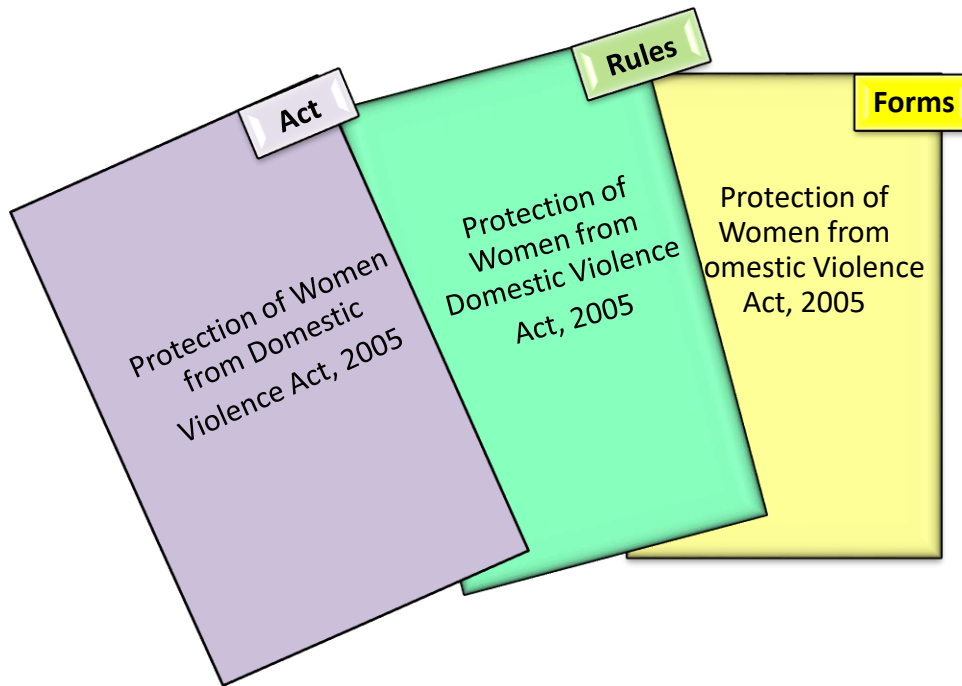


MANUAL 4

Protection of Women from Domestic Violence Act, 2005

ROLE OF THE LAWYERS

ASSISTING A DOMESTIC VIOLENCE SURVIVOR



Author: Rama Sarode
'Sahayog', Pune

And

Women's Studies Centre
ILS Law College, Pune.

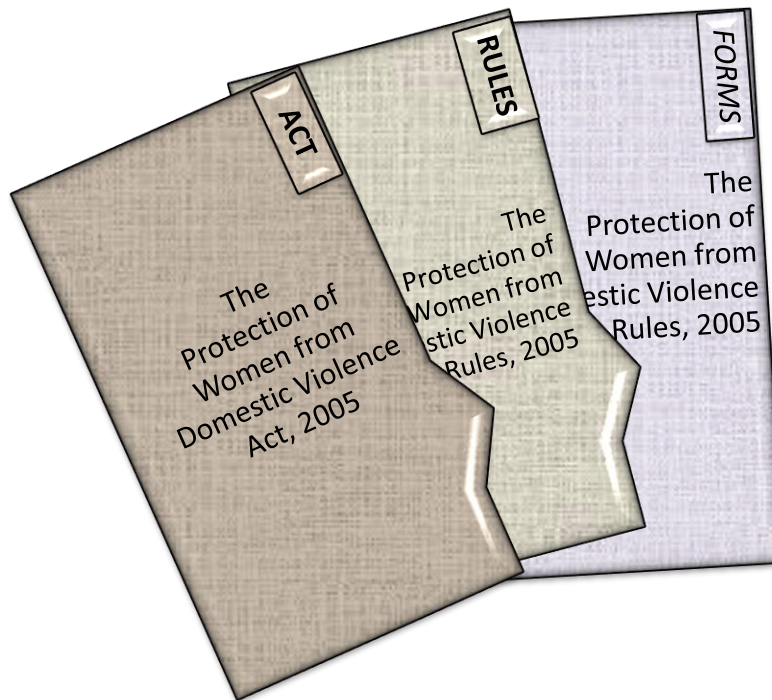


MANUAL 4

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

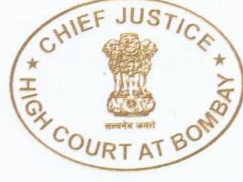
The seven manuals for stakeholders appointed/ notified under PWDVA to provide assistance and services to women (and children) suffering domestic violence are as follows:

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. ह्या कायद्याची परिणामकारक अंमलबजावणी होण्यासाठी अनेक घटकांवर जबाबदारी टाकलेली आहे. त्यातील न्यायाधिशा आणि न्याययंत्रणा हा एक महत्वाचा घटक आहे.

कौटूंबिक हिंसेची समस्या गंभीर, गुंतागुंतीची आहे. पुरुषप्रधान आणि पितृसत्ताक समाजरचनेत, लिंगभावाधीष्टीत होणारी हिंसा (शारीरिक, मानसिक, लैंगिक, आर्थिक, शाब्दिक) स्त्री-पुरुषामध्ये भेदभाव निर्माण करते. ही हिंसा स्त्रीच्या मानवी हक्कांचे आणि राज्यघटनेने दिलेल्या मूलभूत हक्कांचे उल्लंघन करते. ह्या पार्श्वभूमीवर कौटूंबिक हिंसेपासून स्त्रियांच्या संरक्षणाच्या कायद्याखालील येणाऱ्या प्रकरणांमध्ये न्यायालयांचा दृष्टीकोन अधिक संवेदनशिल असणे अपेक्षित आहे असे मानून सर्वोच्च न्यायालयाने कृष्णा भटाचारजी वि. सारथी चौधरी (किमिनल 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 ह्याचा विचार व्हायला हवा.

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

सर्व हितसंबंधाना माझ्या शुभेच्छा !

१६ ऑक्टोबर २०१८

HL - 5
(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 is as below:

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, Government of Maharashtra, 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, Government of Maharashtra, 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.

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Coordinator:

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

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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.wcdcommune.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

Dt: 10th Dec, 2022

Manual 4
Protection of Women from Domestic Violence Act, 2005
Role of the Lawyers

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Manual 4
Protection of Women from Domestic Violence Act, 2005
Role of the Lawyers

1.0 INTRODUCTION

Lawyer plays a very crucial role in representing the aggrieved woman in a domestic violence case. The lawyer is a bridge between the woman and the justice delivery system. The role he/she plays is beyond giving legal advice; it is that of a motivator who helps in empowering the woman in using law to fight against injustice and claim her rights.

For performing this role, some key attributes of a lawyer are:

- empathy where they put themselves in the place of the aggrieved person and understand the nuance of violence.
- lucid and simple communication skills without the use of difficult jargons, so that the woman/ client does not feel lost and intimidated.
- ability to help the woman understand the pros and the cons of the case, and network with other stakeholders.
- willingness to handhold the woman so that she learns to take charge of her case.
- skills to create spaces for the woman to speak out regarding what she wants, so that feasible legal solutions can be discussed and then converted into prayers in the legal petition/ application.
- ability to treat each case as being unique and accordingly use a unique strategy.

Please Note: **In order to adopt an appropriate legal strategy, a case should be understood not merely from the legal point of view, but also within the woman's social, cultural and economic contexts.**

This manual addresses lawyers of the aggrieved persons as well as lawyers of the Respondents for the following purpose:

- the spirit behind this law – **to make 'domestic relationships' free of violence**, is understood and maintained.
- to encourage the lawyer of the aggrieved person and the Respondent to **open spaces for dialogue to end domestic violence** with a conviction that **there is no excuse for domestic violence**.
- to promote the attitude that **lawyering in a DV case is not about 'winning' or 'losing' a case, but it is about the lawyer's potential to end violence and creating positive human relationships** that contribute to a larger social cause.
- to nurture the belief that **lawyers can be the change-makers** in helping their respective clients to assert against domestic violence.

The manual takes the reader through the journey of how to deal with a client from the very first meeting till the actual implementation of the orders.

It is presented in 2 Parts- **Part A** for the lawyer representing the aggrieved person and **Part B** for the lawyer representing the Respondent.

Key features of Protection of Women from Domestic Violence Act (PWDVA)

As discussed in Manual 1 'Gender, and Domestic Violence', PWDVA came into being through a consultative process with domestic violence survivors, organizations that support women's rights, and lawmakers. It resulted in the formulation of a law that is civil in nature but has certain criminal implications.

Addresses women as being a vulnerable category – PWDVA formulated as a beneficial legislation: Manual 1 has discussed how our male dominated and patriarchal society makes 'women' vulnerable to violence, and how violence is used as a tool to maintain the status-quo in the gender power relations. PWDVA addresses this vulnerable group – 'women' and hence it is a beneficial legislation. It protects 'women' from domestic violence through stop-violence or 'protection orders'.

Provides a broad definition for 'domestic violence': PWDVA has defined domestic violence to include physical, emotional, sexual and economic forms of abuse.

Provides remedies to the DV survivor - PWDVA as a civil law: As discussed in Manual 1, it is a common experience that a woman uses law as a last resort after she has tried all other ways to resolve issues of violence. Her expectation most often is that violence should stop without breaking the domestic (marital) relationship. She wants justice within the relationship. Hence, it is crucial that law provides her with remedies that stop violence and help her stay safe in a home. Just criminalizing the perpetrators, who are her own family members, will not resolve her issues. With this in mind, PWDVA is enacted as a civil law.

Provides various legal options to combat violence: The legislation attempts to provide various options for women to combat domestic violence. While it establishes right to a life free from domestic violence, it also establishes the right to reside in the 'shared household', provides for residence orders, monetary relief, compensation orders, custody orders. It also provides for interim orders and *ex-parte* orders to ensure immediate/ urgent relief. Along with PWDVA, the woman can file a criminal case as well.

Makes available the negotiating space for the DV survivor: Undoubtedly, PWDVA strives to stop violence on the woman (and her children). As mentioned in Manual 1, the root cause of violence lies in the gender power relations within patriarchal family relationships. We understand that stopping violence because of a court order gives the woman the equal footing that she would require for negotiation within this power-relationship.

Deters the perpetrator (Respondent) from committing further acts of domestic violence: Although this legislation is civil in nature, it provides for criminal proceedings against the perpetrator who has resorted to violence despite a stop-violence order (protection order) from the court.

To provide multiple support to the DV survivor to combat violence: Besides legal options, it provides for her the right to use support services of a range of personnel—such as protection officers, police, shelter homes, medical facilities, legal aid, and services of voluntary organizations/NGOs registered under PWDVA

PART A – For the Lawyer Representing the Aggrieved Person

For taking the reader through the journey of how to deal with a client from the very first meeting till the actual implementation of the court orders, this part is discussed and presented in three stages viz. pre-litigation stage, stage during the period of litigation and post-litigation stage.

‘Pre litigation’ has details of what a lawyer can do from the time the client approaches him/her until the decision to file the case.

‘During litigation’ covers the litigation process and how a lawyer can proactively help client in this process.

‘Post litigation’ covers the lawyer’s role to help the client in implementing the orders and/or filing an appeal.

