman and her children if the accused is enlarged on bail and suggest the Magistrate to impose the following conditions to protect the woman and her children:
 - Pass an order restraining the accused from committing or threatening to commit an act of DV
 - Pass an order preventing the accused from harassing, telephoning or making any contact with the woman
 - Pass an order directing the accused to remove himself or stay away from the residence of the woman or any place that she is likely to visit
 - Pass an order prohibiting possession of firearm or any other dangerous weapon
 - Pass an order prohibiting consumption of alcohol or other drugs
 - Any other order required for protection, safety and relief to the Aggrieved Person

5.3 STEP 12: ASSIST WITH ALTERATION OF ORDERS

Section 25 is extremely significant in that it assumes that the Aggrieved Person is at a risk of violence until she declares that she is confident that violence will not occur again.

Hence, it is assumed that the validity of a Protection Order remains until the aggrieved person applies for a discharge.

For discharge, alteration, modification or revocation of the protection order, the aggrieved woman is required to make an application. The Magistrate, after inquiring into the circumstances is satisfied, s/he may pass the appropriate order, the reasons for which are to be recorded in writing.

Best practice

- The Protection Officer may inform the Aggrieved Person about this provision right in the beginning while making the DIR and the Application under section 12
- Also inform her that she can approach the Protection Officer whenever she is asked to or wants to seek for alteration or discharge of the protection order
- If woman approaches the Protection Officer for applying for discharge, ask her questions, in a confidential environment about the reason for discharge, and probe if there is any coercion
- The Protection Officer can proactively seek directions from the Magistrate where she has applied for discharge, to make a home visit or such other strategies to find out if she has been pressurized or if the circumstances of the woman have really changed.

6.0 CONCLUSION

Discussions with Protection Officers during training workshops and consultations, and the telephonic and in-person interviews (organized with the cooperation extended by the Commissionerate of Women and Child Development, Pune), have gone a long way in contributing to the content of this manual. Information available on the internet has also been used. The following books were also referred to:

References:

1. “Ending Domestic Violence through Non-Violence : A manual for Protection Officers”, by Lawyers Collective, Women’s Rights Initiative
2. “Handbook on Law of Domestic Violence” by Indira Jaisingh, Asmita Basu, Brototi Datta from Lawyers Collective
3. Civil Procedure – Alternative Dispute Resolution and Mediation Rules, 2006 – Bombay High Court
4. Manual on Best Practices, Protection of Women from Domestic Violence Act, 2005, by Lawyers Collective
5. Protection of Women from Domestic Violence Act, 2005 – Handbook on Protocols, Best Practices and Reporting Formats - by MOHIM (2014)
6. Staying Alive – Evaluating Court Orders, Lawyers Collective (2013)
7. Quest For Justice - A Study Of The Implementation Of The Protection Of Women From Domestic Violence Act,2005, by Tata Institute of Social Sciences (2014)

Best wishes to Protection Officers in the effective implementation of the
PWDVA!

APPENDIX

FORM IV

(See rule 8(1)(ii)]

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

1. If you are beaten up, threatened or harassed in your home by a person with whom you reside in the same house, then you are facing domestic violence. The Protection of Women from Domestic Violence Act, 2005, gives you the right to claim protection and assistance against domestic violence.
2. You can receive protection and assistance under the Act, if the persons (s) with whom you are/were residing in the same house, commits any of the following acts of violence against you or a child in your care and custody—
 1. Physical Violence:
For example -
 - (i) Beating,
 - (ii) Slapping,
 - (iii) Hitting,
 - (iv) Biting,
 - (v) Kicking
 - (vi) Punching,
 - (vii) Pushing,
 - (viii) Shoving or
 - (ix) Causing bodily pain or injury in any other manner.
 2. Sexual Violence:
For example -
 - (i) Forced sexual intercourse,
 - (ii) Forces you to look at pornography or any other obscene pictures or material;
 - (iii) Any act of sexual nature to abuse, humiliate or degrade you, or which is otherwise violative of your dignity or any other unwelcome conduct of sexual nature,
 - (iv) Child sexual abuse.
 3. Verbal and Emotional violence:
For example -
 - (i) Insults;
 - (ii) Name-calling;
 - (iii) Accusations on your character conduct etc.,
 - (iv) Insults for not having a male child,
 - (v) Insults for not bringing dowry etc,
 - (vi) Preventing you or a child in your custody from attending school, college or any other educational institution,
 - (vii) Preventing you from taking up a job,
 - (viii) Forcing you to leave your job,
 - (ix) Preventing you or a child in your custody from leaving the house,
 - (x) Preventing you from meeting any person in the normal course of events,
 - (xi) Forcing you to get married when you do not want to marry,

