

Indian Protection of Women from Domestic Violence Act: Stumbling or Striving Ahead?

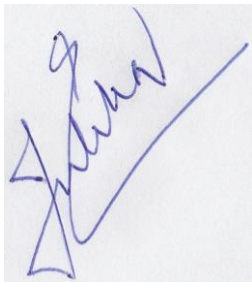
By

Tulika Saxena

A thesis submitted for the degree of Doctor of Philosophy of The Australian National University.

Declaration

I, Tulika Saxena, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy, in the School of Politics and International Relations of the Research School of Social Sciences, College of Arts and Social Sciences, Australian National University, is wholly my own work unless otherwise referenced or acknowledged. This thesis has not been submitted for qualifications at any other academic institution.

A handwritten signature in blue ink, appearing to read 'Tulika Saxena', is written on a light-colored background.

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Acknowledgments

Completing my PhD thesis has been a long journey, thankfully, I made it to the end. This would not have been possible without the generous support of many people, and I acknowledge their contribution. Firstly, my sincere thanks to my supervisor, Em. Professor Marian Sawyer, who made sure that I reached the end of this research project. She was a constant source of support from the start, and always provided me with the right motivation. She was a mentor for me, and was never irritated by my underdeveloped drafts of chapters. Her feedback on my chapters was always prompt and she helped me to focus on what I wanted to achieve from this research project.

I also thank my panel members Dr Kuntala Lahiri and Professor Stewart Lockie for their inputs. Dr Kuntala Lahiri helped me fine tune some important aspects of the thesis from an Indian feminist perspective. I have to thank the support provided by the Australian Awards Liaison Officer Gina Abarquez and her team, they coordinated an excellent orientation program and were always in touch at ANU. The generous scholarship from the Australian Awards was the reason that I was able to pursue my studies at ANU. I also thank SPIR faculty members and administration office staff for always being so helpful. I would also like to thank my various PhD colleagues, who always inspired me and made my time at ANU enjoyable. There are times when some kind people step in and help you in a way that you had not expected. I acknowledge such help from Dr Merrindahl Andrew for reading my chapter and giving her inputs to improve it.

I have to thank many people in India without whom this research would not be possible. First of all I acknowledge the support of all the NGOs, government

officials and lawyers who made my field work in India possible. Then I have to thank all the 78 women who shared their life experiences with me and gave me insights into a subject that I am passionate about. There is also a generous friend Sharaf who gave his office space for me to work on my thesis in India when I was back from Canberra working part time on my thesis.

I have to thank several friends in Canberra, for without their support it would have been hard to survive as a single mother in a foreign land. Naina is one among them, and she and others were there to provide me emotional support, inviting me over for meals, and most of all they happily baby-sat my daughter whenever I needed to study on weekends.

.I am also indebted to my family, my parents, my mother Bina, for believing in me, and my father Rajendra for surviving a bad phase of old age and illness without me while I was far away, studying. I also acknowledge the support of my two lovely sisters Kokila and Renu. Kokila helped me in Australia to focus on my research and Renu helped me by being the anchor of my family in India while Kokila and I were away. I also thank the support of my cousin Shreya who provided me help by reading and commenting on my chapters and pushed me to finish.

Lastly but not the least, I want to thank my daughter Anvita and my partner David Donovan for tolerating me while I was at my worst and for pushing me when I lost motivation. You both have been my life support system. I could not have done this without you both. Thanks for standing by me and loving me.

Abstract

Domestic violence, the most pervasive form of violence against women, is accepted internationally as a violation of human rights and about 125 countries have policies to address it. Women's movement and activism first brought the issue of violence against women onto the mainstream policy making agenda. The focus now rests on how efficient these policies are. However, few impact assessment studies on these policies are available. This research seeks to fill this gap. An impact assessment of the Indian *Protection of Women from Domestic Violence Act* (PWDVA) 2005 was done in three States of India: Delhi, Madhya Pradesh and Uttar Pradesh. The research assessed the impact of accessing PWDVA in the lives of 78 women from these three States. Since States have allocated different resources and used different models of implementation, this research also assessed the impact of the State's commitment and resources on the outcomes for women.

For this research, a gendered impact analysis framework was used, which focussed on assessing the level of strategic gender needs of women that were being met. Feminists have argued that gender-aware policies might not result in gender equitable goals due to the law implementer's gender bias. The women interviewees reported on the law implementers' behaviour and its impact on the outcomes. They also reported on their overall satisfaction with the outcomes through PWDVA and its impact on their lives in reducing violence, homelessness and economic dependence. The women rated judges, police, lawyers, protection officers appointed under this Act and NGOs that had been registered as service providers. It was found that the

judges were most influential in impacting the outcomes for women inside court and police were most influential outside the court. However, negative behaviours from both adversely impacted outcomes. It was found that judges also highly influenced the relief granted to women and that protection orders were granted to only one third. Maintenance was the relief most often granted. The research findings also show that protection officers, intended to be the main law implementers for the PWDVA, were the least accessed law implementers in the given research sample. Overall, about 37 percent of women were extremely satisfied or satisfied with the outcomes and about same number of women, that is 37 percent, were not satisfied with the outcomes. There were about 23 percent who were partially satisfied.

Analysis of the behaviour of the key stakeholders reveals that civil society, in the form of women's organisations, NGOs and activists, are the only institutions that consistently provide gender-sensitive support to women. The other stakeholders can be characterised as still representing the patriarchal state; with gender-insensitive behaviours negatively influencing the gender relations that women share with men. This research highlights the need to further incorporate civil society into implementation of the Act and into capacity-building for other stakeholders such as the judiciary and police.

Contents+

Declaration	ii
Acknowledgments.....	iii
Abstract	v
Abbreviations	xviii
Chapter 1: Introduction	1
Domestic violence, a journey from the private to the public sphere	8
Global agenda development on the issue of domestic violence	11
State response to address domestic violence	14
Chapter 2: Domestic violence in India: Women's movement and state response	18
State responses versus feminists' demands	23
UN Framework for model domestic violence legislation.....	28
UN framework influence on PWDVA	29
PWDVA compared to other Acts	31
Salient features of PWDVA 2005	32
Progress o\ Implementation of PWDVA	36

Budget allocation for implementation	37
Protection Officers as key implementers.....	38
Reporting under the PWDVA	41
Capacity-building issues.....	42
Women’s Organisations/Service Providers involved in implementation.....	43
Medical facilities	45
PWDVA: Perceptions and Practices of key stakeholders	46
PWDVA implementation issues.....	51
What remains missing?	51
Chapter 3: Literature review	54
Implementing DV policies: Efficiency debate	55
Indian <i>Protection of Women from Domestic Violence Act</i>	58
General analysis of the Act.....	60
Implementation and monitoring literature.....	62
Evaluation and impact	70
Conclusion.....	73

Chapter 4: Research Design and Methodology.....	74
Research question.....	75
Research methods.....	77
Research approach and philosophy	78
Research purpose.....	79
Research strategy.....	80
Comparative case study method.....	81
Data collection.....	82
Semi-structured interview.....	82
Interviews.....	83
Ethics clearance	84
Sampling.....	85
Selection of the cases	86
Number of observations	87
Validity, credibility and reliability of research.....	88
Research limitations	89