2.0 Pre-litigation stage

Contents – pre-litigation stage

2.1 Receive the client and provide information

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- 2.1.2 Check eligibility under PWDVA
- 2.1.3 Help the client make informed choices
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- 2.2.1 Seek factual information for preparing the content of the draft
- 2.2.2 Write every fact as a pleading
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2.3 Get evidence in support of her allegations

2.4 Connect client to other services

2.1 Receive the client and provide information

The lawyer and the client have to work together in seeking justice and resolving issues with the Respondent. A trustworthy and professional relationship between the two would always go a long way to traverse a rough path with greater ease. The lawyer’s journey, in case of PWDVA, is with a woman whose vulnerability has kept her at the receiving end of violence, and the lawyer’s role is to show her the path of justice by empowering her to take control of her situation with the help of law and claim her rights. Hence, it is even more important to build a trustworthy and professional relationship. Some ways by which we can do this are presented below:

2.1.1 Build a rapport:

Give a warm reception. The aggrieved person is a vulnerable person and has come to the lawyer with great hope and expectation after having already tried all she could to stop the violence that she faces. She may have approached family and friends, she may have gone to a counselor and when all attempts have failed, she is opting for the legal recourse as the last resort. A warm reception filled with sensitivity, concern and empathy from a professional who would fight for her rights and argue in court to seek justice, is what is required. It would help establish a trustworthy and a professional relationship.

2.1.2 Empathize with her:

Be a patient listener; listening is an art that the lawyer has to develop. Ask questions that will give room for her to vent, lend a sensitive ear to her realistic and unrealistic expectations. Be attentive and respond through both body language and verbal responses as she talks. Validate her feelings (sadness, anger, anxiety), and assure assistance to the best possible extent. She has to be constantly told that she is not responsible or the cause for the violence, that she is justified in not tolerating violence, that there is nothing wrong in standing up for her rights. Discuss that tolerating violence and staying in violent homes is even worse for children. Simple actions like offering a glass of water, giving her break at the right time when she may feel like crying goes a long way in expressing empathy that is required in building a meaningful lawyer-client relationship.

2.1.3 Understand all the nuances of violence from her perspective:

Enquire why she thinks violence occurs and when it occurs. Allow her/ encourage her to talk about incidents of violence and how she responded. Ask her about her support system and how they have helped her or can help her. Especially enquire about the measures she has taken to stop it. Assure her that the more correct information she shares, the lawyer will understand her and help her with the case. This will help build a relationship of trust that is so essential for a woman who has been blamed, rejected and abused by persons who she calls her own. **Appreciate that every case is unique**, although superficially all cases seem similar. The uniqueness lies in how she perceives the violence, her expectations of change in the violent relationship and the potential solutions about which the lawyer can discuss.

2.1.4 Use language that she is comfortable with:

The comfort of language for the aggrieved person has to be considered. This will help her speak up and express what she wants to.

2.2 Check eligibility under PWDVA

The lawyer, first, needs to check if the case fits within the purview of PWDVA. Under this Act, only a woman (and her children) can file a case under PWDVA.

She is eligible to file a case under PWDVA only if:

- the woman (aggrieved person) is being or has been subjected to ‘*domestic violence*’ in which the Respondent harasses harms, injures, endangers, and/or threatens the woman physically / psychologically / emotionally / sexually / economically.
- aggrieved person is in a ‘*domestic relationship*’ with the Respondent.

Only if the person who has inflicted the violence is in a ‘*domestic relationship*’ with the woman, only then will she be eligible to file a case under PWDVA against this person.

For better clarity on eligibility, it is important to note the following definitions presented below:

IMPORTANT DEFINITIONS

- 1. Domestic violence: Section 3 PWDVA** - “*any act, omission or commission or conduct of the Respondent shall constitute domestic violence in case it—*
(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person”

Further in explanation I. it provides the various acts/ behaviours that constitute physical abuse, sexual abuse, verbal and emotional abuse and economic abuse (please refer table 1 for examples)

- 2. Aggrieved person: Section 2(a) PWDVA** – “*Aggrieved person” means any woman (and her minor children) who is, or has been, in a domestic relationship with the Respondent and who alleges to have been subject to any act of domestic violence by the Respondent.*
- 3. Respondent: Section 2(q) :** “*Respondent” means any adult person (man or woman) who is or has been in a domestic relationship with the aggrieved person*

4. Domestic relationship: Section 2(f) PWDVA - “domestic relationship” means –

- a relationship between two persons who lives or have, at any point of time, lived together in a *shared household*,
- when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption
- or are family members living together as a joint family.

5. Shared household: Section 2(s) PWDVA, “shared household” means 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

Child: Section 2(b) PWDVA – “Child” means any person below the age of eighteen years and includes any adopted, step or foster child

Examples of acts or behaviours which constitute ‘domestic violence’ under the various categories are presented in the table below:

Physical abuse	Sexual abuse	Emotional abuse	Economic abuse
Any conduct that includes bodily pain, threat to health and well being	Violence that is sexual in nature that degrades or violates the woman’s dignity	Violence that causes her mental agony and trauma	Violence that makes her economically vulnerable
Beating, slapping, hitting, biting, kicking, punching, pushing, shoving, burning, not giving food, etc.	Forced sexual intercourse, showing pornography, child sexual abuse, sexual act that are unwelcome, etc.	Insult, name calling, humiliating treatment, forced marriage, ridiculing for not bearing a child or a male child, preventing her from taking up a job, character assassination, etc.	Taking away salary/wages, not providing maintenance, not paying children’s fees, forcing out of the house, not allowing to use household things, not paying utility bills, rent, etc.

Here are a few examples in which a woman is **NOT** eligible to file a case under PWDVA -

1. *'Y' is a domestic help who stays with 'X' family for all 24 hours of the day. She complains of violence from the members of the 'X' family and comes to the lawyer for help.*

Here, 'Y's case does not fit under this law because although Y is staying in the house of the employer, she is not a domestic relationship; rather, it is an employer - employee relationship.

2. *Sanika was divorced for 6 years. She got the custody of her children through the divorce. Later, when her children became adult, they got in touch with their father. The younger daughter took up a course as recommended by her father at a college that was close to her father's house. However, she stayed in a hostel near her college. The daughter had a medical condition that needed attention and therefore the mother did not approve of her staying in the hostel that was far away from her house. But the daughter did not listen to the mother and did as her father said. The medical condition of the daughter deteriorated. The mother had to shift her base to her daughter's place and hence had to give up on her job and bear economic losses. The mother now wanted to file a case of domestic violence against the father for influencing her daughter and causing her poor health condition.*

In this case, although the mother was concerned about the daughter's condition, she cannot file the case on her daughter's behalf as the daughter is a major.

It is important for a lawyer to be knowledgeable about Case Law that has clarified certain definitions and brought amendments, and needs to update herself / himself about it.

Examples of Important Case Law that determine eligibility

1. Regarding proof of marriage and maintenance right - In ***Chandmuniya v/s. Virendra Kumar Singh Kushwaha and Anr. (2011) 1 S.C.C. 141*** liberal interpretation was given to the term 'wife' under the ambit of "domestic relationship" under PWDVA. A strict proof of marriage is not a precondition for maintenance under Section 125 of the Cr.P.C. In a case where there has been long cohabitation without there being a valid marriage in place, entitles the woman to maintenance.
2. Regarding interpretation of "relationship in the nature of marriage - In ***D. Velusamy v/s. D. Patchaiammal (2010) 10 S.C.C. 469*** the expression "domestic relationship" in Section 2 (f) of the Protection of Women from Domestic Violence Act, 2005 includes not only relationship of marriage but also a relationship in the nature of marriage.

A “relationship in the nature of marriage” is akin to a common law marriage.

Common Law marriages require that although not being formally married –

- (a) The couple must hold themselves out to society as being akin to spouses.
- (b) They must be of legal age to marry.
- (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
- (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

Not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned above must be satisfied, and this has to be proved by evidence.

In *Indra Sarma v. V.K.V. Sarma* (2013) 15 S.C.C. 755 The continuous cohabitation may raise the presumption of marriage. In the instant case, since the Appellant was aware that the Respondent was a married person even before the commencement of the relationship, the status of the Appellant is that of a mistress or concubine. To fall within the ambit of the 2005 Act, the relationship should be in the “nature of a marriage.” The court should have a close analysis of the entire relationship and cannot isolate individual factors. Since the Appellant was a concubine/mistress, she cannot enter into a relationship in the “nature of a marriage.”

3. Respondents can also be women

There were speculations about whether a female relative can be made a Respondent under this law. This was settled in *Archana Naik v/s Urmilaben Naik* (2010CriLJ751) where the Bombay High Court ruled that the female relatives of the ‘adult male’ Respondent can be made Respondents under this law.

In *Hiral P Harsora and ors v/s Kusum Narottamdas Harsora & Ors* (<https://indiankanoon.org/doc/114237665/> decided by SC on 6th Oct 2016) the Supreme Court has struck down the words “adult male” before the word “person” in Section 2(q) of PWDVA holding that these words discriminate between persons similarly situated, and is contrary to the object sought to be achieved under PWDVA. It also mentions the proviso to Section 2(q) of the Act being rendered otiose also stands deleted

2.3 Help the client make informed choices:

2.3.1 Give time to the client, get all the facts correct

Hard pressed with time, lawyers, especially those who predominantly deal with domestic violence cases that seem so similar, may assume facts and directly discuss legal solutions that they think are appropriate. Instead, what is required is to hear her out. Good listening can help the lawyer pick up a lot of details that can be useful in the case. Good questioning skills are equally important in eliciting facts, but questions have to be asked sensitively.

2.3.2 Ask appropriate questions

Good questioning skills are an essential quality for a lawyer. Questioning skills are used to elicit facts/ experiences, to know how she perceives violence, to help her express what she really wants, and to show the lawyer's concern for her. For example, while enquiring into the occurrence of sexual abuse, direct questions may embarrass the client, especially if it is a male lawyer. In such situations, the lawyer may say to her that there are many women facing sexual violence, and use colloquial vocabulary as used in her culture. To understand the obstacles and challenges she has faced in stopping violence on her, ask for details of the efforts she has taken to stop violence. This will also help in understanding her vulnerabilities vis-à-vis her strengths.

Examples of questions for seeking information about her efforts to stop violence

- Have you shared incidences of violence with any family members or friends or neighbours?
- Did you visit any NGO?
- Have you visited a counsellor?
- If yes did the Respondent also meet the Counsellor?
- What was the outcome of the meeting with the Counsellor?
- Have you filed any complaint with the police?
- Do you have a copy of FIR?
- Have you met the Protection Officer?
- Has he prepared a DIR? Do you have a copy?
- Were you ever injured?
- Did you see the doctor?
- Do you have the doctor's report or prescription?
- Has the violence increased/ decreased after all these efforts?

This information will provide the lawyer with a complete and clear picture of her struggles, and enable her/him to make a strong case that clearly states the violence faced and its consequences on her.

2.3.3 Ensure to ask her what she wants.

This information will help the lawyer guide her about what is possible, why and how, and what is not possible and why. Lawyers always strive to build a strong case. Getting clear and correct facts would definitely help a lawyer achieve this goal, and the client also would be in a better position to assert her own case. The lawyer has a role of an educator and guide.

2.3.4 Brief the client about her rights and services available under PWDVA:

For this purpose, lawyers may use Section 5 of PWDVA that has set out duties for stakeholders. Form IV PWDVR¹ provides these guidelines. By doing so, the lawyer plays the role of an educator and this helps to strengthen the professional rapport. Encourage her to ask questions and discuss them. It helps build trust about the lawyer's competence and increases the client's confidence in taking decisions. As we build the rapport, the woman will feel comfortable talking about embarrassing incidents such as those of sexual abuse, and other traumatic incidents.

2.3.5 Discuss with her a wide range of remedies - both legal and other.

The client approaching a lawyer may be completely ignorant of legal options that are available to best suit the case. Encourage her to ask questions and discuss them to clarify doubts. If the case shows to the lawyer that non-legal options such as out-of-court options or seeking help from a counselling center, may help, the lawyer need not hesitate to suggest these.

2.3.6 Discuss the consequences of the legal or other options with her.

Every legal step that the woman takes will have consequences on her family relationships, her social status, her economic position, her day-to-day living, her children and her physical and mental health, and her resources. Hence, it is pertinent for a lawyer not only to discuss the options but also the consequences of these options. Educating the client about the legal processes (including time and money) is also equally important.

