

Annex 4: Overview of the Protection of Women from Domestic Violence Act 2005

This overview was prepared by Center for World Solidarity as part of the public awareness campaign on the Domestic Violence Act, which was passed in 2005.

Overview of the Protection of Women from Domestic Violence Act 2005 (PWDVA)

The origin of the Act lies in Article 15 (2) of the Constitution of India, which clearly says that “State can make special provisions for women and children” towards realizing the right to equality. This indicates the use of affirmative action to remedy a wrong. It is often said that India has several laws but they are not implemented. The problem, however, is not the lack of implementation, but the lack of a mechanism by which it can be implemented. Women have insufficient understanding of the law and lack of access to the courts. Hence it is necessary not only to enact a law but to provide the necessary infrastructural tools with which to access the law. The way of doing this is to put a mechanism in place in the law itself. In the Act, this has been done by creating the office of the Protection Officer and recognizing the role of the Service Providers. Affirmative duties have been imposed on the government to provide legal aid, medical facilities and shelter homes in the hope that women in distress be given all these facilities. The Act is a statement of commitment by the State that domestic violence will not be tolerated.

The framework and crucial aspects of this Act are as follows

The PWDVA is a civil law. While the objective of criminal laws is to punish the offender, a civil law is directed towards providing reliefs to the aggrieved party; in this case, the woman who faces violence at home.

Definition of “Domestic Violence”

The Act defines “Domestic Violence” for the first time in Indian law. It is a comprehensive definition and captures women’s experience of abuse and includes not only physical violence but also other forms of violence such as emotional / verbal, sexual, and economic abuse. It is based on definitions in international law such as the UN Declaration on Violence Against Women and a Model Code.

The Act recognizes domestic violence as a human rights violation. It recognizes a woman's right to live in a violence-free home. To realize this right, the Act recognizes a woman's right to residence and her right to obtain protection orders under the law.

The reliefs provided in the Act are meant to provide immediate relief in emergency situations

The Act does not make any changes in the existing personal law regime on family matters. The reliefs under the Act are in addition to existing laws and have been recognized with the objective of empowering a woman to tide over an emergency situation. Having obtained relief under the law, a woman can still go for relief under other laws later.

Access to justice and the availability of infrastructure

Recognizing that a woman requires assistance with legal procedures and other forms of support, the PWDVA allows for the appointment of Protection Officers, and recognizes the role of Service Providers in providing medical, shelter, legal, counseling and other kinds of support services. The Protection Officer is the person in charge to assist women to avail of these facilities as well as assist her in obtaining the appropriate order under the Act.

Procedures to obtain orders, reporting of violence and the consequence of breaching the obtained orders

The Act includes provisions for making Domestic Incident Reports which will serve as important records at the stage of evidence taking. The manner in which the applications for orders under the Act have also been mentioned in the Act. Finally, the Act provides that the breach of an order obtained is a criminal offence.

PWDVA

- It is a civil law for protection orders and not meant to penalize or punish
- It recognizes the right to residence of woman, It recognizes the right of the woman to live in a violence-free home and that she should not be facing violence
- It provides only temporary and emergency relief
- It is a law in response to the needs of the woman
- It has certain crossovers from civil to criminal law—so when the protection order or Magistrate's order is violated, criminal law will start

Procedures involved under the PWDVA

Step 1: *Informing the Protection Officer: Any person who has reason to believe that such an act has taken place or is likely to take place can inform the Protection Officer.*

Step 2: *Aggrieved woman should be informed of her rights under the law: A police officer, Protection Officer, Service Provider or Magistrate who has received a complaint shall inform her of:*

- Her right to make an application for obtaining relief by way of protection order, an order for monetary relief, a custody order, a residence order, a compensation order;
- The availability of services of the Protection Officers, Service Providers, including shelter homes, medical facilities, etc.
- Her right to free legal services under the Legal Services Authorities Act 1987; and her right to file a complaint under section 498 A of the Indian Penal Code.

Step 3: Making the Domestic Incident Report and other responsibilities of the Protection Officer: The Protection Officer makes a Domestic Incident Report to the Magistrate and forwards copies there of to the Police Officer in charge. She/he ensures that:

- The aggrieved person gets all the benefits mentioned.
- A list of all Service Providers is maintained and that the aggrieved person has access to counseling, shelter homes and medical facilities where required;

Step 4: Once the matter is with the Magistrate: The Magistrate shall fix the first date of the hearing, which shall not ordinarily be beyond three days from the receipt of the application by the Court, and shall endeavour to dispose every application within a period of 60 days from the date of the first hearing.

Step 5: Informing the respondent of the date of hearing: A notice of the date of hearing shall be given by the Magistrate to the Protection Officer who shall serve it on the respondent and on any other person as directed by the Magistrate within a maximum period of two days.