Researcher's position	90
Research sample	92
Profile of women	95
Other information	98
Theoretical concepts and framework of Gender Impact Assessment	98
Gender analysis.....	99
Gender-aware monitoring and evaluation of policies.....	100
Monitoring and evaluation framework for PWDVA	105
Key questions for monitoring and evaluating the implementation of the PWDVA.....	108
Chapter 5: Implementation context and models in the three States	112
Case 1: Madhya Pradesh	113
Case 2: Delhi	115
Case 3: Uttar Pradesh	117
Model of implementation	120
Resources and budgets	124

State actors	126
Chapter 6: Courts, judges, lawyers and PWDVA	132
Influence of the court environment on PWDVA case management	133
Judges' behaviour influencing the outcomes for women	135
Instances of judges positively influencing the outcomes for women.....	137
Instances of judges negatively influencing outcomes for women.....	143
Judges influencing the relief granted.....	161
Protection orders.....	162
Maintenance orders	163
Residence orders.....	165
Compensation orders	166
Other relief	167
Judges influencing duration of the case	168
Lawyers	173
Analysis of findings.....	177
Criminal courts and civil procedures	178

Judges interpreting the PWDVA	179
Issues emerging from the responses	181
Conclusion.....	184
Chapter 7: Police, protection officers, service providers	185
Police	186
Positive behaviour of police	188
The negative behaviour of police as reported by women.....	192
Protection officers	204
Accessibility of protection officers	204
Full time, district-level, protection officers: Delhi	205
Part-time sub-district level protection officers: MP	206
Part-time district level protection officers: UP	206
Positive influence of protection officers	209
Protection Officer's report as evidence in court	209
Support in compliance of orders	210
Providing emotional support.....	211

Negative influence of protection officers	212
Low accessibility and poor quality of services	212
No advantage to contacting the protection officers	213
Insensitive reporting and counselling	213
Observations related to the role of protection officer.....	216
Service providers	218
Positive influence of service providers.....	221
Providing guidance during the whole process	221
Providing emotional support.....	222
Accompanying women to court and police station.....	223
Influencing other stakeholders.....	223
Help with expenses	224
Help with compliance	224
Negative influence of service providers	225
Medical facility.....	226
Chapter 8: Overall Satisfaction and Impact of PWDVA	229

Case Duration requirements	229
Cases with duration of less than 90 days	230
Cases with duration of more than 90 days but less than a year	231
Cases ranging from more than a year but to less than two years.....	232
Cases ranging more than two years	232
Reasons for the long duration of cases	233
Expenses.....	235
Overall satisfaction with outcomes from PWDVA	237
Satisfied or extremely satisfied.....	238
Partially satisfied.....	239
Not satisfied or worse than before	239
Impact of orders on the lives of women	242
Reducing violence.....	243
Economic support	246
Homelessness.....	247
Custody of children.....	249

Impact of PWDVA in other areas of women's lives	249
Changed gender relations with respondent	250
Negative impact of accessing PWDVA	252
Conclusion.....	253
Chapter 9: Implications and policy recommendations.....	256
Gender impact analysis	256
Strategic gender needs.....	258
Impact on negotiation power	260
Recognition of domestic violence as a human rights issue	261
Practical gender needs	263
Economic abuse.....	264
Reducing homelessness	265
Comparison of findings across States.....	267
Who causes adverse outcomes for women?	270
What are the main issues?	271
Access of women to remedies	273

Extent of needs met	274
Adequacy of enabling environment and support services	275
Comparison of findings with existing literature	276
Recommendations	277
Full-time protection officers:	280
Cases should be time-bound	283
Legal counsel:	284
Allocated resources to be distributed:.....	284
Registered service providers to be utilised more:	285
PWDVA not to be used for compromises outside court:.....	285
Immediate passage of interim orders:	286
Conclusion.....	287
Bibliography.....	291
Appendix 01: Semi -structured interview questionnaire for women	314
Appendix 02: Information Sheet	317
Appendix 03: Oral Consent Script	321

Appendix 04: Recruitment of women in three States	323
Appendix 05: List of NGOs that participated in this Research.....	329
Appendix 6 PWDVA 2005	330

Abbreviations

AP	Andhra Pradesh
CDPO	Child Development Project Officer
CEDAW	The Convention on the Elimination of all Forms of Discrimination Against Women
CrPC	Code of Criminal Procedure (1973)
DIR	Domestic Incident Report (made by Protection Officer)
DLSA	Delhi Legal Services Authority
Dowry	Wedding gifts for bride at time of marriage
DV	Domestic Violence
DWCD	Department of Women and Child Development
FIR	First Information Report (made at Police Station)
ICDS	Integrated Child Development Services
INR	Indian Rupees
LCWRI	Lawyer's Collective Women's Right Initiative

<i>Mahila Panchayat</i>	A group of women developed at community level by an NGO for purpose of resolving family conflicts and violence against women
<i>Mayaka</i>	Married women's parent's home
MLJI	Ministry of Law and Justice of India
MP	Madhya Pradesh
NCW	National Commission for Women
NFHS-2	National Family Health Survey-2(1998-99)
NGO	non- government organisation
PO	Protection Officer
PWDVA	<i>Protection of Women From Domestic Violence Act</i>
RMIT	Royal Melbourne Institute of Technology, Melbourne
<i>Sasural</i>	Married woman's matrimonial home of her husband and his family
<i>Sati</i>	Ancient ritual of burning a widow on husband's pyre
SEAN	South East Asian
Sec 498A	Penal code against cruelty related to dowry

Section 125	Maintenance Law of CrPC whereby wife and other dependents can claim maintenance
Section 304B	Penal code for cruelty related to dowry resulting in women's death
SRVAW	Special Rapporteur on Violence against Women
UN	United Nations
UNDP	United Nations Development Program
UNFPA	United Nations Population Fund
UNIFEM	United Nations Development Fund for Women
UP	Uttar Pradesh
VAW	Violence Against Women
WHO	World Health Organisation
WPR approach	What's The Problem approach

Chapter 1: Introduction

Forty years ago, terms such as “domestic violence”, “gender-based violence” and “intimate partner violence” had little public recognition worldwide or space in the public policy agenda. It required many years of feminist activism to change the way we look at domestic violence, the most prevalent form of violence against women. The first major breakthrough towards recognising violence against women (VAW) internationally as a serious violation of human rights was the United Nations (UN) Declaration on the Elimination of Violence against Women in 1993. Since then, more and more countries around the world have been adopting policies to address violence against women, particularly domestic violence. By 2006, about 89 countries had some sort of legal provision against domestic violence (United Nations, 2006), and this figure increased to 125 countries by 2011. These countries have recognised domestic violence as an issue that needs state intervention and hence have brought policies to address it (UN Women, 2011).

During the early 2000s, the academic literature on domestic violence was focussed on conditions or causes that precipitated a response from states resulting in the adoption of domestic violence laws. Women’s international advocacy organisations and activists within the UN were focussed on building frameworks and minimum standards that laws addressing violence against women should adhere to. Based on the UN-proposed model framework, many countries have adopted domestic violence policies (UN Women, 2011). Since these policies now exist in more than 125 countries, attention has moved on to focus on what is being achieved by these laws.

The present literature review shows that there is a dearth of such impact assessment studies.