All this will help her make informed choices - about whether she wants to go to court, which legal option to choose and why, how to equip herself to face consequences of the action she takes, and such other matters. This is empowering for the client.

Remember: The client takes better ownership of her decisions when she makes informed choices.

¹ Please refer Appendix 1 for copy of the Form IV PWDVR

2.4 Assess risk and draw out safety measures

It is important for the lawyer to probe about how safe the client feels and encourage her to think about the immediate safety precautions she can take. Lawyers may also suggest safety measures that are taken in other cases.

Safety planning varies from case to case depending upon the circumstances.

Some examples of the safety measures that a lawyer can suggest are:

- to hide sharp weapons or combustible material such as kerosene
- to connect with friends / neighbours, update them with the instances of domestic violence, and seek their support – for example by requesting them to intervene if they hear strange noises or shouts from her house, or come to her house if they do not see her for a very long duration
- To keep her mobile handy
- To memorize or keep important phone numbers handy – of relatives/ friends/ police/ protection officers etc. to use in emergency
- To keep all important documents – such as her educational certificates, financial documents, photographs, medical certificates etc. in a safe place
- To keep other valuable belongings such as gold etc. in a safe place that is inaccessible to the respondent

Inform her that she can use the safety plan provided in the Form V of PWDVR² once she decides to litigate.

2.5 Provide information about using support services of multiple stakeholders

The success of this legislation is the appointment of multiple stakeholders who have designated roles to play. The lawyer has to diligently inform the client of stakeholders whose support she may need.

Some of the information about other stakeholder that may be given to her is as follows:

- Police help: Women helpline no 1091 can be called when she cannot step out of the house or is wrongfully confined. When the woman cannot reach the police, through this helpline the police can reach her.
Patrolling squad can come to her rescue when the aggrieved person uses the helpline. The client has to be told to ensure that the complaint (even if it is non cognizable i.e. NC) is written in the register that patrolling officers carry. This will remain as evidence.
- Shelter Home: If staying in the shared household is unsafe or she has been

² Please refer Appendix 2 for copy of Form V PWDVR

removed out of the house she must be informed of the shelter home services that are available. The lawyer has to give the address of the shelter home to the client.

- Counselling Services: In many cases violence can be stopped through counseling. The lawyer has to educate the client on how taking help from the counselors can assist in stopping violence. Counseling can be the diffusing factor in many cases especially where the Respondent is willing to go for counseling. Going to the counselor can also create a record of the assistance she has taken to stop violence before approaching the court.
- Protection Officer: Sometimes there is a possibility that the woman is not sure whether she wants to file application under PWDVA. She may just want legal advice so that she is prepared to take actions later. A lawyer has to inform her of the important role that Protection Officers play. At such times it is a good strategy to get a Domestic Incident Report (DIR) done from the Protection Officer as it has an evidentiary value. This will help in building a rapport of the client with the Protection Officer as later if she decides to file the application in the Court the Protection Officer will play an important role.

Tip: A list of resources (under PWDVA) that are available in a district, with contacts and addresses, has been developed by the District Women and Child Development office. It is advisable for a lawyer to keep such a copy handy.

Remember: The woman may take her time to decide about when she wants to file the case. She may not be ready to file the case immediately. Meanwhile, the information that the lawyer gives will help her decide and prepare her for filing the application under this law.

The lawyer can prepare a checklist of what information he/she has to get – such as:

- With whom she has shared incidences of violence - with any family members or friends or neighbours
- Whether she has visited/ sought help of any NGO?
- Whether she has seen a counsellor?
If yes, whether the Respondent has also met the Counsellor
What was the outcome of the meeting with the Counsellor?
- Whether any police complaint has been made
- Whether she has a copy of FIR.
- If she has met the Protection Officer.
- Whether DIR (Domestic Incident Report) has been prepared; and if so, whether she has a copy.
- Whether she has ever been injured by the Respondent.
- Whether she has visited the doctor for treating the injuries, and if so, whether she has the doctor's report or prescription.

Once the aggrieved woman has decided to file the case, she may contact the lawyer for this purpose. A case u/s. 12 PWDVA can be filed before the JMFC. Under Section 26 PWDVA, it can be filed in any other court if there is already a pending case. This will help her in getting remedies in one court rather than running around in different courts for each case. This will also help the Judge understand her situation as a whole, as most of the time there are inter-linkages to different cases between same parties.

2.6 Assure confidentiality

While the aggrieved person is sharing her private information, it is the duty of the lawyer to inform and educate her on how this information will be used in the draft and that the more information she gives, the stronger her case will be made. This will boost her confidence. The lawyer should assure her that confidentiality will be maintained, especially by the team from the lawyer's office that is working on the case. Also, the aggrieved woman can be informed she has the right to ask for an in-camera hearing during the litigation period. Such information becomes very crucial for the aggrieved woman to open up.

2.7 Draft the Application under Section 12

2.7.1 Seek factual information for preparing the content of the draft

From the initial talks with the woman (aggrieved person) the lawyer would have information about the violence that she has gone through. However, for drafting the application, very many details of the violence, the consequences on her need to be sought, and prayers for various orders and reliefs must be drafted appropriately. This can be best done in either of the following two ways -

2.7.2 Simultaneous drafting by the lawyer as the woman narrates facts/ incidents/ experiences:

The advantage of drafting is that the doubts can be cleared immediately. The aggrieved woman is present to answer all the questions the lawyer will have, and this will become the final draft.

2.7.3 Seeking a written account from the aggrieved woman:

The aggrieved woman writes all the facts/ incidents/ experiences and what she wants from the law/court. For this, the lawyer can provide her guidelines and tips so that she narrates relevant incidents; for example, while narrating an incidence of violence, she can mention in what circumstances it occurred, what consequences it had on her and her children, and what she did after the incident (left home? Called her parents? Went to the police station? Etc.). The advantage of a written account by the woman herself is that the lawyer can draft the case in his/her time and pace. However, deadlines should be set to address urgency and avoid inordinate delay. Also, the draft must be completed only after due consultation with the aggrieved woman and changes made accordingly.

2.7.4 Write every fact as a pleading

Information that she has provided must be used in the draft. The lawyer has to communicate her perception of domestic violence through the draft, as it is subjective and differs from person to person. This is possible only if the lawyer is unbiased and non-judgmental. The lawyer has to therefore be a good listener and empathize with her circumstances.

While drafting the application, write incidents even if they seem to be ‘minor’ and link such seemingly ‘minor’ incidents to ‘major’ ones. Such drafting will set the context and highlight the triggers that lead to violence. It will give a clear picture to the judge about what the woman has gone through and therefore justify the prayers she has made in the application.

2.7.5 Write only the facts that the aggrieved woman has mentioned without distorting those.

Remember that lawyers are merely the representatives of the clients in the court, and it is ultimately the woman who has to depose before the court for examination in chief and cross-examination and provide evidence. Any incidence of violence, however minor it may seem, impacts her and her family life. It is this impact – whether escalation of violence, or impact on physical or mental health or deprivation of basic needs, that should be highlighted. Undistorted facts will make the client more confident to appear before the court.

Let’s take an example- *Aditi’s lawyer wrote in her application that her husband tried to burn her. Such an incident had not occurred. Aditi had gone through a lot of mental harassment. He would call her names and humiliate her in front of relatives and friends. She had also faced economic violence. Her husband controlled her bank account and withdrew money using her debit card. He had not caused any physical violence. Her lawyer thought that to make the case look serious, he has to add some physical violence and so he wrote her husband tried to burn her. Aditi found it very stressful in facing the cross examination and could not elaborate on ‘facts’ that she had mentioned in her Application.*

<p>The lawyer need not write anything that has not happened because it only weakens the case as the points cannot be proved. Hence, understanding violence from the aggrieved person’s perspective is crucial.</p>
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2.7.6 The language of the draft:

It is advisable for the lawyer to ask the aggrieved person the preference of language while drafting the case. If the aggrieved woman is comfortable in vernacular language, then preferably we should draft it in that language. The lawyer should give the draft of the case to the client for reading. We must draft it to the satisfaction of the client. If she

is illiterate, it should be read out to ensure she has understood the contents. Even if she agrees to get the draft done in English but is not very fluent with it, the lawyer has to read out the draft to her and take efforts to explain what is written there.

This is very important because when she is signing the verification, she has to know what is written. Drafting is an important aspect of pleading, the case has to be done with a lot of precision and has to be to the satisfaction of the client and the lawyer.

It is also important to explain to the aggrieved woman if the Respondent/s mentions new facts/ information in his reply to her Application, and she wants to reply to those new facts or provide clarifications, she can give a rejoinder. This information can make her feel comfortable.

2.7.7 Details to be covered in the draft

- i. **Relationship of the aggrieved woman with the Respondent(s)** should be clearly mentioned as being a ‘domestic relationship.’ This information will help establish the power equations between the aggrieved woman and the Respondent(s)
- ii. That the applicant is/was staying in a **‘shared household’**
- iii. **The nature of violence** - physical, verbal/emotional, sexual, economical
- iv. **The details of violence**

While detailing the violent acts, do the following:

- As far as possible, present the incidents chronologically so that the links between incidents can be established. A woman, while speaking/ writing, may not present incidents chronologically. But the lawyer has to use her/his skills to get the approximate. Date/ month/ time of violent incidents to enable her/him to present them chronologically.
- Clearly bring out how vulnerable she has been by highlighting the circumstances in which violence has taken place - the time of the violence (violence has happened at night), the place, the people who were present or absent, the support she had, whether or not violence escalated after the incident, etc.

If she does not remember the exact date and time, a period can be specified (such as summer season, during Diwali festival, etc.) This will help the judge understand the pattern of violence, especially if it is recurring.

The place where the violence took place has significance because it determines her accessibility to services - transport, telephone/ mobile, police help etc.) This information would help identify/trace witnesses and gather evidence as well.

- Establish the risk to the violence that she faces both because of circumstances and because of filing of the case. Explain the incidents, arguments, etc. that

have escalated the violence in the past, and how that puts her at a risk of recurrence of violence and threat to life even now. Mentioning this future apprehension of violence in the case will help the judge understand the seriousness of the situation and give immediate, interim reliefs and/or *ex parte* orders.

- It is relatively easy to describe the physical violence, but describing emotional violence is a challenge. Emotional violence has to be presented from the aggrieved person's perspective - about what and how she felt when the violence happened, and what impact it had on her. This will help the Magistrate better understand what she suffered.
- It is likely that a woman may take certain acts for granted and does not perceive them as violence; one of which is sexual violence or even the use of abusive language. The lawyer has to help her identify such acts as 'violence' too, and once she understands, include it in the draft.
- Also, she may hesitate to talk about sexual violence – which includes forced sex, abstinence from having sex, forcing her to see pornography etc. and as discussed before, it is the lawyer's skill to help her open up. Let us understand from Reshma's case as described below:

Reshma was married to Rakesh, who belonged to a very influential family. The elders in the house, like her mother-in-law and father-in-law, were very controlling and dominating in the house. Even if Rakesh did a wrong act which adversely affected Reshma, no one in the family would say or do anything to stop him. Reshma obviously felt very vulnerable in her marital home. While she was pregnant and she visited her gynecologist, advised her and Rakesh not to engage in any sexual activities for some days as there was a risk of Reshma facing health problems. Against medical advice, Rakesh forced Reshma to have sex, and she had to undergo an abortion. Later, the doctor advised Reshma and Rakesh to avoid pregnancy, but once again forced sex with Reshma led to pregnancy almost immediately. Reshma went through a second abortion.

Reshma suffered through two abortions, despite the doctor's advice to take precautions. This violates her reproductive health right and is sexual violence. Here Reshma, did not think this was sexual violence when she first came to the lawyer. The lawyer had to educate her before filing a case.