- (xii) Preventing you from marrying a person of your own choice,
- (xiii) Forcing you to marry a particular person of his/their own choice,
- (xiv) Threat to commit suicide,
- (xv) Any other verbal or emotional abuse.

4. Economic Violence:

For example -

- (i) Not providing you money for maintaining you or your children
- (ii) Not providing food, clothes, medicines etc, you or your children,
- (iii) Stopping you from carrying on your employment
- (iv) Disturbing you in carrying on your employment
- (v) Not allowing you to take up an employment or,
- (vi) Taking away your income from your salary, wages etc;
- (vii) Not allowing you to use your salary, wages etc,
- (viii) Forcing you out of the house you live in
- (ix) Stopping you from accessing or using any part of the house,
- (x) Not allowing use of clothes, articles or things or general household use,
- (xi) Not paying rent if staying in a rented accommodation, etc.

3. If an act of domestic violence is committed against you by a person/s with whom you are/were residing in the same house, you can get all or any of the following orders against the person(s) -

(a) Under section 18:

- (i) To stop committing any further acts of domestic violence on you or your children;
- (ii) To give you the possession of your *stridhan*, jewellery, clothes etc.;
- (iii) Not to operate the joint bank accounts or lockers without permission of the Court.

(b) Under section 19:

- (i) Not to stop you from residing in the house where you were residing with the person/s;
- (ii) Not to disturb or interfere with your peaceful enjoyment of residence;
- (iii) Not to dispose off the house in which you are residing;
- (iv) If your residence is a rented property then either to ensure payment of rent or secure any other suitable alternative accommodation which offers you the same security and facilities as earlier residence;
- (v) Not to give up the rights in the property in which you are residing without the permission of the Court;
- (vi) Not to take any loan against the house/property in which you are residing or mortgage it or create any other financial liability involving the property;
- (vii) Any or all of the following orders for your safety requiring the person/s to.

(c) General order:

- (i) Stop the domestic violence complained /reported.

- (d) Special orders:
 - (i) Remove himself/stay away from your place of residence or workplace
 - (ii) Stop making any attempts to meet you;
 - (iii) Stop calling you over phone or making any attempts to communicate with you by letter, e- mail etc;
 - (iv) Stop talking to you about marriage or forcing you to meet a particular person of his/ their choice or marriage;
 - (v) Stay away from the school of your child/children, or any other place where you and your children visit;
 - (vi) Surrender possession of firearms, any other weapon or any other dangerous substance;
 - (vii) Not to acquire possession of firearms, any other weapon or any other dangerous substance and not to be in possession of any similar article;
 - (viii) Not to consume alcohol or drugs with similar effect which led to domestic violence the past;
 - (ix) Any other measure required for ensuring your or your children’s safety.
- (e) An order for interim monetary relief under section 20 and 22 including—
 - (i) Maintenance for you or your children;
 - (ii) Compensation for physical injury including medical expenses;
 - (iii) Compensation for mental torture and emotional distress;
 - (iv) Compensation for loss of earning;
 - (v) Compensation for loss caused by destruction, damages removal of any property from your possession or control.