Available literature shows that the implementation of laws on domestic violence is a greater challenge than it was to introduce them in first place. Even though the scale of domestic violence has been well established, with the World Health Organisation (WHO) reporting that globally one out of every three women is abused in her lifetime by a person with whom she is well acquainted (WHO, 2005, Ellsberg and Heise, 2005), the state institutions which implement the laws are known to harbour the gender-biased notions of the past, where domestic violence was considered to be an issue in the private realm and not the state's responsibility (Bush, 1992, Bhasin and Khan, 1986). This influence of the social, economic and political environment of the country hinders effective outcomes from these pieces of legislation, which are usually more gender-progressive than the environment in which they are being implemented.

Given that the impact of domestic violence policies is an under-researched area and that their implementation is already being signalled as an area of challenge, it is important to undertake a gender impact assessment of a piece of legislation that has both adhered to the recommendations of the "UN Framework for model legislation on domestic violence" and that is being implemented in a challenging environment.

This research takes the case of India, which is representative of a developing, democratic and secular country in South Asia, a region which is notorious for women's rights breaches, especially violence against women. India has a unique history both of violence against women, and of the struggle by women's activists

and organisations to address it. Surviving in an extremely patriarchal society, women in India have witnessed extreme violence, such as *Sati* (the burning of a Hindu widow on the deceased husband's funeral pyre) and dowry deaths and honour killings. In India, the last case of *Sati* was in 1987, with a failed attempt as late as 2009 (The Times of India, 2009). Dowry deaths that involved burning a bride to death in the early years of marriage also plagued the country in the 1980s, which forced the Indian government to bring in stringent laws to curb such forms of violence. Apart from the extreme homicidal form of violence, ongoing domestic violence in the lives of women is also reported to be a widespread problem. It has been observed that two-thirds of married Indian women have faced domestic violence in their lives. Seventy percent of married Indian women between the ages of 15 and 50 have been physically assaulted, raped or coerced into sex by their spouses (Nigam, 2008). Despite this prevalence of violence against women and a number of legal reforms, Indian governments have generally been apathetic in their responses to the issue.

Similar to the struggle that women's organisations faced all around the world in putting violence against women on the public agenda, Indian women's organisations and activists also had to adopt various strategies to draw the attention of governments to the pervasive nature of violence (Menon, 1999). Women's activists demanded a systematic response by government and adherence to the international conventions that India has signed. For the first time, the Indian government officially recognized the gravity of violence against women (VAW) and its adverse impact on the nation in its Country Report for the 1995 Fourth World Conference on Women in

Beijing. Later, after ten years of intensive women's movement activism, India passed legislation on domestic violence in 2005.

In the case of India, the *Protection of Women from Domestic Violence Act 2005* (henceforth referred to as PWDVA) not only proposes a feminist definition of domestic violence, but it also provides a single access point for women, with the provision of protection, shelter, medical services, interim custody of children, maintenance and compensation. At the level of implementation, however, there are still many problems that need to be resolved to achieve better outcomes for women. According to a 2009 report by an Indian non-governmental organisation (NGO), the Lawyers' Collective Women's Right Initiative (LCWRI), the responses from the 28 States and seven Union Territories of India vary considerably. Under the provisions of the Act, all States have to appoint 'Protection Officers', engage service providers (mostly NGOs), and ensure delivery of medical facilities, shelter homes and paralegal aid, among other types of support. The progress to date shows significant variations between the States with respect to the mechanisms adopted and the resources invested. Given that there are significant differences between the environments in which PWDVA is being implemented, it is reasonable to assume that the impacts generated will also be different.

The PWDVA in India has been subject to regular monitoring and evaluation by the 'United Nations (UN) Trust fund to End Violence against Women' at a national level through LCWRI, the national NGO mentioned above. This monitoring and evaluation gives us a picture of how Indian States are proceeding differently

regarding the implementation process. However, these reports are not evaluative in nature and cannot be used to assess the outcomes or impact of the Act on the lives of the women. Though assessing impact is a long-term process, accessing outcomes for women is important when making further claims to the efficiency of such legislative reforms that are taking place all over the world. Hence, the purpose of the current research is to address this gap and analyse the outcomes by means of gathering qualitative data through interviewing women who have accessed this Act in the past two years in different environments.

This research investigated three States of India, namely Delhi, Uttar Pradesh (UP) and Madhya Pradesh (MP). These three States were selected in order to understand the difference in outcomes for women where the law is the same but implementation models and resource commitments from the States are different. This research has focussed on women who have received relief from the PWDVA and who have documented their feedback both on the quality of their experience while accessing the PWDVA and the changes in their lives after relief was granted through this Act. Feminist scholarship has shown that, despite the best intentions of gender progressive policies, the attitudes of the implementing authorities become a barrier in achieving the desired outcomes (Kabeer and Subrahmanian, 1996, Bacchi, 2006). Hence the research participants were asked to rate the behaviour of law implementers and what influence such behaviour had on the outcomes. This data was then analysed through a gender impact assessment framework designed for this research (see Chapter 4 for the framework) to assess whether the outcomes achieved through the Act catered to women's practical gender needs or strategic gender needs. Details on what were defined as practical and what were defined as strategic gender

needs are provided in Chapter 4. For both practical and strategic needs combined, this research has traced the changes in the gender relations that women share with men as a result of accessing the PWDVA.

This research provides evidence from the end users (women who have survived domestic violence) on the familiar proposition that gender insensitive attitudes of law implementers are the biggest challenge that influences the outcomes for women. This research pinpoints the negative and positive behaviours of law implementers, such as judges, police, lawyers, service providers and protection officers, and how these behaviours influence outcomes for women. Analysis of the behaviour of the key stakeholders reveals that civil society, mainly women's organisations, NGOs and activists, is the only institution that consistently provides gender-sensitive support. The other stakeholders can be characterised as still representing the patriarchal state; with gender-insensitive behaviours influencing negatively the gender relations that women share with men. This research highlights the need to further incorporate civil society into the implementation of the Act and also in building the capacities of other stakeholders within the state institutions, such as the judiciary and the police.

In this thesis, next section of this chapter will focus on how the domestic violence gained visibility and was brought into agenda of the policy debates that resulted in domestic violence being addressed by 125 countries around the world. Later section will detail how and when states respond to the demand of domestic violence policy.

Chapter 2 will provide the background of women's movement for domestic violence policy and the context in which PWDVA was passed in 2005. This chapter also presents the salient features of PWDVA and the progress of implementation till date.

Chapter 3 reviews the literature related to the research, focussing in depth on the literature available related to the implementation of PWDVA. This chapter identifies the need of doing the impact assessment of domestic violence law.

Chapter 4 discusses the research design and methodology used in the research and the research question. The research involves feminist qualitative research and gender analysis tools to analyse the data collected through interviews of 78 women. The later section of chapter 4 describes the conceptual frameworks used in research. The gendered impact assessment framework used in the research uses gender analysis tools.

Chapter 5 provides the context of the three States in which the research was conducted. It describes the gender indicators of the State and the implementation model of PWDVA of each State, Delhi, Madhya Pradesh(MP) and Uttar Pradesh(UP).