- If the aggrieved woman has approached, the Protection Officer who would have prepared the Domestic Incident Report (DIR) in Form I (as per Rule 5(1), 5(2) and 17(3))³, refer to it for details of violence, and to ensure it matches with details written in the Application. Any additional information or

³ Please refer Appendix 3 for copy of Form I (Domestic Incident Report) of PWDVR

details of violence other than that written in the DIR may be written in the Application. If the Lawyer finds the DIR inappropriate, he/she need not attach it with the Application.

Please note: DIR is not mandatory. An application under Section 12 PWDVA can be filed directly with the court without a DIR.

- The Lawyer may use her/his discretion in suggesting that the aggrieved woman approaches the Protection Officer for preparing and filing a DIR, and also for other support. DIR is an important document prepared by an officer of the court – the Protection Officer. It may hold additional value in the court or law.

v. **Draft appropriate prayers for seeking relevant orders -**

The soul of this Act lies in its ‘stop-violence’ orders – referred to as **Protection Orders** under Section 18 PWDVA. Domestic violence, one must remember, covers all forms – physical, emotional, sexual or economic against which we can seek such orders.

These protection orders come along with remedies or reliefs in order that the violence does not continue, recur or occur. For example, if there is economic violence because the husband refuses to maintain his wife, she can seek relief through an order for maintenance; if they have thrown her out of the shared household - which is a physical and economic abuse, she can seek relief through residence orders; if the husband refuses child’s access and custody to the wife – which is a form of psychological abuse, she can seek relief through custody orders. We can seek such and several more such orders.

Unlike other laws, it does not restrict PWDVA to just one remedy in one way. This law encourages alternatives under the same remedies as per the requirement of each case and all under one roof. Lateral thinking and customizing prayers for orders for each client is the key.

Orders that can be prayed/ requested for are provided under Sections 18 to 22 of PWDVA and they emanate from the protection order –

- Protection Orders Section 18
- Residence orders Section 19 – for rectifying and preventing economic abuse (S 3(d)(iv)) and establishing the right to reside in the shared household under Section 17
- Monetary reliefs Section 20 – for rectifying and preventing economic abuse
- Custody orders Section 21 – for rectifying and preventing physical/emotional abuse (as applicable)
- Compensation orders Section 22 – for rectifying and preventing the harm caused because of violence Section 3 (d)

The detailed explanation of the orders that can be sought for is given below:

a. **Protection Order - 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 its recurrence or occurrence of any other form of violence as well.

Protection orders that can be prayed for and include (but not limited to) one or more of the following:

- The Respondent be
 - stopped from committing any act of violence.
 - restrained from entering the woman’s place of employment or the educational institution of the children or any other place that the aggrieved person visits.
 - stopped from making any communication through any means with the aggrieved woman or her family members
 - prohibited from taking away the assets of the woman like her bank related documents, lockers or any other property.
 - stopped from causing any violence to any relatives, dependents or any person who gives assistance to the aggrieved person.
 - asked to surrender any firearms or other weapon or any dangerous substance that he/she may possess.
 - be prohibited from acquiring any firearms, weapons or any other dangerous substance.
 - asked not to consume alcohol or drugs with similar effect when it is the root cause of violence. As a corrective measure, the court can also ask or suggest the Respondent to go to the deaddiction center. The chances of stopping violence in the name of addiction can be higher.
 - prohibited from forcing the aggrieved person to marry.
 - told not to prohibit the aggrieved person to continue with her education if the Respondent is restraining her from pursuing education.
 - and any other such orders unique to the case.

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

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 :

- *Prohibit the Respondent from committing economic abuse that deprives the aggrieved person of household necessities and her right to maintenance.*

- *Stop the Respondent/s from emotional abuse – stop continuous criticism over household work stop verbal abuses to aggrieved person's parents, stop drinking alcohol.*
- *Order the parents for stopping the marriage that they are forcing on their daughter.*

Prayer for a Protection order is a must for every case of DV - Five reasons:

1. Protection order (passed under Section 18) is valid or in force until the DV survivor applies to the Magistrate for a discharge, i.e. 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 DV is something that should not be tolerated, that DV survivor has a right to violence free, peaceful and dignified life, and for which she can claim remedies under PWDVA
3. The Respondent, having ordered by a supreme authority to stop violence, 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. Testimony of the DV survivor suffices for invoking Section 31, if the protection order is breached.

Tips for the lawyer in drafting a prayer for protection order

- Inform/ discuss/ suggest/ advise on the following to the aggrieved person:
 - Inform her that a protection order is a stop-violence order.
 - Asking for a protection order is extremely important and must be prayed for to ensure that violence stops.
 - Educate her about what constitutes a 'protection order' (the various kinds of protection orders are as listed above).
 - Inform that protection order can be sought against any person (including the Respondent) who are aiding or abetting domestic violence.
 - Enquire and together discuss and identify the protection order she wants or advise her on the most appropriate protection order in her case.
 - Inform her that if the Respondent resorts to violence even after a protection order is passed, it results into contempt of court – a criminal offence.
 - Inform her that the protection order continues to operate until the aggrieved person applies for its discharge.

- Ask for general and specific protection orders to prevent occurrence and/or recurrence of any form of domestic violence.

b. Residence Orders – Section 19 PWDVA

If the Respondent tries to get the aggrieved person out of or denies access to the shared household, then it amounts to domestic violence – a form of “economic abuse” as defined by Section 3 Explanation I (iv) PWDVA. In such a case, the lawyer, in the application under Section 12 PWDVA, can seek the remedy of Residence Order under Section 19 of the Act.

Residence Order helps the aggrieved person to claim her ‘right to residence’ provided under Section 17 of PWDVA. It states that: *“Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the property.”*

There are 2 important case laws on the aggrieved woman’s right to residence. The Supreme Court on 15th October 2020 in *Satish Chander Ahuja v Sneha Ahuja*, held that residence rights were not limited to situations where the shared household was joint family property, or belonged to the husband.

In another case of *Prabha Tyagi vs Kamlesh Devi*, 2022 Live Law (SC) 474 (Cr.A. 511 of 2022), the Supreme Court held that a victim of domestic violence can enforce her right to reside in a shared household, irrespective of whether she actually lived in the shared household.

The Court observed if a woman in a domestic relationship seeks to enforce her right to reside in a shared household, irrespective of whether or not she has resided therein at all, then the said right can be enforced under Sub-Section (1) of Section 17 of PWDVA. If her right to reside in a shared household is resisted or restrained by the respondent(s) then she becomes an aggrieved person and she cannot be evicted, if she has already been living in the shared household or excluded from the same or any part of it if she is not actually residing therein. The expression ‘right to reside in the shared household’ is not restricted to only actual residence, as, irrespective of actual residence, a woman in a domestic relationship can enforce her right to reside in the shared household.

The Apex court bench was considering an appeal in which the following issues were raised:

- (i) Whether it is mandatory for the aggrieved person to reside with the persons against whom the allegations have been levelled at the point of commission of violence?

(ii) Whether there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed?

"It is held that it is not mandatory for the aggrieved person, when she is related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family, to actually reside with those persons against whom the allegations have been levelled at the time of commission of domestic violence. If a woman has the right to reside in the shared household under Section 17 of the D.V. Act and such a woman becomes an aggrieved person or victim of domestic violence, she can seek reliefs under the provisions of D.V. Act including enforcement of her right to live in a shared household."

In other words, the expression 'right to reside in the shared household' is not restricted to only actual residence, as, irrespective of actual residence, a woman in a domestic relationship can enforce her right to reside in the shared household

Remember – Residence order is for protecting the aggrieved person from domestic violence. It would protect the woman and her children from becoming homeless, and help her claim her right to the shared household.

Safety of her life is the most important and therefore while claiming the 'right to reside' in the shared household, the lawyer has to make a safety assessment, and accordingly seek for residence orders along with protection orders that would prevent further violence.

Orders that would prevent likelihood of violence are already embedded in Residence Orders under Section 19 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 (Section 19(1)(a)).
 - From entering any portion of the shared household where the DV survivor resides (Section 19(1)(c)).
 - Alienating or disposing off the shared house or encumbering it (Section 19(1)(d)).
 - Renouncing his rights from the shared household (Section 19(1)(e)).
2. **Orders directing the Respondent to remove himself from the shared household.** (Section 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 (Section 19(1)(b)).

3. Other orders

- To execute a bond with or without sureties for preventing the Respondent from committing DV (Section 19(3)).
- Directing the Police for providing protection or assisting DV survivor or person on her behalf in implementation of protection order and residence order (Section 19(5)(7)).
Tip: The DV survivor in her application may specify the need for such directions to be given to the police, including the direction to assist the DV survivor in breaking open the lock of the residence, if found locked, etc.
- Any other orders that put additional conditions for protection and safety of the DV survivor and her children while claiming their right to residence (Section 19(2)).

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 (Section 19(1)(f)).
- Imposing obligations on Respondent for paying rent, or other payments for fulfilling financial needs and resources (Section 19(1)(f)).

Tips for the lawyer in drafting a prayer for residence order

- First of all, guide the aggrieved person to show that she has stayed in the shared household and that she has a domestic relationship with the Respondent. Some of how she can establish this is by showing:
 - The identity cards that have address in it like passport, *aadhar* card, ration card.
 - The leave and license or rent agreement in the name of both parties.
 - The existence of the children from this relationship.
 - The nature of financial dependency that exists between both the parties.
- Help the aggrieved person to show how she was dispossessed from the shared household.
- Inform her that they cannot evict her unless the Respondent gets an eviction order by procedure established by law. (Section 17(2))
- Tell her that law gives her choice to stay in the same shared household or ask for an alternative accommodation if she feels unsafe to stay in the shared household.
- **Tip:** While asking for the alternative accommodation the lawyer can suggest to the aggrieved person to do some background study of the ongoing prices (rental/ purchase) in the area where accommodation is

required, so that it can be submitted to the court.

- If the Respondent has a premise which is not occupied, draft prayer for order seeking for its keys and to make the premise available to her.
- If the lawyer of the aggrieved person thinks and foresees that the Respondent will not give peaceful possession of the residence, ask in the prayer clause of the application, for the court to direct the police to accompany the Protection officer and to break the lock if the premise is found locked. Such an order will save the aggrieved person's time and effort, who otherwise, for non-compliance/ non execution of the order, would have to approach the court again.
- If need be, seek in the prayer directions from the Magistrate to give to the police for providing her protection while she enters the house/ during execution of residence order.
- Clearly explain to the aggrieved person that a residence order does not create any title or substantive right. It just helps the woman from being dispossessed from the shared household and prevents her forcible removal.
- Most important of all is to ask for Protection order under Section 18 along with Residence Order

c. Orders for Monetary Reliefs:

Domestic Violence has monetary implications for the survivor, the family in the short run; and the community, the state and the nation in the long run. PWDVA therefore provides for grant of monetary orders.

- PWDVA is sensitive to the monetary losses incurred because of DV.
- By definition of 'Domestic Violence' (Section 3) monetary loss or deprivation is regarded as DV as economic abuse.
- In order to protect the DV survivor and her children from economic abuse (Domestic Violence), monetary reliefs are granted.
- It is therefore necessary to ask for protection order under Section 18 against economic form of abuse in the Application made under Section 12

Orders for Monetary reliefs that can be prayed for

These include expenses and losses suffered by the aggrieved person and the child/children because of domestic violence, such as -

- Loss of earnings because the DV survivor is unable attend employment.
- Expenses on medical treatment of the DV survivor /s.
- Losses because of destruction, damage, of her property.
- Monetary losses because of removal of any property from the control of the DV survivor.

- Other expenses incurred, for example – travel expenses for go to safe place, or expenses for lodging herself in a hotel, or for phone calls, etc.
- Maintenance for DV survivor and her children **under or in addition to** Section 125 Cr.P.C. or any other law, including personal laws.
- Any other losses or expenses incurred by the DV survivor and her children because of DV.