Note - I. Any of the above relief can be granted on an interim basis, as soon as you make a complaint to domestic violence and present your application for any of the relief before the Court.

II. A complaint for domestic violence made in From I under the Act is called a “Domestic Incident Report”

4. If you are a victim of domestic violence, you have the following rights:
- (i) The assistance of a Protection Officer and service providers to inform you about your rights and the relief which you can get under the Act under section 5.
 - (ii) The assistance of Protection Officer service providers of the officer-in-charge of the nearest police station to assist you in registering your complaint and filing and application for relief under section 9 and 10
 - (iii) To receive protection for you and your children from acts of domestic violence under section 18.
 - (iv) You have right to measures and orders protecting you against the particular dangers or insecurities you or your child are facing.
 - (v) To stay in the house where you suffered domestic violence and to seek restraint on other persons residing in the same house, from interfering with or disturbing peaceful enjoyment of the house and the amenities, facilities therein, by you or your children under section 19.
 - (vi) To regain possession of your *stridhan*, jewellery, clothes, articles of daily use and other household goods under section 18.

- (vii) To get medical assistance, shelter, counselling and legal aid under sections 6, 7, 9 and 14.
- (viii) To restrain the person committing domestic violence against you from contacting you or communicating with you in any manner under section 18.
- (ix) To get compensation for any physical or mental injury or any other monetary loss due to domestic violence under section 22.
- (x) To file complaint or applications for relief under the Act directly to the court under sections 12, 18, 19, 20, 21, 22 and 23.
- (xi) To get the copies of the complaint filed by you, applications made by you, reports of any medical or other examination that you or your child undergo.
- (xii) To get copies of any statements recorded by any authority in connection with domestic violence.
- (xiii) The assistance of the Protection Officer or the Police to rescue you from any danger.

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

Name of Organization	Service Provided	Contact Details

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

FORM 1

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

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

1. Details of the complainant/aggrieved person:

- (1) Name of the complaint /aggrieved person:
- (2) Age:
- (3) Address of the shared household:
- (4) Present Address:
- (5) Phone Number, if any:

2. Details of Respondent:

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

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

- (a) Number of Children:
- (b) Details of children:

Name	Age	Sex	With whom at present residing

4. Incidents of domestic violence:

S. No.	Date, place and time of violence	Person who caused domestic violence	Types of violence	Remarks
			Physical violence	
			Causing hurt of any kind, please specify	
<i>(i) Sexual violence</i> Please tick mark [√] the column applicable.				
			<input type="checkbox"/> Forced sexual intercourse. <input type="checkbox"/> Forced to watch pornography or other obscene material <input type="checkbox"/> Forcibly using you to entertain others <input type="checkbox"/> Any other act of sexual nature, abusing,	

			humiliating, degrading or otherwise violative of your dignity (please specify details in the space provided below):	
<i>(ii) Verbal and emotional abuse</i>				
			<input type="checkbox"/> Accusation/aspersion on your character or conduct, etc. <input type="checkbox"/> Insult for not bringing dowry, etc. <input type="checkbox"/> Insult for not having a male child. <input type="checkbox"/> Insult for not having any child. <input type="checkbox"/> Demeaning, humiliating or undermining remarks/ statement. <input type="checkbox"/> Ridicule. Name calling. <input type="checkbox"/> Forcing you to not attend school, college or any other educational institution. <input type="checkbox"/> Preventing you from taking up a job. <input type="checkbox"/> Preventing you from leaving the House. <input type="checkbox"/> Preventing you from meeting any particular person. <input type="checkbox"/> Forcing you to get married against your will. <input type="checkbox"/> Preventing you from marrying a person of your choice. <input type="checkbox"/> Forcing you to marry a person of his/their own	