Step 6: Other options with the Magistrate: The Magistrate may

- Direct either of the parties, singly or jointly, to undergo counseling;
- Seek assistance of a person, preferably a woman, engaged in promotion of family welfare, for assisting him/her in discharging his/her functions;
- Conduct the proceedings in camera.

Step 7: Where does she stay in the meantime? Aggrieved person has the right to reside in a shared household, whether or not she has any right, title or beneficial interest in the house and shall not be evicted.

Step 8: How is she protected in the interim? The Magistrate, after giving both parties an opportunity of being heard, and satisfied that domestic violence has taken place, can pass a protection order or a residence order, direct the respondent to pay the aggrieved person monetary relief and in addition, can pass compensation orders, custody orders and ex-parte orders.

- The Magistrate shall ensure that a copy of any such order shall be given free-of-cost to the parties.

Step 9: What if the protection order is breached? If the protection order has been breached, it shall be punished with either imprisonment or fine or both.

Step 10: Who will ensure that all this is done? The Central and the State Government shall take measures to ensure that:

- Provisions of this Act are given wide publicity through media;
- Central and State government officers including police officers, members of the judicial services, etc., are given periodic sensitization and awareness trainings on issues addressed by this Act;
- There is effective coordination between the services provided by concerned Ministries and Departments dealing with law, home affairs, health and human resources, and that there is a periodic review of the same.

■ Rules

- This is a Central law and hence the Centre is framing the Rules—but the appointment of POs will be by the State Governments.
- The PO is the first point of contact for the woman—hence a very important cadre.
- The Rules specify the rights of the victim and the duties of the authorities under the Act.
- The Rules specify the procedure for exercise of powers under the Act including eligibility and appointment of authorities, manner of counseling, disposal of applications, service of summons etc.

■ Heads for which Rules are to be made listed under the Act

- Eligibility, appointment, terms and conditions of service etc. of the Protection Officer
- Form and manner of making a Domestic Incident Report
- Form and manner of making applications for protection order
- Duties of the Protection Officer
- Registration and regulation of Service Providers
- Form of making applications
- Means of serving notices
- Qualification and experience of counselors
- Form of affidavit to be filed by the applicant

■ Shelter and medical assistance to the aggrieved person

- The shelter homes and the medical facility are under a legal obligation to provide shelter or medical facility to the aggrieved person.
- Copy of medical examination report is to be provided free of cost to the aggrieved person.

■ Qualifications and appointment of Protection Officer under the Act

- Protection Officer either to be a government servant or a social worker working for women and child welfare, with a post graduate degree in Humanities or Law
- One or more Protection Officer within the jurisdiction of each Judicial Magistrate

■ Functions and duties of Protection Officer

- To inform aggrieved person of her rights under the Act
- To provide all forms and applications and assistance to the aggrieved person
- Make a safety plan and take adequate measures in view of the safety plan
- Enforce the orders of the Court as and when directed by the Court

■ **Service Providers include shelter homes, medical facilities and counseling services.**

- The Service Providers should be registered and fulfill the statutory requirements for running a medical facility or a counseling center, etc.

■ **Form and manner of making complaint—(Domestic Incident Report) and applications for relief under the PWDV Act**

- Complaints and applications under the Act can be made by filling in the prescribed forms.
- The forms can be availed of from any source including Service Providers, Protection Officers or Police Stations.
- The aggrieved person has a right to seek assistance for filling in the forms or filing the applications before the Court.
- The aggrieved person can also file the complaint or applications directly before the Court.
- In case the aggrieved person files the complaint or applications through the Protection Officer or a Service Provider, she has a right to receive a copy of the complaint or the applications free of cost.
- The service of the notice or summons shall be by handing over the same to the respondent or any male member of his family.
- The summons / notice can be delivered by registered post.
- Court can direct service in accordance with the Code of Criminal Procedure or the Civil Procedure Code or employ any other effective way of service in view of the facts and circumstances of the case.

■ **Appointment of counselors and counseling**

- The Court can direct counseling for an amicable of the matter by the parties.
- Counseling can be directed on admission of alleged misconduct and undertaking not to repeat the same by the respondent.

■ **Enforcement of orders passed under the Act and consequences of breach of protection order.**

- The breach of orders of the court under the Act shall amount to cognizable, non-bailable offence warranting immediate arrest and summary trial.

■ **Computerized user-friendly forms for making complaints and applications**

- The forms for making complaints and applications are in computerized format and user friendly.
- The aggrieved person can easily provide the required details.
- Filling in the forms will take care of all the legal requirements to be fulfilled by aggrieved person.