In *Binita Das v/s Uttam Kumar*⁴, the Delhi High Court in 2019 held that interim maintenance cannot be denied to a woman because she has an earning capacity or is a qualified person. Petitioner had filed an application under PWDVA 2005 and along with the application had filed an interim application under Section 23 seeking interim maintenance. Said application has been rejected by the Trial Court by order dated 04.08.2015 solely on the ground that the petitioner and respondent are equally qualified and petitioner was previously employed and has disclosed none cogent explanation or disability on her part to disable her to earn her living.

High Court observed "Clearly both the Trial Court and the Appellate Court have erred in not appreciating the judgments of this Court wherein it has specifically been held that capacity to earn and actually earning are two different things."

High Court then observed and held "It is not the case of the respondent, that petitioner is actually employed or earning. The only ground taken is that she is qualified and capable of earning. Qualification of the wife and the capacity to earn cannot be a ground to deny interim maintenance to a wife who is dependent and does not have any source of income.

In *Rajnish V/s Neha & Anr*⁵ the Supreme Court gave clarification on Law of Maintenance. The Court framed the guidelines to bring uniformity, consistency, efficient disposal and procedural fairness in cases of maintenance. The Court set a comprehensive format for Affidavit of Disclosure of Assets and Liabilities to be filled by both the parties. The guidelines pertain to the following:

1. Issue of Overlapping Jurisdiction: To avoid conflicting orders passed by courts in different proceedings, the Supreme Court has passed the following direction:
 - where successive claims for maintenance are made by a party under different statutes, the relevant Court could consider an adjustment or set-off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;
 - the applicants have to mandatorily disclose all the previous proceedings and the orders passed in any subsequent proceeding;
 - if the order passed in the previous proceeding/s requires any modification or variation, the party would be required to move the concerned court in the previous proceeding.

⁴ <https://www.linkedin.com/pulse/divorce-know-your-rights-archita-srivastava?trk=pulse-article>
accessed on 9/12/2022

⁵ *Criminal Appeal No. 730 of 2020 arising out of SLP (Cri) No. 9503 of 2018*;
<https://indiankanoon.org/doc/117541087/>

2. Payment of Interim Maintenance:

- The Respondent must file an Affidavit of Disclosure within a maximum period of 4 weeks. The Court must not grant more than 2 opportunities to the Respondent to file the Affidavit.
- If the Respondent fails to file the Affidavit within the given time, the Court must decide the application based on the affidavit of disclosure made by the Applicant.
- The Court must make an objective assessment of the approximate amount of maintenance based on the pleadings filed by both the parties.
- In the course of proceedings if there is a change in the financial status or circumstances or if there is any new information, an amended or supplementary affidavit can be filed and it has to be considered by the Court at the time of final determination.
- The Court must decide the interim application within a reasonable time, within a period of maximum 4-6 months, after the affidavit of disclosure is filed.

In addition to the above, the SC made the following observations regarding Permanent Maintenance:

- Parties could lead oral and documentary evidence regarding income, expenditure, standard of living, etc., before the concerned Court, for fixing the permanent maintenance payable to the spouse.
- The duration of the marriage should be taken into consideration for determining the permanent maintenance to be paid.
- Provision in relation to grant of reasonable expenses for the marriage of children must be made at the time of determining permanent maintenance (in cases where the custody is with the wife). The expenses ought to be determined by considering the financial position of the husband and the customs of the family.
- If there are any trust funds/ investments created by any spouse/ grandparents in favour of the children, the same ought to be taken into consideration while deciding the quantum of final child support.

3. Criteria for determining quantum of maintenance:

- The Court has stressed that upon the importance of careful and just balance between all relevant factors and the maintenance must be reasonable and realistic.
- The Courts must take cognizance of the fact that the maintenance awarded to the applicant should neither be extravagant, that it becomes oppressive and unbearable for the Respondent, nor should it be meagre that it drives the applicant to penury.
- The Court must also consider before determining the quantum of maintenance:
 - (a) the status of the parties; (b) reasonable needs of the wife and dependent children; (c) whether the applicant is educated and professionally qualified; (d) whether the applicant has any

independent source of income; (e) whether the income is sufficient to enable the applicant to maintain the same standard of living as she was accustomed to in her matrimonial home; (f) whether the applicant was employed prior to her marriage; (g) whether she was working during the subsistence of the marriage; (h) whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; (i) reasonable costs of litigation for a non-working wife.

- There were additional factors that the Court laid down as follows:
 - a) Age and employment of parties
 - b) Duration of marriage
 - c) Maintenance of minor children and
 - d) Serious disability or ill health of a spouse, child/children or any dependent who needs constant care and recurrent expenditure

4. Date from which maintenance is to be awarded:

- There was inconsistency about the date from when the maintenance was to be awarded.
- The Supreme Court has held that maintenance in all cases (including Section 125 Cr.P.C.) is to be awarded from the date on which the application was made before the concerned Court. This was done with a view to prevent a dependent spouse from being reduced to destitution.

5. Enforcement of maintenance orders:

- The Court observed that execution after the order takes a long time. It recognized that, if maintenance was not given in time; it defeats the very purpose of social welfare legislation.
- Accordingly, the Court directed that an order or decree granting maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1955; Section 20(6) of the Protection of Women from Domestic Violence Act, 2012; Section 125 of Cr.P.C.; or under the C.P.C. as may apply. It was further held that the order of maintenance may be enforced as a money decree of a civil court as provided by various provisions of the C.P.C., including provisions for civil detention, attachment of property, etc., more particularly provided in relevant provisions therein.
- It cautioned the Courts that the option of striking off the defence of the respondent should be exercised as a last resort and in cases where the conduct of the defaulting party was found to be willful and contumacious.
- It further provided that contempt proceedings for willful disobedience could also be initiated before the appropriate Court.

Tips in drafting prayers for order for monetary reliefs

- Enquire with the aggrieved person about availability of evidence for the allegations she is making and seek from her such documentary evidence, if any, like number of leaves taken because of violence and because of which there was a loss of wages/payment, receipts of day-to-day expenses such as grocery bills, medical bills, hospital expenses if any, school/college receipts can be shown to get an approximate expense.
- Along with the aggrieved person, quantify the amount that she is claiming and specify the total amount that she is claiming. It is better and justifiable when this is quantified under various heads, like food, clothes, medical expense, school fees, utilities, etc. This will bring in a lot of clarity even for the Court to understand the amount claimed.
- Pray for adequate and fair amount of monetary relief and according to the standard of living to which the aggrieved person is accustomed (as per Section 20(2) PWDVA).
- Pray that the Court direct the Respondent to either make an order for lump sum or monthly maintenance, depending on the nature of the expense.
- Try to seek specific orders from the Magistrate by providing specific information like where, when, how the Respondent should pay the monetary relief. The details provided may include –
 - Quantum of the monetary relief
 - When the amount is to be paid - specific date of the month on which the amount is to be paid
 - Where the amount is to be paid – whether in the court or into the aggrieved person’s bank account. If it has to be paid to a bank account of aggrieved person, then the bank details have to be submitted.
 - Clear mention of the time from the claim is made. Usually it is from the date the application is filed, so that calculating arrears will be easy.
 - How the Respondent should pay – whether through post-dated cheques, bank transfer, by cash, etc.
- In appropriate cases, taking into consideration the circumstances, monetary relief in kind – such as directing the Respondent to provide certain groceries, medicines, etc. can also be prayed for, although order in the form of money is always a better option.
- For better implementation, request the court to send the copy of the order to the police station and to the protection officer.

Renuka's husband was a farmer and refused to take any responsibility at home. He got money from the yield in the field but he did not give any for household expense. Finally, Renuka approached the Court. He did not have a bank balance to pay the maintenance, but Renuka knew the yield that he got from the field. So, while asking for monetary relief, she asked for some amount and some share in the yield through which she could generate her income.

In this case, instead of money, yield from field was asked. The lawyer should discuss the feasibility for seeking monetary relief and find innovative ways so that the purpose is served.

Tip: 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 DV survivor out of the wages/ salary or credit of the Respondent.

d. Custody Order – Section 21 PWDVA

Section 2(b) of PWDVA defines "child" to mean any person below the age of eighteen; and it includes male and female children. It also includes adopted, step and foster children of the DV survivor.

Custody orders grant temporary custody of children to the DV survivor.

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

The Magistrate also has the power to grant visitation right and specify arrangements for visit of the child/ children by the Respondent. In case there is a history of violence against children of the Respondent, then the access can be limited. The aggrieved woman can request the Court to give the access in her presence, in the court premise and for a stipulated time.

In deciding a case for temporary custody, the court considers what is in the best interest of the child/children. The criteria for 'best interest' focus more on factors conducive for the healthy psycho-social care and growth of the child rather than economic or material factors.

Tips in drafting prayers for custody orders

It is important for a lawyer to ensure the following -

- Inform the aggrieved person that this is a temporary order meant to be given so that the Respondent does not take disadvantage of the children being with him, which can deter the aggrieved person from stopping the violence.
- This order as far as possible must be asked at the initial stage.
- Inform the aggrieved person that not being able to economically provide

for the child is not the deciding factor to give custody of the child to her, as many women tend to think

- If the Respondent is/ has abused the child, write so in the Application u/s 12 PWDVA, with all details, to seek an order from the court preventing the Respondent from having any kind of access to the child or visiting rights in the best interest of the child.

Because of the temporary nature of the order, the lawyer may have to assist the aggrieved person to file for custody under other laws simultaneously.

While arguing the case, all factors to be considered “in the best interest of the child” should be brought out

e. Compensation – Section 22 PWDVA

PWDVA recognizes that the DV survivor has a right to be compensated for the pain that she had to undergo/tolerate because of physical injury, mental torture, and other emotional distress.

It also recognizes that losses to a woman facing DV are much beyond the actual material expenses she has incurred because of DV, and hence are different from monetary orders. Compensation can help her make a new beginning.

A compensation order is over and above monetary and other orders granted under PWDVA. A prayer for compensation order can be made in the Application under Section 22.

We can ask it for besides any other claim that she may have made under any other civil law.

If compensation has been received in other civil cases, the same has to be disclosed to the court.

The Court after assessing the facts and circumstances of the case and the extent of injuries sustained, decides the amount of compensation and is paid onetime by

Tips in drafting prayers for seeking compensation orders

- First explain to the aggrieved woman the difference between monetary relief and compensation.
- Find out the injuries, mental agony and trauma faced because of violence and losses/ damages incurred
- Mention in the prayer for what purpose the compensation is required
- At the same time also mention in the prayer the resources that she lacks and further justify the need for such compensation
- Inform in the Application any compensation that has been received under any other civil law

f. Seek/ pray for interim orders

In view of delays due to legal procedures, it is advisable to seek interim orders to address the urgency for receiving protection and preventing violence. A woman is likely to face more violence because the family considers it as having caused dishonour to it by going to the court. An interim protection order (and reliefs) would help the aggrieved woman to proceed with the litigation in a less threatening or non-threatening environment.

Section 23 PWDVA deals with interim and *ex parte* orders. They can be prayed for in the Application itself, but an affidavit too needs to be prepared and submitted to the Magistrate, in which she claims on oath that domestic violence has occurred. An affidavit is important because in most cases of domestic violence the woman does not have documentary evidence as violence often happens behind closed doors. PWDVA therefore allows the woman to submit her evidence in the form of affidavit⁶. In cases filed under PWDVA, the format for the affidavit is in Form III prescribed under Rule 6(4) and Rule 7 of PWDV Rules⁷.

The provision of Order XIX of Code of Civil Procedure deals with affidavit.

Rule 3 (1) of Order XIX of C.P.C. deals with matters to which the affidavit shall be confined. It provides as follows:

"Matters to which affidavits shall be confined. - (1) affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted; provided that the grounds thereof are stated."