			<p>choice.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Any other verbal or emotional abuse. (please specify in the space provide below) 	
<i>(iii) Economic violence</i>				
			<ul style="list-style-type: none"> <input type="checkbox"/> Not Providing money for maintaining you or your children <input type="checkbox"/> Not providing food, clothes, medicine, etc., for you or your children <input type="checkbox"/> Forcing you out of the house you live in <input type="checkbox"/> Preventing you from accessing or using any part of the house <input type="checkbox"/> Preventing or obstructing you from carrying on your employment <input type="checkbox"/> Not allowing you to take up an employment <input type="checkbox"/> Non-payment of rent in case of a rented accommodation <input type="checkbox"/> Not allowing you to use clothes or articles of general household use <input type="checkbox"/> Selling or pawing your <i>stridhan</i> or any other valuables without informing you and without your consent 	

			<input type="checkbox"/> Forcibly taking away your salary, income or wages etc. <input type="checkbox"/> Disposing your <i>stridhan</i> <input type="checkbox"/> Non-payment of other bills such as electricity, etc. <input type="checkbox"/> Any other economic violence <input type="checkbox"/> (please specify in the space provided below)	
<i>(iv) Dowry related harassment</i>				
			<input type="checkbox"/> demands for dowry made, please specify <input type="checkbox"/> Any other details with regard to dowry, please specify. Whether details of dowry items, <i>stridhan</i> , etc. attached with the form <input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>(v) Any other information regarding acts of domestic violence against you or your children</i>				

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

5. List of documents attached

Name of document	Date	Any other detail
Medico-legal certificate		
Doctor's certificate or any other prescription		
List of <i>stridhan</i>		
Any other document		

6. Order that you need under the Protection of Women from Domestic Violence Act, 2005.

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

7. Assistance that you need

Sl. No.	Assistance available	Yes/No	Nature of assistance
(1)	(2)	(3)	(4)
(1)	Counsellor		
(2)	Police assistance		
(3)	Assistance for initiating criminal proceedings		
(4)	Shelter Home		
(5)	Medical Facilities		
(6)	Legal aid		

8. Instruction for the Police officer assisting in registration of a Domestic Incident Report:

Wherever the information provided in this Form discloses an offence under the Indian Penal Code or any other law, the Police Officer shall—

- (a) inform the aggrieved person that she can also initiate criminal proceedings by lodging a First Information Report under the Code of Criminal Procedure, 1973 (2 of 1974)
- (b) if the aggrieved person does not want to initiate criminal proceedings, then make daily diary entry as per the information contained in the domestic incident report with a remark that the aggrieved person due to the intimate nature of the relationship with the accused wants to

pursue the civil remedies for protection against domestic violence and has requested that on the basis of the information received by her, the matter has been kept pending for appropriate enquiry before registration of an FIR

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

Place:.....

Date.....

.....

(Counter signature of Protection Officer/Service Provider)

Name:.....

Address:.....

(Seal)

Copy forwarded to:—

1. Local Police Station
2. Service Provider/ Protection Officer
3. Aggrieved person
4. Magistrate

FORM V
 (See rule 8(1)(iv)]
SAFETY PLAN

1. When a Protection Officer, Police Officer or any other service provider is assisting the woman in providing details in this form, then details in columns C and D are to be filled in by the Protection Officer, Police Officer or any other service provider, as the case may be, in consultation with the complainant and with her consent.
2. The aggrieved person in case of approaching the court directly may herself provide details in columns C and D.
3. If any aggrieved person leaves columns C and D blank and approaches the Court directly, then details in the said columns are to be provided by the Protection Officer to the court, in consultation with the complainant and with her consent.