Chapter 6 to chapter 8 presents the findings of the research. Chapter six presents the findings related to law implementers within the judiciary system, judges and lawyers and the impact of these law implementers have on outcomes for women. Chapter 7 presents the findings related to law implementers outside the courts, responsible for the implementation of the PWDVA. They are police, protection officers and service providers. Chapter 8 then presents the findings on indicators like duration of the case, expenses incurred for accessing PWDVA and the overall satisfaction from the

outcomes achieved through PWDVA. The impact on the lives of women is also discussed in this chapter.

The final chapter 9 presents the implications of the findings and summarises the critical findings which informs the recommendations that the chapter makes. This chapter then concludes the thesis.

Domestic violence, a journey from the private to the public sphere

Violence against women (VAW) is a pervasive phenomenon across borders and across all cultures. Resulting from the unequal power relations between women and men in society at large, gender-based violence signifies the patriarchal control of men over women. Among the plethora of violence that women face all around the world, including sexual violence, honour killings, female genital mutilation, female foeticide and female trafficking, perhaps the most prevalent and invisible is domestic violence. Domestic violence is also referred to by terms such as intimate partner violence or gender-based violence. Domestic violence against women is unique in that the perpetrator is closely related to the victim/survivor and the violence mostly occurs in the home. Due to the private nature of this form of violence, its prevalence is estimated to be much more than indicated by available data(UNICEF, 2000).

Feminist scholarship has shown that prior to 1970, there was hardly any cognizance of the phenomenon of domestic violence (Hague and Wilson, 2000, Ashcraft, 2000). Dominant discourses at that time considered the four walls of the home as a benevolent unit providing safety and security to all its members, and generally violence inside home was a distant thought (Dobash and Dobash, 1979). Moreover, any issue happening within the purview of the home was considered a private matter and the members of the household were supposed to deal with it on their own.

When dominant discourses did recognise the existence of violence and abuse, it was often construed as deviant behaviour needing attention. Domestic violence was seen as a pathological aberration, a result of poor anger management on the part of the perpetrator. Causes were often seen as alcohol, financial issues or stress (Bush, 1992). From the 1980s onwards, there was much effort to name the issue from a feminist perspective. Feminists challenged the traditional discourse and reframed the violence as a mechanism of control and expression of patriarchy. This led to the inclusion of many more behaviours that were visibly not physically violent but were used to control women. For example, emotional abuse and economic abuse was also included (Liddle, 1989).

Other studies like Gill Hague and Claudia Wilson, while describing domestic violence in the UK, also wrote that it is a phenomenon which exists in every class, caste or race (Hague and Wilson, 2000). A lot was also said about the battered women syndrome and trying to understand why women stay with abusers. Major reasons identified were around economic dependence, lack of other options of shelter, children and even the conjugal bond with the perpetrator, among many others (Hague and Wilson, 2000). Hence there was an emphasis on the need for suitable shelter homes and women to be economically independent (Kurz, 1998). From 2000 onwards, though, there was a shift from the approach of rescuing women and enabling them to escape violence. Suellen Murray from RMIT University, Melbourne, writes about how the right of a woman suffering domestic violence to stay in her home was recognised so that women are not further disadvantaged by the disruption caused by leaving (Murray, 2008).

Already, many studies have suggested that earlier approaches to domestic violence resulted in laws, policies and welfare schemes which were inadequate to support the victims of violence (Kurz, 1998). Feminists have argued, though, that it might not be the policies as such that fail but rather the mismatch between the expectations of what women themselves want and what the state thinks women want that results in the failure of the policies (Suneetha and Nagraj, 2006). This highlights the need for adequate language which captures the experiences of women well and helps to reform the way the issue is being addressed by various stakeholders from state and civil society.

Feminists suggested that the way we understand and approach domestic violence has implications on the policy response it will generate. Bacchi (2006) points out the strong links between how a problem is framed and the response that will be generated. Using 'what's the problem' approach, she claimed that when domestic violence is understood as a 'social breakdown' it results in tighter social control of men, and if it is understood as a 'power struggle' it requires the empowerment of women who need to be free and safe from abusive men. In both ways she claims that a tendency to label a complex social issue as a 'social problem' which needs to be fixed attracts responses which may not address the underlying causes (Bacchi, 2006). Similarly the popular use of word 'victim' or 'battered' for the aggrieved women reinforces the deviant behaviour of the perpetrator and highlights the vulnerability or the powerlessness of the aggrieved. Use of language to portray such images often results in the response that victims of violence require welfare and shelter (Ashcraft, 2000).

An enhanced understanding of the domestic violence, its underlying causes and its impact on the aggrieved has led to the recent policy responses which are more holistic in the understanding of the needs of women. For example, the understanding of the right of a woman to stay in her own home has resulted in policies that may require the perpetrator to leave the home in some countries, like Australia and the US. However, it has been observed that in actual practice the sense of belonging and the accommodation needs of the perpetrator might be given preference by the law implementers (Murray, 2008). This theory is underdeveloped in India, since the patriarchal notion of the right of the male over his household is very strong. Hence, the policy only provides the aggrieved the right to stay (share) and hardly prohibits the perpetrator from entering the home (LCWRI, 2009). This is yet another example of how the understanding and social set-up may have implications for the policy responses.

Global agenda development on the issue of domestic violence

It has been a long and difficult process to achieve the recognition of violence against women (VAW) as a global issue. Challenging violence against women also challenges the very foundations of male dominance within the family and society at large. It is therefore one of the hardest issues to get onto the political agenda. Historically, during the Western women's suffrage movements, which peaked during the period 1890 to 1918, feminists hoped that 'wife beating' would be addressed through temperance reform (Siegel, 1996).

When the second wave of the feminist movement arrived, activists realised that feminist efforts to end domestic violence must try to recast the relationship between the family and the state. Feminists saw that the personal/public divide is political in the sense that it helps the state and other institutions avoid accountability and responsibility. The women's movement therefore challenged the assumption that the state should not interfere in the private sphere and coined the popular slogan "the personal is political" (Bhasin and Khan, 1986). Moreover, domestic violence came to be understood by feminists as a universal problem and not just a phenomenon associated with any specific culture, community or class. Although feminists recognised violence against women as a priority issue, it took the slow journey of four decades to bring it onto the international agenda (Joachim, 1999, Weldon, 2002).

From the 1970s onwards, many international women's organisations came to realise the systemic and widespread nature of violence that women face and were keen to bring it onto the international agenda, mainly through the UN (Joachim, 1999). There were opportunities at the UN world conferences on women in Mexico City (1975), Copenhagen (1980) and Nairobi (1985). At Mexico in 1975 a reference was made to violence against women, but the issue did not materialise on the agenda. Similarly, in Copenhagen in 1980, women's organisations were not able to get VAW onto the agenda (Weldon, 2006). The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the UN General Assembly in 1979. However, it took a further 13 years for CEDAW jurisprudence to encompass the explicit mention of violence against women.

It was only in Nairobi in 1985 that international women's organisations were able to have gender-based violence included in the agenda in a constructive way for the first time. The major difference in Nairobi was that women from South were better represented (about 60 percent of the participants were from South) and the activists had developed 'norms of inclusivity', realising that earlier divisions had undermined their efforts (Weldon, 2006). Of the 100 workshops conducted at Nairobi, over 30 addressed violence against women. The issue gained high priority. To garner government attention, advocates framed violence against women as an obstacle to peace. Women's organisations were able to draw attention to the fact that the whole of every nation pays directly and indirectly for the violence that women experience (Joachim, 1999).