If the Magistrate, after reading the affidavit, is of the opinion that there is a prima facie case of domestic violence, s/he may pass an interim order and ex parte order.

vi. Include the order implementation plan in the prayers:

Including the implementation plan in the prayer will allow the court to pass orders accordingly and help in quick and effective enforcement of the orders. The aggrieved person knows her situation and the tactics that the Respondent/s are likely to use to delay the implementation. Therefore, the implementation plan should be drafted in consultation with her. For example, in case of prayer for order of maintenance, include how much amount, details or where it is to be paid, how it is to be paid (cash, cheque, electronic transfer etc.), and date when it is to be paid. In case of a residence order, ask for permission to break the lock with the help of police if the house is found locked.

⁶ As per Case Law, in **Vishal Damodar Patil v/s Vishakha Vishal Patil, 2009 Cri.L.J 107 Bom**, it was decided a separate application under Section 23 is not mandatory; a prayer for interim order can be made in the Application made under Section 12

⁷ Form III must be filed up 'as nearly as possible'. If the complaint otherwise is drafted in a manner with all necessary particulars and the information required as prescribed in form III, it has to be accepted. This was decided in **Milan Kumar Singh v/s State of U. P. 2007 Cri.L.J. 4742,**

2.8 Get evidence to support her allegations

The lawyer has to inform the aggrieved person on how to collect evidences for the different forms of violence that she has gone through. This will help her in preparing for her case. Many times, women fear taking the decision to litigate because they think they cannot prove their case. Some evidences that can be submitted for various forms of violence are as follows:

Physical violence	Emotional/Mental violence	Sexual violence	Economic violence
Medico – legal certificate of physical injuries	Document from medical professional about the mental condition like depression and stress, letters, messages she has written to her relatives/ friends or any other person	Emails or messages with unwelcome language	Bank statements showing transfers to the Respondent's account
Photographs of the injury Mention of old scars	Letters, messages or emails from the Respondent using abusive language or indicating violence	Medico-legal report of sexual abuse	Non-payment of rent, utility bills, grocer's unpaid bill, etc
Copy of any complaint made to the police	Affidavit	FIR under Protection of Children from Sexual Offence Act, 2012 if the child in the domestic relationship is sexually abused by the Respondent/s	Credit card bills showing the Respondent's spending
	Witnesses who have seen or heard the abuse.		Absence from work because of domestic violence (corroborating evidence)

This is only a suggestive list that is given as an example of what can be submitted. Get a certificate under S65(B)(4) of the Indian Evidence Act for all electronic evidence⁸.

⁸ *RavindraSingh@ Kaku v/s State of Punjab* 2022 Live Law (SC) 461, Cr.A. 1307 of 2019

2.9 Connect the aggrieved person to other services:

As stated earlier in the manual, while getting detailed information, it is very important to check if she needs any other services and if so, the lawyer can inform the aggrieved person of the services that she can avail. If she accesses these either before or after filing of the case, the lawyer can guide her to connect with these.

For example,

Use services of PO: Inform her she can approach the Protection Officer anytime as s/he plays a very crucial role in assisting the aggrieved woman, such as in preparing the DIR, providing support during the period of litigation, in implementation of interim and final orders, reaching out during emergency. Connecting the aggrieved woman to the Protection Officer will also help in building her rapport with her/him.

Seek assistance of the Police, if necessary: Filing a complaint with the police can be used as evidence. Even a **non-cognizable complaint** with the police can help as a deterrence. Sometime when the woman does not want to file complaint with the police but still wants the police to know of the violence she is facing, as a deterrence she can request the police to **note her complaint in the station diary**. Even when the patrolling squad comes to help the woman guide her to check that they record her complaint in their register.

Connect with Shelter home: Her safety has to be of utmost concern. If the aggrieved person is not safe at home and does not have any other place to stay, the lawyer may help her connect with a shelter home. The Shelter home (notified or registered under the Act), as a service provider, can also file a DIR.

Medical assistance: If the woman has been physically hurt, or the violence has had consequences on her physical or mental health, the lawyer can advise her to seek medical/ psychiatric help. It would help the woman learn self-care as being her primary responsibility. This will enable her to be better prepared to deal with the stress she may face because of litigation. When required, the prescription given, the diagnosis and the medical examination report can be used as evidence as well. Where appropriate, a medico-legal case can also be made. The lawyer should also inform the aggrieved woman that if she faces violence during the litigation period, she may approach the police and the medical facility and seek a medical the examination report.

Counselling services - The lawyer can ask the aggrieved person to take help from a counselor while she has decided to file the case. This counseling can be to help her cope with her stressful situation, build her self-esteem, and boost her confidence. A lot of women feel guilty about approaching the court and need constant assurance that she has the right to respect, dignity and violence-free domestic relationships. This counselling would prepare her better to face the litigation. Also, there is a possibility that the counsellor may call upon the perpetrator, and if he responds positively to the

counselling, it is likely that the issues may get resolved – either by reconciliation or through separation of ways amicably.

The lawyer representing the aggrieved person must not work with the sole purpose of just filing her case, but must have a holistic approach that can help her come out of the violent situation in the best possible way.

Some points to keep in mind while drafting the Petition

1. Empathise with her situation without being judgmental.
2. Mention all the facts without distorting it.
3. When the lawyer is not sure of a particular fact verify it with the client rather than presuming something.
4. Write about how the violence has impacted her life.
5. Check for facts with certain evidences and remove the contradictions if any so as to represent her without leaving any loopholes.
6. Ask her about how she wants the orders while drafting Prayer clause.
7. Give annexure wherever she has proof to submit.
8. Ask her to read the draft of the Petition before she signs it.
9. Answer all her queries in the draft as it is extremely important for the client and lawyer to be on the same page.
10. As far as possible use the language that the client is comfortable for the draft.
11. Explain to her what she can get from the various orders so that she makes informed choice.

The draft of the application should cover every fact in the pleading without leaving any loophole. Once the draft Application is filed, making an amendment is not an easy process. It is time consuming and can cause delays in even seeking interim orders. The lawyer therefore has to put in his/her best efforts at drafting.

3.0 During Litigation

Contents – during the litigation stage

3.1 Filing the Application

- 3.1.1 Where to file the Application
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3.6 Referral to Counseling

3.7 Recording of Evidence

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3.9 Final Orders

3.1 Filing the Application

3.1.1 Where to file the Application

The Application under Section 12 PWDVA is filed before the Judicial Magistrate First Class (JMFC) or Metropolitan Magistrate that has jurisdiction in the area where the aggrieved person resides – whether temporary or not, or where the Respondent resides or where the domestic violence has allegedly taken place.

In case the aggrieved person has a case pending in any other Court like the Civil, Criminal or Family court, we can file an application under PWDVA in that court under Section 26 of the Act. This provision helps the person to file the case in the single court where there is a case pending between the same parties instead of running from one Court to another.

3.1.2 Whether DIR is required to be filed along with the Application

In most cases when the case is filed directly through the lawyer, Domestic Incidence Report (DIR) is not filed with the Application. Although it is not mandatory⁹, the Court may ask the Protection Officer to file the DIR.

Tip: If there is no DIR, it should be mentioned in the Application itself that as per case law it is not required under PWDVA and mention the case law. This would avoid delays.

⁹ Filing the DIR is not a condition precedent to take cognizance of the case has been established in *Amar Kumar Mahadevan v/s Kartiyayini* MANU/TN/9632/2007.

However, despite this if the Court insists on not proceeding with the matter unless the DIR is filed and it is taking up inordinate time of the aggrieved person, the lawyer can request the Court to grant interim orders until then, for her safety.

Sometimes it takes a long time till the Protection Officer receives the court order to file the DIR. In order to accelerate this process, the lawyer can request the Court to allow him/her to take the order for the Protection Officer by hand under Section 28 of the Act. The lawyer by establishing connections with the Protection Officer can see how this process can be expedited.

3.1.3 Amendments to the Application already filed

It is possible that after the lawyer has filed the Application, the aggrieved person may remember certain facts that were not mentioned in it. Each fact in case of domestic violence is important to get orders in her favour. Hence the lawyer has to inform the aggrieved person she can apply to the Magistrate for allowing her to amend her application.

While making such amendment request, the lawyer has to mention that the amendment is crucial to ensure that vital facts are included and not missed out. The Court will take say from the Respondent's lawyer regarding the amendment request and then pass the order. Here the lawyer of the aggrieved person can convince the court to allow the amendment based on the broad powers that the Court has under Section 28.

Meena had faced physical, economic, mental and sexual harassment from her husband. The lawyer who had helped her in filing the case only wrote about economic violence and did not mention about any other violence. The Court did not understand the danger that Meena apprehended and so when she asked for Protection Order the Court rejected it.

Another lawyer, after understanding her situation realized that the pleading in Meena's case was inadequate. The lawyer also understood Meena's discomfort at mentioning sexual violence as she thought it will blemish her family name. The lawyer explained to her why it was important to write all the facts that describe violence so that the court can come to the correct conclusions and pass orders accordingly. Finally, Meena agreed. The lawyer made an application to the court mentioning the reason vital facts were not mentioned. There was a prayer made to withdraw the old application with a permission to file a new application.

In this case, there were major changes as very few facts were actually mentioned, so prayer to withdraw the old application with the permission to file new application was made. When there are minor changes the application can be to make amendments. The court can be persuaded to use their power under Section 28 where this law allows them to deviate from the established procedures with the sole purpose to stop domestic violence

3.1.4 Taking Safety Measures:

The lawyer needs to deliberate with the aggrieved woman about risk of violence after filing of the case and consider taking safety measures and preparing the safety plan in Form V as per rule 8(1)(iv) PWDVR. (Please refer Appendix 2 of this document)

This exercise will also be good for the aggrieved person as it will compel her to think of safety options that are specific to her situation. The lawyer can submit the duly filled Safety Plan in Form V to the Magistrate any time during the case hearing/ trial period. It is not mandatory to submit the Safety Plan in every case. However, it can be useful in showing to the court the grievousness of the situation and persuade to get orders quickly. It can be submitted at any stage of the proceedings.

3.2 Filing Affidavit for Interim and Ex-parte Orders

Interim and Ex parte Orders can be got under Section 23 of the Act through an affidavit, a format of which is provided in Form III under rule 6(4) and 7 PWDVR¹⁰. These orders can be got without hearing the Respondent or even before the notice is issued where the Court feels that there is a prima facie case of domestic violence and immediate cognizance has to be taken to stop the violence. Since the orders are interim in nature they can be changed when the circumstances change.

On the perusal of the affidavit if the Magistrate is of the opinion that the Respondent is committing or has committed or there is a likelihood of committing domestic violence interim orders may be granted *ex-parte*. The lawyer has to explain why it is important for the Court to give the interim orders *ex-parte*.

Radhika was pursuing Ph.D. and had got scholarship for the same. Her mother and brother were not too happy with her decision to pursue Ph.D. studies because they wanted to marry her off and she refused to marry. So there was a lot of mental pressure everyday which was making it very difficult for her to stay in the same house with them. She wanted to move out as she was economically independent. When she told her family that she wants to move out her mother and brother started threatening her. Hence, she could not leave the house without protection order as she was scared that they could cause her harm.

She filed the petition under PWDVA asking for Protection Order. The Court initially was not willing to consider giving the interim Protection Order ex parte. When the lawyer argued that, firstly time was the essence in this case as she could not pursue with her studies until she moved out of the house. Secondly if the notice was sent to the Respondent they will make it very difficult for her to step out of the house even to attend the case as they will know that she has filed the case. The Court was convinced and she got interim and ex parte Protection Order on the day the Petition was filed without issuing the notice. Hence, she could safely move out of the house with the interim and ex-parte Protection Order.

¹⁰ Please refer Appendix 4 for copy of Form III of PWDVR

The provision of interim and *ex-parte* orders in this law is to stop violence immediately. Usually, in cases of domestic violence the aggrieved woman approaches the court as a last resort. Her desperate condition for a safe environment has to be understood by the lawyer so he/she can convince the court on why immediate interim and *ex-parte* orders are required. In most cases the court has an approach where interim orders are not passed *ex-parte* on the belief that the other party must be given a fair chance. The lawyer has to persuade the court that this is a beneficial legislation to stop domestic violence. When it is *prima facie* evident from the affidavit that the aggrieved person is not safe Section 23 PWDVA¹¹ has to be applied.