	A	B	C	D	E
SI. No.	Violence by the Respondent	Consequences of violence mentioned in column A suffered by the aggrieved person	Apprehensions of the aggrieved person regarding violence mentioned in Column A	Measures required for safety	Orders sought from the court
1.	Physical violence by the Respondent	Complainant’s perception that she and her children are at risk of repetition of physical violence	(a) Repetition (b) Escalation (c) Fear of injury (d) Any other, specify		
2.	Any sexual act abusing, humiliating or degrading, otherwise violative of your dignity	(a) Depression (b) At risk of repetitio of such an act (c) Facing attempts to commit such acts	(a) Repetition (b) Escalation (c) Any other, specify		
3.	Attempts at strangulation	(a) Physical injury (b) Mental ill health (c) Any other, specify	(a) Repetition (b) Any other, specify		

4.	Beatings to the children	(a) Injury to the children (b) Adverse mental effect of the same on the children (c) Any other, specify	(a) Repetition (b) Adverse effect of violent behaviour/environment on the child		
5.	threats to commit suicide by the Respondent	(a) Violent environment in the house (b) Threat to safety (c) Any other, specify	(a) Actually trying to commit the same (b) Repetition (c) any other, specify		
6.	Attempts to commit Suicide by the Respondent	(a) Violent environment in the house (b) Insecurity, anxiety, depression, Mental trauma (c) Any other, specify	(a) Repetition, escalation, aggravation of the same (b) Mental trauma, pain (c) Any other, specify		
7.	Psychological & emotional abuse of the Complainant like insults, ridicule, name calling, insults for not having a male child, false accusation of unchastity, etc.	(a) Depression (b) Mental trauma, pain (c) Unsuitable atmosphere for the child/children (d) Any other, specify	(a) Repetition, escalation, aggravation of the same (b) Mental trauma, pain (c) Any other, specify		
8.	Making verbal threats to cause harm to the aggrieved person/ her children/Parents/relatives	(a) Living in constant fear (b) Mental trauma, pain (c) any other, specify	(a) Respondent may carry out the mentioned threats (b) Mental trauma, pain (c) any other, specify		
9.	Forcing not to attend school/college/any other educational institution	(a) Depression (b) Mental trauma, pain (c) Any other, specify	(a) Repetition (b) Mental trauma, pain (c) Any other, specify		

10.	Forcing to get married when do not want to/ forcing not to marry a person of choice/forcing to marry a particular person of Respondent/s choice	(a) Depression (b) Mental trauma, pain (c) Fear of being married forcibly (d) Any other	(a) Repetition (b) Mental trauma, pain (c) Any other		
11.	Threatening to kidnap the Child/children	(a) Living in constant fear (b) Threat to the child/ children's safety (c) any other, specify	(a) Children might be kidnapped (b) Any other, specify		
12.	Actually causing harm to the aggrieved person/children/ relatives	(a) Living in constant fear of further harm (b) Any other, specify	(a) Repetition (b) Escalation (c) Fear of injury (d) Any other, specify		
13.	Substance abuse (drugs/alcohol)	(a) Living in constant fear of abusive and violent behaviour by the Respondent due to substance abuse (b) Deprived of leading a Normal life (c) Any other, specify	(a) Physical violence after consuming the same (b) Abusive behaviour after consuming the same (c) Non-payment of maintenance/ household expenses (d) Any other, specify		
14.	History of criminal behaviour	(a) Constant fear of violence (b) Fear of revenge by the Respondent	(a) Respondent has a tendency to violate law and is likely to flout orders passed by the Court against him (b) Respondent might cause harm to the aggrieved person/children for filing any further proceedings (c) Any other, specify		