Soon after the Nairobi conference, other factors, including the end of the Cold War and the subsequent changes in the focus of the UN, also paved the way for violence against women to rise in the priority list. In 1991, the Commission on the Status of Women recommended the development of an international instrument on violence against women, and an expert group subsequently prepared a draft declaration. The following year the CEDAW treaty committee also issued General Recommendation 19, which recognised gender-based violence as a form of discrimination and identified a range of measures for eradicating it (Joachim, 1999).

Around the same time, Roxanna Carrillo, who was then UNIFEM's Human Rights Adviser, wrote a paper entitled 'Violence against Women: An Obstacle to Development', which drew attention to the fact that violence against women affects all areas of their lives, preventing them from contributing to a country's development. This violence therefore works against the overall development goals of

the country. This paper resulted in UNIFEM taking a stance on violence against women and becoming a strong ally within the UN for the women's movement (Joachim, 1999).

Finally, in 1993 the UN General Assembly unanimously adopted the Declaration on the Elimination of Violence against Women (Joachim, 1999). In 1994, the establishment of the 'Special Rapporteur on Violence against Women' (SRVAW) was another important development which helped entrench VAW as a human rights concern within the UN (UN Women, 2013). The Special Rapporteur established four key focus areas, one of which was domestic violence. In 1996, the Rapporteur recommended 'A Framework for Model Legislation on Domestic Violence'. This document and CEDAW became the basis on which many feminist movements in various states were to demand legislation on domestic violence (UN Women, 2013).

Under CEDAW, states are required to take legislative measures, both civil and criminal, and to provide services to address the issue of violence against women. By 2015, 189 countries had ratified or acceded to the Convention. However, even after becoming party to the Convention, not all countries responded equally to the issue of violence against women (Weldon and Htun, 2013). There are many factors that are critical in a state responding to the issue of VAW. The next section will discuss how and when states respond to VAW.

State response to address domestic violence

Htun and Weldon have written extensively on the conditions that prompt states to respond to VAW. These conditions can be broadly divided into two groups:

conditions arising within the state (internal influences) and conditions arising outside the state (external influences) (Weldon and Htun, 2013) . Internal influences within a state are strong autonomous feminist movements and women's policy machinery. Htun and Weldon argue that, far from being a priority issue for states, VAW is often not an issue at all. As VAW policies require a challenge to the accepted gender roles and male domination in the private and public spheres, a strong feminist movement is essential to mobilise the pressure required to make the state respond. Women's movements that were organised deliberately for other women's issues will not identify VAW as a priority and subsequently will not have direct influence when it comes to responding to issues of VAW(Htun and Weldon, 2012, Weldon, 2002, Weldon and Htun, 2013). Feminist women's movements which are autonomous are more prone to identify VAW as a priority, compared to non-autonomous ones. After adopting VAW as a priority, women's movements can influence policy by shaping public and government agendas, thus creating pressure for institutional reforms (Htun and Weldon, 2012, Weldon and Htun, 2013).

Women's mobilisation alone is not sufficient, however. There is a need for sympathetic allies inside government. These allies may be weak if women's policy machinery is not present in government. An effective women's policy machinery can strengthen policy responsiveness as it reinforces the women's movement. Also described as 'state feminism', women's policy machinery adds to the efforts of the feminist movement in raising the issues within the public agenda and pursuing responses from the state from inside it. They are not, however, a replacement for the energy and pressure mobilised by autonomous women's movements.

Although these internal influences are important, Weldon and Htun have shown that external factors are also influential. Often, feminist movements base their demand on these external influences, particularly those created by international norms. These norms define ‘standards of appropriate behaviour’. This is especially so once key tipping points are reached, such as when 30 percent of UN state members have signed and implemented a given treaty. CEDAW is one example discussed above(Weldon and Htun, 2013).

At the UN Fourth World Conference on Women in Beijing in 1995, 180 governments agreed to the declaration that violence against women is a critical issue (Weldon and Htun, 2013). After 1995, many countries, including India, gained from this conference significantly, and feminist activists started demanding adequate legislations. However, some countries affirm such treaties to gain wider international legitimacy and ratify them with reservations, even if they may be willing to address the issue. In such cases, ratifying or acceding to CEDAW may even be a setback, since it weakens demands for action, particularly in the absence of a strong feminist movement.

Other external influences on which feminist movements can capitalise are regional agreements and regional diffusion. Some examples of regional agreements are the Inter-American Convention on Violence against Women, the Latin American Convention, and the Africa Convention. Europe, Asia and the Middle-East lack such regional conventions addressing violence against women. Regional diffusion happens when international norms spread between countries in similar situations or with similar characteristics, or when neighbours start emulating each other (Weldon and Htun, 2013). For example, after India and Sri Lanka passed domestic violence

legislation in 2005, it was emulated by Bangladesh in 2010, and now feminists in Pakistan are able to mobilise on the basis that Pakistan is the only country left in South Asia without a domestic violence law. In 2012 a bill was drafted and passed by Cabinet. However, in 2015 it was still waiting for final approval by the lower house.

About 125 countries have some legal provision to address domestic violence (UN Women 2011). However, Weldon (2002) clearly highlights that, due to the range of factors listed above, such government responsiveness does not necessarily lead to effectiveness. Responsiveness encompasses the quality and timeliness of the policy response, while effectiveness is a function of the implementation and impact of the policy (Weldon, 2002). Unfortunately, the effectiveness of the policy is much harder to achieve through external influences. The implementation barriers and issues lead to the compromised impact the policy may generate.

Hence, it is very important to measure the impact that these policies are having, and this can be done by evaluating the experience of the end-users and changes in common attitudes towards violence against women. For this, particular policies and programs need to be studied in greater detail (Weldon, 2002). Since most of the policies relating to domestic violence only came into effect in the last ten years, concrete studies to show the impact of these policies are very much required.

Chapter 2: Domestic violence in India: Women's movement and state response

In India the issue of domestic violence was obscured for a long time by societal norms that justify the beating of wives by husbands and consider this as normal. During the 1970s, feminist consciousness relating to violence against women was rising all over the world. In the late 1970s, atrocities related to dowry were rampant and often resulted in the death of women. At the same time, feminists began to speak out against the great injustice done to rape victims due to weak rape laws (Gandhi and Shah, 1992). The women's movement mobilised in India was motivated by these two issues of violence against women (Suneetha and Nagraj, 2006, Jaising, 2009).

Domestic violence was initially recognised in the form of the cruelties that women faced over dowry, often resulting in death. Feminist activists and many women's organisations launched campaigns to reform rape laws and prevent dowry deaths. These seemed to peak in the early 1980s, despite the fact that the *Dowry Prohibition Act* had existed since 1961. The efforts of the women's movement resulted in the amendments to the Indian Penal Code known as 498A in 1983, making cruelty against a wife a cognisable and non-bailable offence. In 1986 section 304B was added, which, in incidences of dowry deaths, sentenced the offender from seven years to life imprisonment (Shetty et al., 2012).

The main purpose of both amendments was to give justice and protection to women from the cruelties related to dowry violence; hence, violence which was not related to the dowry could not be invoked using these amendments. These laws, though very stringent, had various shortcomings. Firstly, these laws only came into play when dowry and severe cruelty were involved and much damage had already been done.