While applying this Section, especially when *ex-parte* orders are vital, the lawyer has to bring to the notice of the court the incidences of violence that occurred in the past and present, and also possibility of violence likely happen in the future. A threat to violence is also enough to get the aggrieved person interim and *ex-parte* orders.

3.3 Appeal from the Interim Order

Either party can appeal from the interim order. This right is restricted and the appellate court will use its discretion only when it finds that the Magistrate Court has used its powers arbitrarily.

Interim orders are temporary in nature and work as a stop gap arrangement. Filing an appeal against the interim order unnecessarily only increases the litigation time of both the parties, and hence should be avoided.

3.4 Serving the Notice

Notice has to be served within 2 days from filing the application as per Section 13 of PWDVA. It is the duty of the Protection Officer to serve the notice by using various prescribed ways prescribed under Rule 12 PWDVA. The Protection Officer himself/herself can serve the notice or we can serve it through someone. The notice is presumed to be delivered if any person in charge of the place accepts it at that moment. If someone cannot physically deliver the notice for any reason, then it can be pasted at a conspicuous place on the premise. It is a good practice to record the pasting of the notice by a photograph.

This law allows the Magistrate to use procedure of their own under Section 28 of PWDVA and so it creates a lot of scope for the Magistrate to use different means to serve the notice.

¹¹ Section.23(2) states : "If the Magistrate is satisfied that an application *prima facie* discloses that the Respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the Respondent may commit an act of domestic violence, he may granted an *ex parte* order in the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Sections 18, 19, 20, 21of PWDVA or, as the case may be, Section 22 of PWDVA against the Respondent."

- In case the Respondent stays out of India we can serve the notice through courier and we can submit the receipt of the courier to the court as proof of serving.
- The notice can be sent by fax and the receipt of the fax can be submitted to the Court as proof. Private service of notice does not violate the provision of PWDVA.
- If the aggrieved person is not sure of the whereabouts of the Respondent, then the lawyer can mention in the pleading that the notice has to be served at various locations so that the purpose that the Respondent should have information of the hearing in the Court is served.

Lily knew that her Respondent husband will not be at his residence on weekdays in day time when the Protection Officer may go to serve the notice. So, in her case the office address of the Respondent was also mentioned so that we can deliver it to him depending on the day of the week when it is served and the time of the day when it is served. The notice had both the addresses and the Protection Officer could serve the notice to the residence or the office address depending on day and the time.

There can be innovative ways to serve notice depending on the situation of each case so that it gets served promptly and we avoid delays. The lawyer has to mention the different ways in which we can serve notice in the prayer when there is a deviation from the regular ways of serving the notice.

Tips: For requesting innovative ways of serving the notice, the lawyer may

- Try to convince the court to use its powers under Section 28 PWDVA if the Respondent is trying to evade the service of notice the Magistrate and explain why it is extremely important to use an 'innovative' means to serve the notice. Section 28 gives the Magistrate the powers to adopt its own procedure.
- Suggest using new/ electronic methods to serve notice – such as email, or even WhatsApp.
The following decision of the Bombay High Court may be quoted - in a case of copyright against producers of a Kannada film Pushpak Vimana Justice Gautam Patel of Bombay High Court used WhatsApp to serve notice after verifying the number of the Respondent on True caller. Now there is a precedent from Bombay High Court.
- If the Respondent resides in another district or State, request the Magistrate to seek the services of the Protection Officer of that District or State to serve the notice.
- Request the Magistrate to direct the police to accompany the Protection Officer serving the notice if there is apprehension that the Respondent may intimidate or create an unnecessary problem for the Protection Officer.
- Any other such request that would prevent delays

3.5 Respondent files Written Statement

A 'Written Statement' (WS), the reply to the Application filed by the aggrieved person is expected. The lawyer has to keep a check on how long the Respondent/s is/are taking to file the written statement/s. Most times the Respondent/s purposely takes/take very long time to file reply. In such cases, the aggrieved person's lawyer can bring this to the notice of the court and press for interim orders (the court has not passed any), even before giving the Respondent/s a chance of representation, so that the safety of the aggrieved person is not at stake.

If there is a lapse of over 3 dates in the court, the lawyer can make an application for 'no WS order' where the lawyer of the Respondent will be not be able to file the Written Statement. In a way this will put a pressure on the Respondent's lawyer to file the written statement at the earliest.

The lawyer, after studying the written statement, has to ask the aggrieved person if there is any fact that needs a reply. If yes, then a rejoinder has to be drafted and filed. The lawyer has to tell the court why the rejoinder has to be filed so that the right of the aggrieved person to put certain facts from her perspective is not lost.

3.6 Referral to Counseling

Under Section 14 PWDVA, the Magistrate can refer the Respondent or aggrieved person either singly or jointly, for counseling at any stage of the proceedings to a 'Counsellor'. The 'Counsellor' is a member of a Service Provider that is registered under Section 10 PWDVA. Counselling at any stage of litigation, as per rule 14 PWDVR, is aimed at stopping violence for which purpose an undertaking is sought from the Respondent.

The lawyer can discuss the availability of counselling under PWDVA, inform the aggrieved woman about the aim and contemplate with her the consequences of the situation. In case she wants to go through counseling, we can add it in the prayer clause in the Application itself, or a request made to the Magistrate at any stage of the hearing.

At times, the Magistrate may on their own accord refer the Respondent and/or aggrieved person for counselling. In such case, the lawyer should explain what counselling entails, and whether she would want to go for counselling. **If the court directs her to go for counselling, either of the party can refuse to go for counseling by stating their reasons. For services like counseling, there are no compulsions but the practice is that we do not deny orders of the court.**

Tip: It is always better to get an interim protection order (stop-violence order) passed before we refer the litigants for counselling. It will give the person a better negotiating space and reduce the threat that she might be facing. This counselling helps build trust in the justice system and gives the person a sense of safety and security. It is possible to stop violence from happening.

Often, Magistrates refer parties for mediation to mediators - advocate mediators or judge mediators, as per Bombay High Court Rules for mediation. This happens when the Magistrate feels that there is a likelihood of an amicable settlement (whether reconciliation or otherwise). The mediators are mostly senior lawyers or judges who may have undergone training in mediation.

In such a case, the lawyer has to explain to the woman about what mediation entails, and take a decision of whether to accept mediation. If she accepts mediation, she should be clear about the terms and conditions she would want to put and briefed not to feel pressurized to make a compromise at the risk of her life and well-being.

It is important to understand **the difference between ‘counselling’ and ‘mediation’**.

✓ **What is counselling?**

Counselling is a process of dealing with psychological aspects of an individual for bringing about positive change in attitudes and behaviours, and for motivating a person to change. Rule 14 PWDVR provides a detailed guideline for conducting the counselling, where the aim is to end violence in the relationship.

Keeping this purpose in mind, we may say that ‘counselling’ under PWDVA is primarily directed at the Respondent for changing his attitude (largely patriarchal) towards self and the relationship, for changing his behaviour/actions, and developing skills to deal with emotions such as anger, disappointments and expectations from the aggrieved person, so that s/he does not resort to violence. The counselling directed at the woman (aggrieved person) is largely towards change in her attitudes towards self and the relationship, and behaviours/ actions that focus more on self-care, being assertive and developing communication skills.

Goals for counselling would vary depending upon the uniqueness of each case, but the expected outcome would be to stop violence through a written settlement of the terms and a ‘no-violence’ undertaking from the Respondent. The Counsellor has to report the outcome to the court.

✓ **What is mediation?**

Mediation, on the other hand, aims at bringing about a settlement through negotiating terms of settlement by discussing the feasible remedies with both the parties. While negotiation the prayer clause and the remedies that the aggrieved person is asking for to stop violence has to be taken in into consideration, else the mediation will have no meaning. The trial court gives both the parties the option to choose mediation if he/she sees a possibility of resolving the case through mediation, and they agree we refer them to the mediator.

The outcome of mediation would be a consensus reached on all terms (negotiations successful) or consensus reach only on some terms or no consensus reach at all (negotiations failed). The mediator submits a report to that effect.

If the mediation has been successful, the trial court grants orders accordingly.

If mediation has failed, they report the same to the court, but without details of discussions that happened.

Tip: If the parties agree partially upon the terms, the lawyer can instruct the aggrieved party that she can request the mediator to finalise the terms that both parties have agreed and request the court to decide other remedies prayed for through the trial process. This will save/ reduce the time taken to complete the case.

It is important to remember that while PWDVA provides guidelines for counsellors under Rule 14, PWDVR that demands a feminist rights-based perspective; they provide no such guidelines for mediators. The sensitivities of the mediators would have to be relied upon with no guarantee of it being feminist and rights-based.

3.7 Recording of Evidence

Evidences submitted can be documentary or as affidavit. Since domestic violence is within the four walls, sometimes, it is very difficult to have witnesses to support the aggrieved person. Evidence affidavit helps the person to put before the Magistrate the violence that she has faced. Hence evidence is based on the oral and documentary evidences by the Court.

The lawyers need to take special care to prepare the aggrieved person to give evidence in the court by using various strategies. There can be fear in her mind of facing the court, and the lawyer on the other side.

Tips for preparing the aggrieved woman to face the trial:

- Tell her to read the Petition and the affidavit and discuss with her questions she may have.
- Prepare a list of tentative questions and have a mock cross-examination session with her. This will boost her confidence to face the cross-examination without being intimidated.
- Though examination-in-chief is done by submitting an evidence affidavit, the lawyer can also give the aggrieved person the option of doing the examination-in-chief in the courtroom. This experience of standing in the witness box, facing the court and answering questions asked, can prepare her better for cross-examination.
- If she has been to NGO for help, the lawyer can request the court to allow the member of NGO to stand by the women in the courtroom to support her.

Vandana had done MA in Hindi. She was well educated and not very fluent in English. When she was asked in which language she wants her application to be drafted, she opted for English. The lawyer drafted in English, read out and explained the application to her, verified that all facts mentioned were correct and finally filed the application. When her case reached the stage of cross-examination, the Respondent's lawyer purposely started asking her questions about the meaning of English words used in her petition as he wanted to prove that she does not know the facts of her case properly because they are in English, a language she is not well-versed in. Vandana told the court that her lawyer had read out the application, explained to her every paragraph that was written and she knew what was written in her application. Vandana started preparing on her own for her next date of cross-examination by referring to the words in application that she found difficult, looking them in the dictionary and understanding the meaning through self-learning. Her lawyer supported her in this exercise. On the next date of cross-examination, Vandana was not afraid of facing the cross-examination. In Vandana's case, the lawyer motivated her and, in the process, empowered her to face the courtroom fearlessly. She had full control of her own case and was actively involved along with her lawyer.

3.8 Argument

After the evidence stage is the Argument stage. Here both the lawyers put forth their arguments based on the contention of the Petition, the Written Statement and the statements made by the aggrieved woman, the Respondent/s and their witnesses during the evidence stage. Final argument is a way to summarise the entire case. The argument can also be submitted in written form. Points made in the argument are considered by the Magistrate while passing the final order. Hence, the lawyer must emphasise on the important points that are crucial in getting the orders in favour of the aggrieved person.

3.9 Final Orders

Interim orders are a stop gap arrangement to stop violence immediately. This law allows the Court to give ex parte interim orders when there is a prima facie case of domestic violence. When the interim orders are given evidence is not considered in great depth and hence there is a possibility that the final orders may not be the same as interim orders. Refer to the Section of orders in the pre litigation section for more details.

4.0 Post Litigation

Contents – post-litigation stage

4.1.1 Enforcement of the Final Order

4.1.2 Breach of the Protection Order

4.1.3 Appeal

4.1.1 Enforcement of the Final Order

The Protection Officer has a duty to assist the aggrieved person in implementing the orders¹².