15.	Not provided money towards maintenance, food, clothes, medicines etc.	(a) Driven towards vagrancy and destitution (b) Any other, specify	(a) Have to face great hardship to fulfill the needs and requirements of her child/children and herself (b) Any other, specify		
16.	Stopped, disturbed from carrying on employment or not allowed to take up the same	(a) Not able to fulfill the basis needs for yourself and your children (b) Any other, specify	(a) Have to face great hardship to fulfill the needs and requirements of her child/children and herself (b) Any other, specify		
17.	Forced out of the house, stopped from accessing or using any part of the house or prevented from leaving the same	(a) Having no place to stay for yourself and your children (b) Being restricted to a particular area of the house	(a) Safety of her child/children and herself (b) have to face great hardship in providing shelter for her (c) Any other, specify		
18.	Not allowed use of clothes, articles or things of general household use	(a) Losing possession of the same (b) Not having resources to replace the same	(a) The same may be disposed of by the Respondent (b) Any other		
19.	Non-payment of rent in case of a rented accommodation	(a) Being asked to leave the same by the owner on such non-payment (b) No alternate accommodation to go to (c) No income to afford a rented accommodation	(a) Losing shelter (b) Facing great hardship (c) Any other, specify		

20.	Sold, pawned <i>stridhan</i> or any other valuables without informing or without consent	(a) Loss of valuables or property (b) Any other, specify	(a) The same may be disposed off by the Respondent (b) Any other, specify		
21.	Dispossessed of <i>stridhan</i>	(a) Deprived of the property in her possession (b) Any other, specify	(a) The same may be disposed of by the Respondent (b) Feat of never receiving the same again (c) Any other, specify		
22.	Breach of civil/criminal court order, specify order	Please specify	Please specify		

.....
 Signature Signature
 Aggrieved person Service Provider/Protection
 Officer/Police Officer

CrPC 128: Section 128 of the Criminal Procedure Code

Enforcement of order of maintenance

A copy of the order of maintenance or interim maintenance and expenses of proceeding, as the case may be shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance for the maintenance or the allowance for the interim maintenance and expenses of proceeding, as the case may be is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance or as the case may be expenses, due.

Section 125(3) of the Criminal Procedure Code

Procedure for non-compliance of order of maintenance

If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month' s allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing. Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife' s refusal to live with him.

FORM II
(See rule 6(1)]

APPLICATION TO THE MAGISTRATE UNDER SECTION 12 OF THE PROTECTION
OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 (43 of 2005)

To

The Court of Magistrate

.....
.....
.....
.....

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

SHOWETH:

1. That the application under section.....of Protection of Women from Domestic Violence Act, 2005 is being filed along with a copy of Domestic Incident Report by the:—
 - (a) Aggrieved person
 - (b) Protection Officer
 - (c) Any other person on behalf of the aggrieved person
(tick whichever is applicable)

2. It is prayed that the Hon’ble Court may take cognizance of the complaint/Domestic Incident Report and pass all/any of the orders, as deemed necessary in the circumstances of the case,
 - (a) Pass protection orders under section 18 and/or
 - (b) Pass residence orders under section 19 and/or
 - (c) Direct the respondent to pay monetary relief under section 20 and/or
 - (d) Pass orders under section 21 of the Act and/or
 - (e) Direct the respondent to grant compensation or damages under section 22 and/or
 - (f) Pass such interim orders as the Court deems just and proper;
 - (g) Pass any orders as deems fit in the circumstances of the case.

3. Orders required:

(i) Protection Order under section 18

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

(ii) Residence Order under section 19

- An order restraining Respondent(s) from
- Dispossessing or throwing me out from the shared household
- Entering that portion of the shared household in which I reside
- Alienating/disposing/encumbering the shared household
- Renouncing his rights in the shared household
- An order entitling me continued access to my personal effects An order directing Respondent(s) to
 - * Remove himself from the shared household
 - * Secure same level of alternate accommodation or pay rent for the same
- Any other order, please specify
.....