Secondly, these laws became infamous, with claims that they were misused by women (Shetty et al., 2012). However, studies have disproved claims that there were a huge number of convictions under the laws: of the 498 cases brought, fewer than three percent resulted in convictions (Kothari, 2005). Because the laws required extreme cruelty to be proved, some commentators have argued that many women were left with no choice but to overstate the level of violence they had faced (Hornbeck et al., 2009). Moreover, these laws were only punitive in nature: the offenders got punished but the victims did not receive any support to rebuild their lives. They were also useless to women who did not intend to punish their partners, but only wished to live a life free of violence. If women wished to get protection from violent husbands, they were unable to do so until they decided to pursue a divorce or judicial separation (Kothari, 2005).

Slowly it became clear to feminists that dowry was not the only major cause of domestic violence. Indian feminists could see that in America, despite the evil of dowry not being an issue, feminists were calling for action from the state to address wife battering which had become a prominent issue there (Bush, 1992). Inspired by the women's movement in America, and realising that the domestic violence faced by women is a much wider issue than dowry, attempts were made to publicise the issue and create laws to protect women from the violence that happens in their domestic life.

Bush (1992) points out that the movement against domestic violence is obstructed by the myth that family and polity are separate spheres. In fact, this personal/public divide is political in the sense that it helps the state and other institutions to evade accountability and responsibility. This is certainly true of India. Indira Jaising, a

famous activist and advocate before the Supreme Court of India, has argued that the attitude of the law towards domestic violence could be seen in the Delhi High Court judgement on the case of Harvinder Kaur vs. Harmender Singh in 1984. This judgement stated that constitutional law could not be applied inside the family and that Article 14 (Equality before the law) and Article 21 (protection of life and personal liberty) of the Indian Constitution had no application in the privacy of married life (Jaising, 2009).

Against this background, the Indian women's movement challenged the assumption that the state should not interfere in the private sphere, adopting the popular feminist slogan "the personal is political" in the Indian context (Bhasin and Khan, 1986). Indian feminists began to identify the use of domestic violence as a mechanism to control women and maintain unequal power relations and not only as a means of obtaining dowry. This changed the way that they approached the issue of gender-based violence. They demanded a law to protect women from this systemic form of violence previously considered a private matter.

In the struggle for domestic violence to be recognised, the international community had a critical role to play, both in terms of putting pressure on the Indian government and in guiding the women's movement towards obtaining a legal reform from Indian government. In 1993, the UN conference on human rights in Vienna accepted the rights of women and girls as 'an inalienable, integral and indivisible part of universal human rights.' As already noted, the UN General Assembly also adopted the Declaration on the Elimination of Violence against Women in the same year. In addition, the 1995 Fourth World Conference on Women, Beijing gave guidance to

women activists by discussing in concrete terms the forms that laws against domestic violence might take (Nigam, 2008).

In 1992, the Lawyers' Collective Women's Right Initiative hereinafter referred to as LCWRI, an NGO of Delhi-based lawyers inspired by laws in other countries on the issue, drafted and circulated a model law on domestic violence. This was picked up by the then newly constituted National Commission for Women (NCW), which was established in 1992. Its mandate was to 'review the Constitutional and legal safeguards for women; recommend remedial legislative measures, facilitate handling of grievances and advise the Government on all policy matters affecting women' (NCW, 1992). NCW invited LCWRI to draft a bill on domestic violence in 1993. In 1994, a committee established by the National Commission for Women came up with a draft proposal. However, proponents did not get an opportunity to table this draft in Parliament. To create pressure on the Indian Government, great efforts were made to consult with various stakeholders and to collect evidence of domestic violence. Research studies (Rao, 1997, Jejeebhoy, 1998, Karlekar, 1998, ICRW, 2000b) presented evidence of the prevalence of domestic violence, ranging from 35 percent to 75 percent in different regions of India. Most of the studies were done from the perspective of health, focusing on the impact of domestic violence on the health of women. Perhaps the first nationwide survey to collect data on domestic violence was the National Family Health Survey conducted by the Ministry of Health and Welfare. This was known as NFHS-2 and was conducted in 1998–1999. This study reported that 21 percent of ever-married women had faced domestic violence (Visaria, 2008). Being a government initiative and conducted by an

important ministry like Health and Welfare, this survey was important in shaping the policy agenda.

Meanwhile in 1998, the Lawyers' Collective, in consultation with various women's groups, proposed an alternative Bill in accordance with the UN Framework for Model Legislation on Domestic Violence, which had been released in 1996 and provided new vigour to women's groups in India. All these simultaneous events (advocacy from women's groups, the UN mandate to address violence against women, CEDAW and the 1995 Beijing Conference, as well as evidence produced by NFHS-2) created sufficient pressure for the government to introduce a Bill on domestic violence in 2001. However, the Bill presented did not satisfy women's groups as it diverged too much from the draft they had prepared earlier. Despite the dissatisfaction of the women's group on the change of contents, the National Democratic Alliance government tabled the Bill in Parliament on 8 March 2002, International Women's Day. However, it did not come up for the vote because of lack of time during the session.

This provided women's groups with an opportunity to launch a major campaign against many aspects of the proposed Bill. In response to this concerted opposition, a Parliamentary Standing Committee of the Ministry of Human Resource Development was set up to re-examine the Bill, and its report was laid before Parliament in December 2002. The Parliamentary Committee had brought back most of the elements that the women's group had demanded, and these were reflected in the new version of the Bill (Jaising, 2009).

However, this progress in the passage of the law was stalled as for next two years no action was taken on this Bill, and ultimately the Parliament was dissolved in 2004. The new United Progressive Alliance government took immediate interest in the Bill and it was referred to the Department of Women and Child Development.¹ In June 2005, the Bill was approved by the upper House of Representatives, *Rajya Sabha* and within two months it was passed in August by the Lower House, *Lok Sabha*, in Parliament. Finally, in September 2005 it received the President's assent as the Protection of Women from Domestic Violence Act 2005 (PWDVA). It took a further year for this Act to come into force and the rules and regulations for its implementation to be framed. Finally, on 26 October 2006, it came into force in all states of India except Jammu and Kashmir.²

State responses versus feminists' demands

The issues of contention that arose between women's organisations and the state are worth discussing, as they show the bias and entrenched patriarchy of the state. These attitudes of the state are important because they influence the implementation and hence the impact of the legislation. It has already been documented that the gender bias in the attitudes of law implementers interfere with the desired outcomes of gender progressive or gender distributive policies (Kabeer and Subrahmanian, 1996).

¹An independent Ministry since 2006. At that time it was a department under the Ministry of Human Resources. This Department/Ministry uses 'Women and Child Development' in the title and hence the same title will be used.

²Jammu and Kashmir is the only autonomous State of India under section 317 of the Indian Constitution where Parliamentary laws, except for defence, communication and foreign policy, are not applicable until passed by the State of Jammu and Kashmir.

The first issue was the definition of violence and the occurrence of violence. When the Bill was first proposed in 2001, it contained many controversial provisions. It allowed physical assaults by men if these were in “self-defence”. Feminists were outraged that the right to self-defence was given to the abuser rather than to the victim. This was also a clear loophole that would allow abusers to be acquitted, because it would be easy to manipulate evidence to argue that the violence was in self-defence. The opportunity to manipulate the law was being provided to the abuser: a clear case of male bias.