The Police too have a similar duty to perform to protect the woman from being subjected to violence. As in case of Residence orders under Section 19(5) and 19(7), the Magistrate can direct the police to protect and assist in implementation of the Residence order and the protection order.

Hence, it is required for the lawyer to mention in the prayer clause on how the aggrieved person expects the order to be implemented. We should include the implementation plan in the prayer in the Application made under Section 12 PWDVA. This will allow the court to pass orders to help effective enforcement of the orders.

The order can be implemented in any part of India¹³, and the local Protection Officer/ Police are expected to assist her. For example – take the case of Priya -

Priya filed the case of Domestic Violence in Jalgaon. She got residence order to reside in the shared household where her husband was already residing in Pune. She came to Pune with the Order passed by the Jalgaon Court. Her husband did not let her inside the house and went out of Pune when he got to know that she has the order to stay in their shared household. So she lodged a complaint with the Police. She also took help of the Protection Officer of Pune to get the order implemented. So the Protection Officer sent a report of non-implementation of the Order. Meanwhile the aggrieved woman found a spare key of the house that she had in Jalgaon so she came back to Pune and took the possession of the house.

The lawyer can also request for additional orders from the Court for smooth implementation when they foresee the Respondent is not going to co-operate in its implementation. These are orders which may or may not need implementation, but

¹² Section 9 (1)(i) PWDVA and Rule 10(e) PWDVR

¹³ Section 1(2) PWDVA

we ask them as an extra measure. For e.g. if the Respondent does not hand over the key to the alternative house as part of implementing Residence Order, there can be a mention of the additional order to take help of the police to break open the lock of the house.

The PWDVA is a civil law. Hence under Section 28 of PWDVA the Magistrate may use the Civil Procedure Code, or Criminal Procedure Code, or procedure of its own. The same principle applies to enforce the order as well. The orders passed are remedies that the aggrieved person gets directing the Respondent to stop violence and hence they are civil in nature. If the Respondent breaches the protection order, the law provides for imprisonment or a fine. The Respondent is given a chance to stop violence before any criminal action is taken against him.

4.1.2 Breach of Protection Order

It is important to inform the aggrieved woman that a Protection order once passed holds until she applies for discharge. Hence, after the order is passed – be it 1 year, 10 years or if she has not applied for a discharge under Section 25 PWDVA, and the protection order is not followed or broken, it is considered being a ‘breach’ under Section 31 of the Act.

PWDVA is a civil law with criminal implication. If the Respondent does not follow the Protection Order, there is a penal liability. Breach of Protection Order under Section 31 is a cognizable and non-bailable offence. Protection Officer can make the report of breach of Order. Alternatively, the aggrieved person can approach the police or Magistrate when there is a breach of Order. The Respondent is given a chance to stop violence and later punished if there is a violation.

This law is not in derogation of other laws and hence, the aggrieved person can also file cases under other civil and criminal laws. This law provides the aggrieved person to get remedies other than sending the Respondent to the prison. Most times, the aggrieved person does not want criminalization of the Respondent. But when the Respondent ignores the orders of the court, the aggrieved person can choose imprisonment as a penalty as per Section 31 of the Act.

Section 31 makes both the breach of interim and final order an offence under the Act, making it punishable with imprisonment of either description, simple or rigorous for a term up to 1 year, or with fine up to Rs. 20,000/- or with both. Undergoing imprisonment does not absolve the Respondent from liability. The Respondent has to follow the orders passed by the court even if they send him to the prison for breach of Protection Order.

Section 31(3) states that while framing charges under Section 31(1) of PWDVA, the Magistrate can frame charges under Section. 498A of Indian Penal Code. So, we can also apply a criminal law when the Respondent has committed the breach of Protection Order.

Section 32 of PWDVA mentions that the court can convict the Respondent on the sole testimony of the aggrieved woman.

The aggrieved person can report the breach of protection order to the Protection Officer. The lawyer has to assist the aggrieved person to make such a report. She has to be educated by the lawyer about what actions she can take when the orders are not implemented. The aggrieved woman can also make the complaint to the Magistrate directly or to the police.

✓ **Steps to be taken by the aggrieved person in case of breach of Protection Order**

The aggrieved woman must state all the facts that have led to the breach of the Protection Order

If she approaches the Magistrate directly, we can frame the charges without filing a FIR

Though there is no limitation to file a case for breach of Protection but because we will follow the Criminal Procedure Code, Section 468 (2) (b) of the Cr.P.C will apply. The limitation under the said Section is one year from the date of offence. The lawyer can advise the aggrieved application to make an application for delay condonation in such a case.

The lawyer can also show that the violence is continuous as per Section 472 of the Cr.P.C and we can consider a fresh period of limitation every time there is violence.

The lawyer can request the Magistrate to take cognizance under relevant Sections of IPC like Section 498A

The lawyer can ask for relevant restraining orders, especially while the Respondent (accused) is going to be enlarged on bail. At such a time, the aggrieved woman has to inform the lawyer of the potential threats that she expects.

4.1.3 Appeal

Appeal is filed when either of the party that is not satisfied with the Order. Appeal can be filed after an interim or after the final order. Appeal from the Magistrate Court should be made to the Session's Court.

The appeal should be made within 30 days from the date of the order.

Either party has the right to file an appeal against an interim order of the Magistrate. If the Magistrate has used his powers decisively, the Appellate Court uses its discretion while deciding the case. Interim orders are temporary and applicable only until the

final orders are passed. If an appeal is filed against such interim order, the case would get delayed and therefore should be avoided.

The Appeal should explain in brief the grounds for the Appeal. It must have the details of evidences which the Court has not appreciated. The lawyer has to explain that new facts cannot be brought into an appeal. A lot of times, the clients are under the impression that additional facts or facts that have not been in the original application can be written in the appeal. It has to be made clear to the client that only law points that should have been considered in deciding a case but are not considered has to be mentioned. After hearing the Appellant, the Court may either dismiss the appeal or alter the Order.

5.0 Other laws that aggrieved person can use

PWDVA is not in derogation of other laws. A case of domestic violence has to be understood in all aspects. There are many interlinking laws that have to be considered by the lawyer to guide the aggrieved person. Sometimes using other laws can help the aggrieved person get multiple remedies to stop violence against her. Some of these remedies are civil in nature, while some are criminal. Some laws can be used to protect others, along with her case. For e.g. a mother complaining that her child has been sexually abused by the Respondent. In such situation the Protection of Children from Sexual Offence Act, 2012 will also have to be used as this law emphasizes on mandatory reporting.

Points to remember

- The aggrieved person can use PWDVA in addition to other laws
- As far as possible the lawyer should make use of optimum provisions and avoid multiple litigation
- Lawyers must build a network with other service providers so that the connections can be made when the aggrieved person approaches
- A lawyer must always explain the procedures and stages in the case to the client as it helps them to be prepared
- The communication related to the case must be in a simple and lucid language that can be easily understood by the client.
- If the Respondent or the lawyer of Respondent approach the aggrieved person's lawyer for compromise then there must be transparency in all such communication so that the aggrieved person does not feel vulnerable.
- A case of domestic violence may also have interface with other laws. Examples:
 - Law related to divorce
 - Law related child sexual abuse (POCSO Act, 2013) where there is a provision of mandatory reporting
 - Maintenance under Section 125 of Criminal Procedure Code
 - Maintenance under other personal laws
 - Complaint under Indian Penal Code

PART B - Lawyers representing Respondents

The lawyers of the Respondent have to understand the objective of PWDVA viz. to stop violence and create a space for dialogue in an environment where the disputes can be resolved amicably. Especially where there is a prima facie evidence to show that the aggrieved person has faced violence, the Respondent's lawyer can look for ways and techniques to stop the violence rather than denying it.

While each party has a right of representation, the role of the lawyer is not just limited to representing a client. There is a larger role and duty where she/he has a responsibility to guide her/his client to do what is just.

Violence has to be understood and perceived from the point of view of the person who has gone through it. While the aggrieved person may have her model of world and the Respondents may have their model of the world, in beneficial legislation like PWDVA, the beneficiary's - aggrieved woman's perspective, has to be understood. So, no fact can be trivialized as not being violence.

The larger role of this legislation is to stop violence and create a space and enabling environment where violence can be stopped through dialogues. Going into denial cannot help either party in bridging the gap in a domestic relationship.

A few ways in which the lawyer representing the Respondent can align to the larger objective of PWDVA are:

- One way is to opt for counseling services. The purpose of this law is to stop violence so that it is a healthy family. Most of the time Respondents think that they do not require the services of counseling. But in reality, counseling can help to put things in perspective. A lawyer's advice to the Respondent to avail the services of counseling can help both the parties.
- There is a tendency to avoid court cases and hence there are many examples where the Respondent/s avoid to take court notices in the first instance. They try to consult the lawyer before accepting the court notice. The lawyer can guide them to accept the notice on time so that they have sufficient time for preparing their case. In the modern times, the court is also using technology of mobile phone to send notice. Hence there is no point in avoiding receipt of the notice. Notice is merely the intimation and information of case filed, where the Respondent/s are also given a fair chance of representation.
- Another point to be noted by the respondent's lawyers is to avoid inordinate delay in filing the written complaint. Necessary time should be taken to file the reply. But just to delay the process if one is not filing the written statement that is a wrong strategy, as it is not helping the Respondent to complete the case on time. Quicker the lawyer's assistance to the Respondent in completing the legal compliance, the faster the case will be over, is the principle, the lawyer has to explain to the Respondent.

- Failure of the Respondent to give the response can be considered as a circumstance against him. This law does not allow the right to keep silent like other laws. Hence the burden of proof is on the Respondent to prove that the averments made by the aggrieved person are not true.
- Lawyers representing the Respondents mostly oppose when the Protection Order is asked. They need not oppose this order because the Respondent does not have to give any of his valuable asset or money in this order. This order just asks the Respondent to do or abstain from certain acts so that the situation is not further aggravated. A lawyer definitely cannot have a role to say protection order should not be given where the aggrieved person perceives violence. Rather the lawyer of the Respondent can advise the client to take precaution not to do anything that can be considered to be aggravating the situation. The lawyer of the Respondent can instead guide the respondents through what measures they can take up to convince the court that there is no domestic violence.
- When there is a residence order passed in favour of the aggrieved woman the Respondent's lawyer must advise his/her client to follow the orders that have been passed to avoid further action rather than not complying with the orders. It is important to remember that this order does not create any substantive right in favour of the aggrieved person on the property.
- When there is a prima facie case that the Respondent has to pay the aggrieved person monetary expenses; instead of denying the payment the Respondent's lawyer can avoid delaying the process by quoting an amount that the Respondent can pay. This will help in giving the Court a realistic picture of the Respondent's capacity to pay. This will work as a win-win situation for both the parties as the aggrieved person gets the monetary relief and the Respondent gets an opportunity to state the amount that is feasible to pay.
- There can be serious consequences for not implementing the orders of the Court and hence the Respondent's lawyer should guide the Respondent in following the Orders of the Court. Also, when the Magistrate decides to take action under the criminal law it does not absolve the Respondent from the responsibility to follow and implement the order.
- Ultimately the lawyers representing both the parties play a very crucial role in putting forth the facts and applying the law in true spirit to make the implementation of the law effective and successful.

Conclusion

Protection of Women from Domestic Violence Act, 2005 is a social legislation passed with an objective to stop domestic violence. Although it is a gender specific law, lawyers of both parties play a crucial role in assisting their respective clients to understand the nuances of violence and what can be done to stop it. This manual is an attempt for lawyers to use various ways to apply the law in spirit.

Wishing you all the best for the effective implementation of 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.

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
Sl. 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 (d)		
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 basic 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

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 choice. <input type="checkbox"/> Any other verbal or emotional abuse. (please specify in the space provide below)	
<i>(iii) Economic violence</i>				
			<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 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