■ Important features

- POs will be appointed by State Government on deputation basis. Deputation will be on a voluntary basis and will be for a minimum of 3 years.
- Direct Incident Reports—DIRs have been simplified. POs should know how to document. NGOs might need training on how to document DIRs—to be used as evidence in Courts
- A woman need not always approach the PO—she can go to Court directly. She can also seek help of police, friend, NGO, Service Provider—but each of them should refer her to the PO. She/he then takes on the role of doing all the needful to provide the woman with immediate and emergency services.
- Letter of demand has been sent to Minister of State; Ministry of Women and Child Development
- Training and awareness sessions with the implementing State partners
- Building linkages with the State Gender Resource Centers
- Speedy implementation at all levels
- Introduction of the PWDVA as a part of the Course Curriculum at the school level
- Protocols for the various Ministries concerned with the delivery of services to women under this Act, including the Courts, are prepared and put in place.

■ Framework of the Rules

The broad categories under which the Rules for the Act have been framed are as follows:

Appointment and functions of the Protection Officer

Appointment of Protection Officers

There was a great deal of controversy relating to the appointment and the qualifications of the Protection Officer. The ideal situation would be to create a new cadre of paralegals to serve exclusively as Protection Officers. However it is not possible to put in place a new system in the Rules as such, since a 'new cadre' would require involvement of the Ministry of Personnel Affairs. Also, the question of whether responsibility of the new cadre will vest with the Centre or the State will arise since law and order is a State subject.

Hence, under Rule 7, it has been suggested that Protection Officers be appointed from a particular section of people who are already employed as government officials. These officials will be on deputation to serve exclusively as Protection Officers. Under the Rules, there is a mention of various departments and sectors from which such officers may be deputed. Emphasis has been given on voluntary deputations. Provisions for the appointment of persons employed in Non Governmental Organizations as Protection Officers have also been included. The issue that remains unresolved is who will be responsible for paying volunteers from the NGOs. If the remuneration is minimal, volunteers may be discouraged from applying to the post. As the State Government is responsible for the appointment of Protection Officers, this is a matter that will have to be put for its consideration.

Tenure of Protection Officers

Rule 8 provides for a minimum term of 3 years for serving as a Protection Officer.

Jurisdiction of Protection Officers

In Rule 8, it is made clear that there shall be not less than one Protection Officer for the area of a Judicial Magistrate. This provision also allows the State Government to appoint more than 1 Protection Officer, keeping in mind the area and the volume of the work involved.

Functions of the Protection Officer

Rule 21 enlists the functions of the Protection Officer. The primary function of the Protection Officer would be to protect the victim from any further act of domestic violence. The Protection Officer should serve as a liaison between the woman, police and the Service Provider. Caution must be exercised to ensure that the functioning of the Protection Officers do not impinge on the right to privacy and the autonomy of women complainants.

The duties of a Protection Officer have been divided into two parts:

Functions of the Protection Officer under the Act

On receipt of any complaint from an aggrieved person, the Protection Officer will have to make a Domestic Incident Report and forward it to the concerned authority for further action if the woman so desires.

- It shall be the duty of the Protection Officer to also assist the victim in
- making a complaint or an application under the Act,
- accessing legal aid and obtaining medical/shelter facilities,
- becoming aware of her rights, remedies and services available under this Act.
- receiving all possible assistance

Thus, the Protection Officer is the authority charged with the duty of doing everything possible to assist the woman in getting the remedies provided under the Act and live a life free of violence. The Protection Officer will be the interface between the victim and the Court, and between the victim and the police, the medical facility and the shelter home.

Functions of the Protection Officers under court orders

On receipt of an order from a Court, the Protection Officer can conduct a home visit, and can make appropriate enquiries regarding the salary, assets, bank accounts, and emoluments of the respondent liable to pay maintenance. The Court can also direct the Protection Officer to assist the aggrieved person in regaining the custody of her children and assist the Court in enforcement of the order passed.

It is an effort of creating a synergy between institutions of society, all of which are responsible for preventing violence against women, but till now have not performed the role that is expected of them.

Whereas there has been a challenge to domestic violence over the years from the civil society, there has been no institutional response to this. The Police, performing their role under Section 498 A, is not an institution to challenge domestic violence. There are no institutions charged with liaising between different institutions charged with the duty to combat domestic violence. Therefore, there is a need to create such institutions.

An apprehension was expressed that a woman should not be denied direct access to the Court. It was clarified that a woman can approach the Court directly and approaching a Protection Officer is purely optional for the woman and is voluntary.

Form and manner of making application for orders

Rule 12 states that on receipt of a complaint, the Protection Officer shall make a Direct Incident Report. An application under Section 12 shall be made in the format included in Form C in Schedule I. The Protection Officer shall assist her in making the application. Attached with the Rules are various forms for obtaining different orders (Forms E–Form J). Rules 14 to 20 state the various Sections under which these applications/forms are to be filed.