The second point of debate was that the Bill recognised only “habitual assault”, where the abuser is in the habit of regularly assaulting the woman. This implied that an occasional assault is acceptable and should be forgiven. In the notion of habitual assault we can see the state’s intention to preserve the family even if it means ignoring the rights of women. The women’s organisations were campaigning for recognition that even a single act of cruelty is an offence. The definitions, reliefs and remedies were not spelled out clearly in the Bill on the pretext that it would make the law more flexible and enable the judiciary to provide more effective judgements on a case by case basis (Rajan, 2004). Women’s organisations argued that the absence of clearly articulated rights signifies the refusal or withholding of those rights, not an access by default to the privileges they signify. In fact, that would leave it up to the judges to have their own interpretations of the law.

Further, women’s groups wanted the law to recognise violence done by other family members in the home, such as in-laws (including mothers-in-law and sisters-in-law), brothers, father and unmarried cohabitating partners. There was also a resistance to including the demand of the right to reside in the shared household, which was being

considered as most radical. In India, culturally in patrilocal marriages, the home of the in-laws where the husband of a married woman lives is called '*sasural*', the matrimonial house. This could be a house where the husband lives with his parents, brothers and the family of his brothers. Culturally, *sasural* is of huge significance to a married woman as *sasural* becomes her new home and she loses most of her rights in her own parents' home, which is called '*mayaka*' (natal home) now. However, in the case of any situation of violence or conflict in the matrimonial home, a married woman's in-laws have the power to remove her from their home, while on the other side she is not welcome to take a permanent refuge back in her natal home. Because of this dilemma that Indian women face in such situations, feminists insisted that this right to reside in the matrimonial house is very critical and will protect women from becoming destitute and homeless (Rajan, 2004). This was considered a revolutionary step in India as, for the first time, it confirms the rights of a married woman in her shared matrimonial house.

Women's organisations did concede on some issues, however. This was generally done as a way to negotiate for small reforms in civil law legislation rather than directly confronting personal laws. The personal laws are family laws based on religion, which are used to govern family matters like marriage, divorce and inheritance. In the past, it had been found that attempts to reform religious personal laws gave rise to severe resistance and communal politics, both of which resulted in riots and tensions between Hindus and minor religious communities (Rajan, 2004). When this occurred, women's right issues were obscured and other political agendas based on religion flared up.

In the famous Shahbano case of 1985, a Muslim woman had received a favourable decision for maintenance through the Supreme Court of India, which was seen by conservative Muslim minority groups as a challenge to Muslim personal law regarding the maintenance of a Muslim wife, where maintenance to the divorced wife is limited to three months. The uproar resulting from her case, during times when communal tensions were running high in India, pressurised the then government to enact a '1986 Muslim Women Act' which pretty much forced the state to reverse the Supreme Court's decision given in her favour earlier. In the end, the rights of the individual woman were sacrificed, while the matter became an opening for the controversial issue of Mosque and Temple in India (Agnes, 1994, Mullally, 2004).

Learning from experiences such as the Shahbano case, women's movements compromised on some of their own issues to get the desired policy reforms (Rajan, 2004). For example, in America and many Western countries, the law prohibits the abuser from entering into his own house altogether. By contrast, Indian feminists compromised by accepting the "right to share", realising that prohibiting the abuser entry into his home would be too controversial because it would infringe directly upon "inheritance property" rights. Instead, activists have claimed the "right to share" provision as an initial step towards women having the right of inheritance over the matrimonial home, which is denied by the majority of religious laws (Rajan, 2004). Feminists argued the laws still provided relief to women affected by violence, considering their compromises as "strategic and short-term reforms that would not directly conflict with personal laws". They believed that the more immediate issue of

maintenance for married women in marital abuse situations, which affects all religions, would thereby be addressed (Rajan, 2004).

Women's organisations not only succeeded in provoking the government to introduce this Prevention of Domestic Violence Bill, but also stopped the passage of the earlier Bill, which was inadequate. Progressive women lawyer activists and women's organisations were responsible for ensuring that such radical provisions as the right to the matrimonial house were featured in the Bill (Rajan, 2004). The Indian case therefore clearly supports Weldon and Htun's (Weldon and Htun, 2013) argument that strong, autonomous women's movements are the first and essential requirement for obtaining an effective response from the state concerning violence against women. Not only did the women's movement in India create pressure to bring about this law, it also prevented its dilution at the hands of state actors.

The Indian case also shows how inside allies in terms of women's policy machinery provide space for women's movement activists to voice their priorities and concerns in front of state actors. Both the National Commission of Women and the Department of Women and Child Development played crucial roles. The National Commission of Women picked up the issue from the public domain and legitimised feminists' demands, and the Department of Women and Child Development finally helped by endorsing the demands and approving the final draft as an insider agency. The external influences were also extremely important in the case of India, with proponents capitalising on international tools like CEDAW, and on the fact that India was a signatory to it. The presence in India of international organisations, such as UNIFEM, also helped to build the case for domestic Indian feminist activists.

UN Framework for model domestic violence legislation

In 1996, The UN Special Rapporteur on Violence against Women, Radhika Coomaraswamy, recommended “A Framework for Model Legislation on Domestic Violence”. This framework provides guidelines and calls on countries to comply with the international standards, prescribing domestic violence as a gender specific violence (Coomaraswamy, 1996b). Since then, this framework has acted as a guiding source for developing legislation in numerous countries. Evidently, women activists and gender experts involved in drafting the law for India took advantage of this framework.

The framework contains essential components for domestic violence legislation, such as the purpose, definitions, complaints mechanisms, duties of judicial officers, criminal and civil proceedings and the provision of services (UN Women 2013 P6). The framework calls for flexible and speedy remedies and for effective enforcement of laws that provide relief and prevent further abuse. The State is responsible for taking legal measures to provide civil or criminal remedies. The framework includes protection or injunctive orders, remedial orders and other affiliated orders to provide civil remedies, and defines domestic violence as a criminal offence. It provides for measures to encourage complainant participation in criminal proceedings as criminal remedies. Other non-legal measures incumbent on the state include the provision of services, training and capacity-building for law implementers and service providers, awareness-raising and education, all working towards a comprehensive response to domestic violence. All States that have ratified CEDAW are obligated to treat

domestic violence as a violation of human rights (LCWRI, 2009, UN Women, 2013).

UN framework influence on PWDVA

PWDVA has been praised for its compliance with the UN framework for model legislation and is seen as the most progressive law to be found among other South Asian (SA) and many other South East Asian (SEAN) countries (UN Women, 2013). Among South Asian countries, Sri Lanka, Bangladesh and Pakistan all have domestic violence policies enforced. Sri Lanka introduced its laws in the same year as India (2005), Bangladesh in 2010 and Pakistan as recently as 2012. The UN framework has influenced all of these responses, and the next section discusses how far PWDVA has complied with the UN framework.

PWDVA fares quite well against most of the indicators in the framework. The framework says that the aims and objectives of the law should express the view that domestic violence is a breach of human rights and that the law should be gender specific. PWDVA provides “effective protection of the rights of women guaranteed under the constitution who are victim of violence of any kind occurring within the family” (PWDVA, 2005). Not only is PWDVA gender specific; it provides a rationale for having a gender specific measure, already sanctioned in the Indian Constitution (article 15, section 3) which allows special measures to be taken for women and children.