(iii) Monetary reliefs under section 20

- Loss of earnings, Amount claimed
- Medical expenses, Amount claimed
- Loss due to destruction/damage or removal of property from the control of the aggrieved person, Amount claimed
- Any other loss or physical or mental injury as specified in clause 10(d) Amount claimed
- Total Amount claimed
- Any other order, please specify

(iv) Monetary reliefs under section 20

- Directing the Respondent to pay the following expenses as monetary relief:
 - Food, clothes, medications and other basic necessities, Amount.....per month
 - School fees and related expenses Amount.....per month
 - Household expenses Amount.....per month
 - Any other expenses Amount.....per month
 - Totalper month
 - Any other order, please specify

(v) Custody Order under section 21

Direct the Respondent to hand over the custody of the child or children to the
—

- Aggrieved Person
- Any other person on her behalf, details of such person

4. Details of previous litigation, if any

- (a) Under the Indian Penal Code, sections.....Pending in the Court of
- Disposed off, details of relief
- (b) Under Code of Criminal Procedure, sections.....Pending in the Court of
- Disposed off details of relief

- (c) Under the Hindu Marriage Act, 1955, sections.....Pending in the Court of
Disposed of, details of relief.....
- (d) Under the Hindu Adoptions and Maintenance Act, 1956, sections.....
Pending in the Court of.....
Disposed of, details of relief.....
- (e) Application for maintenance, under section.....underAct
Interim maintenance Rs.p.m.
Maintenance granted Rs.....p.m.
- (f) Whether Respondent was sent to Judicial Custody
For less than a week
For less than a month
For more than a month
Specify period
- (g) Any other order

Prayer:

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

Place:.....

Dated:.....

COMPLAINANT/AGGRIEVED PERSON
THROUGH

COUNSEL

VERIFICATION

Verified at.....(place) on thisday of..... that the contents of paras. 1 to 12 of the above application are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

DEPONENT

.....
Counter-signature of Protection Officer with date.

FORM VI
 [See rule 11(1)]
 FORM FOR REGISTRATION AS SERVICE PROVIDERS UNDER
 SECTION 10 (1) OF THE PROTECTION OF WOMEN FROM
 DOMESTIC VIOLENCE ACT, 2005

1.	Name of the applicant	
2.	Address along with phone number, e-mail address, if any	
3.	Service being rendered	<input type="checkbox"/> Shelter <input type="checkbox"/> Psychiatric counselling Family counselling Vocational Training Centre Medical Assistance Awareness Programme <input type="checkbox"/> Counselling for a group of people who are victims of domestic violence and family disputes <input type="checkbox"/> Any other, specify.
4.	Number of persons employed for providing such service:	
5.	Whether providing the required services in your institution requires certain statutory minimum professional qualification? If yes, please specify and give details.	
6.	Whether list of names of the persons and the capacity in which they are working and their professional qualification is attached?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.	Period for which the services are being rendered:	<input type="checkbox"/> years <input type="checkbox"/> years <input type="checkbox"/> years <input type="checkbox"/> years <input type="checkbox"/> More than 6 years
8.	Whether registered under any law/regulation	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If yes, give the registration number	

9.	Whether requirements prescribed by any regulatory body or law fulfilled?	
	If yes, the name and address of the regulatory body:	
Note: —In case of a shelter home, details under column 10 to 18 are to be entered by registering authority after inspection of the shelter home		
10.	Whether there is adequate space in the shelter home	<input type="checkbox"/> Yes <input type="checkbox"/> No
11.	Measured area of the entire premise	
12.	Number of rooms	
13.	Area of the rooms	
14.	Details of security arrangements available	
15.	Whether a record available for maintaining a functional telephone connection for the use of inmates for the last 3 years	
16.	Distance of the nearest dispensary/ clinic/medical facility	
17.	Whether any arrangement for regular visits by a medical professional has been made?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If yes, name of the Medical Professional Address Contact number Qualification Specialisation	
18.	Any other facilities available, specify	