Registration and duties of Service Providers

The Rules provide for the registration of Service Providers. The important issue that arises in this regard is that if NGOs are not registered, does it mean that they cannot continue providing services to women facing domestic violence? This is not the case. All Service Providers can continue to perform all the functions they are at present performing without any need to register. Registration under the Act is purely voluntary for the Service Provider. The objective of providing for the registration of Service Providers is that if they are registered, then their records will have authenticity in the court of law. The record of a registered NGO and a Domestic Incident Report ('DIR') recorded by them will form part of the evidence or the previous history of violence in a court of law and will be very helpful in getting a protection order. Record keeping is, therefore, crucial. If the NGOs are registered, then the records maintained would be authentic records.

The status that is accorded to the NGOs will also give them the authority to insist that the victim be provided the facility offered by other registered Service Providers such as medical facilities and shelter homes. Minimum standards can be enforced in the facilities. What is required is a need to liaison between different institutions such as the police, legal authority, Service Providers etc. This role will be played by the Protection Officer.

Counseling process

Section 14 provides that a Magistrate can, at any stage of the proceedings, direct the aggrieved person and the respondent, either singly or jointly, to undergo counseling. Under Section 15, a Magistrate can requisition the services of a person engaged in "promoting family welfare" to assist him/her in discharging his/her functions. Both these provisions did not form part of the Draft Bill submitted to the Ministry. But since these provisions are present in the law, it becomes imperative to lay down a comprehensive procedure that ensures that these provisions will not be used against women in their struggle for justice. Hence, the format and manner in which the Rules have been formulated reflect this concern.

Stage at which a counselor can be appointed and the purpose of counseling

The first important step in this regard is that, Under Rule 35, counseling can be directed only after passing an order for interim relief. It has to be kept in mind that counseling can take place only in an atmosphere free of violence. Only once the violence stops can equality be restored and negotiations can take place on a level playing field. The purpose of counseling would be to tell the aggressor not to commit any form of domestic violence towards the complainant. To this extent, an undertaking may be obtained from the perpetrator. Rule 38 clearly lays down that that the perpetrator shall not be allowed to plead any justification for the alleged act of domestic violence during the process of counseling.

Appointment of counselors

Rule 33 refers to the appointment of counselors. The qualifications and disqualifications for the appointment to the position of counselors have also been provided in detail. The disqualifications include any form of association with either of the parties to rule out bias. Further, the

appointment of the counselor is subject to the consent of both the parties. Care must be taken to ensure that Protection Officers are not appointed as counselors under the Act.

Settlements arrived at during the process of counseling

Rule 39 provides that negotiations for a settlement can be initiated at the behest of the aggrieved person.

The aim of counselor would be to arrive at a settlement of the dispute by suggesting measures for redressing the grievances of the aggrieved person by taking into account the measures or remedies suggested by the parties.

During the course of counseling, Rule 40 provides that the counselor shall not be bound by the provisions in the Indian Evidence Act, 1872 or by the Code of Civil Procedure, 1908 or the Code of Criminal Procedure, 1973 and shall be guided by the principles of fairness and justice.

On arriving at a settlement, the counselor, under Rule 41, will record the terms of settlement and get the same endorsed by both the parties. The Court shall accept the terms only after it is satisfied subsequent to conducting a preliminary enquiry to rule out fraud, force and coercion. The Court will then record its reasons. Thereafter the Court can pass appropriate orders. Any orders in existence can be discharged if a proper and fair settlement has been arrived at.

If a settlement is not arrived at, the case will be continued with, and the record of the counseling proceedings shall not be deemed to be material on record for the purpose of the case.

Means of serving Notices

Rules 29–32 refer to the service of notice and summons. In these provisions, it is stated that notices shall be served at the place where the respondent is residing or where the respondent is employed. For any further process, the procedure as prescribed in the Code Of Criminal Procedure, 1973 or the Code of Civil Procedure 1908 shall be followed.

Enforcement of orders and breach of protection orders

Rules 44–50 refer to the procedure to be followed in cases where there is a breach of a protection order. An aggrieved person may report the breach of a protection order to a Protection Officer who shall then inform the concerned Magistrate or may directly make a complaint to the Magistrate. A simple affidavit by the woman that a particular Protection Order has been breached is enough to trigger off the procedures prescribed to address breaches. Section 31 of the Act provides that the breach of a protection order is an offence and shall be punishable with imprisonment of either one year and/or a fine. The procedure laid down in the CrPC shall govern arrest, summary trial, sentence etc

Safety Plan for the aggrieved person

Under Rule 23, it is also stated that on an application being moved under Section 12, the Protection Officer shall prepare a “safety plan” which shall include measures to prevent further violence after making an assessment of the dangers involved.