	Note: —In case of a counselling centre, detilas under column 19 to 25 are to be entered after inspection by registering authority
19.	Number of counsellors in the centre
20.	Minimum qualification of the consellers, specify <input type="checkbox"/> Under graduate <input type="checkbox"/> Graduate <input type="checkbox"/> Post graduate <input type="checkbox"/> Diploma holder <input type="checkbox"/> Professional degree Any other, specify
21.	Experience of the counsellors <input type="checkbox"/> Less than a year <input type="checkbox"/> 1 year <input type="checkbox"/> 2 years <input type="checkbox"/> 3 years <input type="checkbox"/> More than 3 years
22.	Professional qualification/experience of counsellors <input type="checkbox"/> Professional degree <input type="checkbox"/> Experience in family counselling as a.....(designation) in the.....(Name of the organization) <input type="checkbox"/> Experience in psychiatric counselling as.....(designation) in the.....(Name of the organization) <input type="checkbox"/> Any other relevant experience, please specify
23.	Whether a list of names of counsellors along with their qualifications has been annexed <input type="checkbox"/> Yes <input type="checkbox"/> No
24.	(a) Type of counselling provided <input type="checkbox"/> Supportive one-to-one counselling <input type="checkbox"/> Cognitive behavioural therapy (CBT) (Mental Process that people use to remember, reason, understand, solve problems and judge things) <input type="checkbox"/> Providing counselling to a group of people suffering <input type="checkbox"/> Family counselling

24.	<p>(b) Facilities provided</p> <ul style="list-style-type: none"> <input type="checkbox"/> Offering personal professional and confidential counselling sessions <input type="checkbox"/> A safe environment to discuss problems and express emotions <input type="checkbox"/> Information on counselling services, support groups and mental health care resources <input type="checkbox"/> One to one counselling and group work <input type="checkbox"/> Therapies, ongoing counselling and health related support <input type="checkbox"/> Any other, please specify <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
24.	<p>(c) Any other service</p> <p>(1) Services being provided</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>(2) Personnel appointed</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>(3) Statutory minimum qualifications required for providing such service</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>(4) Whether a list of names of Personnel engaged for providing service along with their professional qualification is annexed</p> <ul style="list-style-type: none"> <input type="checkbox"/> Yes <input type="checkbox"/> No <p>(5) Any other details which the service provider desirous of registration may provide</p> <p>.....</p> <p>..... If necessary continue on a separate sheet</p>

Place:.....

Date:.....

Signature of authorised official
 Designation
 (Seal)

FORM III
(See rule 6(4) and 7]
AFFIDAVIT UNDER SECTION 23 (2) OF THE PROTECTION OF WOMEN FROM
DOMESTIC VIOLENCE ACT, 2005

IN THE COURT OF.....; MM,

P/S:.....

IN THE MATTER OF:

Ms. & Others.COMPLAINANT

Versus

Ms. & Others.RESPONDENT

AFFIDAVIT

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

1. That I am the Applicant in the accompanying Application for..... filed for myself and for my daughter/son.
2. That I am the natural guardian of
3. That being conversant with the facts and circumstances of the case I am competent to swear this affidavit.
4. That the Deponent had been living with the Respondent/s at since.....to.....
5. That the details provided in the present application for the grant of relief under section (s).....have been entered into by me/at my instructions.
6. That the contents of the application have been read over, explained to me in English/Hindi/any other local language (Please specify.....)
7. That the contents to the said application may be read as part of this affidavit and are not repeated herein for the sake of brevity.
8. That the applicant apprehends repetition of the acts of domestic violence by the Respondent(s) against which relief is sought in the accompanying application.
9. That the Respondent has threatened the Applicant that

.....
.....
.....

10. That the reliefs claimed in the accompanying application are urgent in as much as the applicant would face great financial hardship and would be forced to live under threat of repetition/escalation of acts of domestic violence complained of in the accompanying application by the Respondent(s) if the said reliefs are not granted on an ex-parte ad-interim basis.
11. That the facts mentioned herein are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

DEPONENT

VERIFICATION

Verified at.....(place) on this.....day of.....
20.....

That the contents of the above affidavit are correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed there from.

DEPONENT