The UN framework mandates that the law should define domestic violence as physical, mental, economic and sexual abuse and should cover all domestic relationships. PWDVA includes all forms of such violence and even provides detailed explanations of physical, sexual, verbal, emotional and economic abuse and

covers all kinds of domestic relationships. The UN framework details that the law should have provision for criminal and civil remedies. PWDVA provides civil remedies, and breaches of civil orders are treated as criminal offences attracting further penalties to the respondent. Even though the law is civil, the access to these civil provisions is through magistrates' courts, which are criminal courts constituted under the provisions of CrPC (Code of criminal procedures 1973 of India) and not via civil family courts³, thus aiming to enhance the gravity of the orders issued by the courts (Kothari, 2013). The guidelines further mandate that the law should provide for the protection and rehabilitation of the aggrieved person. The provisions should be specific and should be disposed in a timely way. In response, the PWDVA has specific provisions for protection, shelter, maintenance, custody and compensation. The PWDVA also makes these provisions time-bound, requiring cases to be processed within 60 days. The law should facilitate access to other support services, and the PWDVA accordingly specifies the duties of service providers, medical facilities, shelter homes and the police, listing these as key stakeholders. As per the guidelines of the framework, the Act also makes the government responsible for the training and public awareness of the law implementers and the general public, as well as for the coordination of the relevant ministries, such as law, home affairs which includes policing, and health and human resources, in order to implement the law, to address the issue of domestic violence and to periodically review progress (PWDVA, 2005, Uma, 2010).

³ Family disputes are brought in special family courts and generally deal with matrimonial disagreements, divorce, spousal maintenance, custody of children etc.

PWDVA compared to other Acts

As mentioned earlier, PWDVA compares well to the domestic violence laws of other neighbouring Asian countries of similar socio-cultural background. One example is the case of Sri Lanka, where the trajectory of the introduction and passage of the domestic violence Act through the parliament was similar to the experience in India. However, the Sri Lankan Act became diluted in many ways from the first Bill that was tabled in parliament. Subsequent versions of the Bill made the laws gender neutral and not gender specific, in contrast with India, where the PWDVA applies only to women (Kodikara, 2012). It has been argued that in Sri Lanka as in India, where power relations significantly favour men, it is doubtful whether a gender neutral act can effectively promote equality of justice (Wijeyesekera, 2011). The definition of domestic violence was shortened in later versions of the draft bills, and in its final form covers only those types of violence previously covered by the penal laws. The 2005 domestic violence law added only emotional abuse of a serious nature, which according to many observers fails to encompass various kinds of mental, emotional and economic violence (Kodikara, 2012).

A further limitation of the Sri Lankan legislation is that sexual abuse is not included. This is a disappointment in a country where marital rape is not sanctioned by any other provisions. This domestic violence Act therefore fails to address the range of domestic violence issues for which Sri Lanka accepted responsibility as a signatory to CEDAW(Wijeyesekera, 2011) (Wijeyesekera 2011). The only effective relief under the Act is a protection order, which might not address the range of responses that the aggrieved requires (Wijeyesekera, 2011).

The recently-passed domestic violence Act (2010) of Bangladesh is very similar in content to India's PWDVA. Both in India after 22 years and in Bangladesh after ten years of criminal law implementation, civil laws were passed. However, the Bangladesh Act is gender neutral and it imposes penalties for false complaints, which are much higher than the penalties the respondent has to pay for breaches of the court order (MWCA Bangladesh, 2013). This inequality in penalties will only serve to deter the aggrieved.

Salient features of PWDVA 2005

PWDVA is applauded for various unique features that were not covered and available to women in India by law before this Act (Shukla, 2006, Vyas, 2006, Mahajan, 2011). It defines domestic violence as all acts of gender-based violence whether physical, verbal, emotional, sexual or economic, whereas previously women could only access the law for cruelty that encompassed physical violence only. The PWDVA also provides a woman with the right to stay in her shared matrimonial household. Previously, laws such as 498A of the Indian Penal Code only provided protection to married women. However, PWDVA covers all forms of domestic relationships so that, apart from the violence faced in the matrimonial home, this law also recognises the violence that women face in their natal homes. Hence the respondents under this law could also be fathers and brothers. The Act also recognises relationships that are "like marriage": marriage need not be proved to access this law (PWDVA, 2005, Uma, 2010). This Act is the first legal recognition and protection for relationships "like marriage" in India and this is seen as revolutionary by many.

Another important feature is that the Act provides easier and direct access to the courts, as women can be presented before a magistrate even without having an FIR (First Information Report) from the police. This recognises that it can be hard for women to approach the police in cases of domestic violence. The Act introduces a new support structure for women to access the provisions of the law through a protection officer. The Protection Officer (PO) is to be the key person for the implementation of the law, assisting a woman from the very first stage of registering her case, taking the case to the court and lastly ensuring that the court orders of relief are implemented and accepted by the respondent (Uma, 2010). This law also brings service providers into its ambit, including shelter, medical facilities and NGOs working on gender-based violence. These key institutions can assist women to register their cases with protection officers. The police are also expected to assist women and direct them to protection officers to register their cases. This holistic approach is intended to provide a woman with a single access point and a clear process to address all her needs if she is a victim of domestic violence (Uma, 2010).

The PWDVA also provides various forms of relief for which otherwise a woman would need to file cases under different legal remedies. For example, she can get a protection order, maintenance order, residence order, custody order and compensation order all under the PWDVA. The protection order directs the respondent to stop violence or threats of violence immediately, and the maintenance order directs the respondent to pay monthly expenses to the woman, for whatever she was entitled to have as a family member for herself and her children, while the residence order ensures the peaceful occupation of the same or alternative accommodation if needed by the woman and also restricts her dispossession from the

shared household. If she has children, a woman can also claim custody of the children through a custody order provided for in this act. Although the custody order is temporary, it still provides a woman with a convenience till both parties finally resolve the matter later (Uma, 2010). Compensation can also be claimed for the injuries or mental trauma inflicted on the aggrieved person and, lastly, a judge also has the freedom to grant any other order deemed necessary to rehabilitate the woman (Uma, 2010) The main aim is to provide a woman with a single window of opportunity to access all the relief she is seeking.

PWDVA also provides women easy access to the Act. It gives women multiple routes to access this Act. The Act involves the role of key stakeholders, such as protection officers, police officers and service providers, in directing women to put an application before the magistrate under this Act. Applications under this Act can also be made by a private lawyer. Women have therefore accessed the Act through various routes, depending upon the availability of resources open to them or upon the availability or non-availability of systems and structures (Protection Officer and registered service providers) under PWDVA (Uma, 2010). The Act is intended to provide single window clearance and can be initiated through any route a woman chooses. Ideally a woman approaches the protection officer of her area; the protection officer files the Domestic Incident Report (DIR) and presents her case to the magistrate, which results in the relevant orders, such as a protection order. Women are also free to pursue alternative routes, depending on their circumstances (Uma, 2010).

The Act does give freedom to choose any route, and often there exists a pattern of how women access this Act in a given area. Women have been reported to approach

courts directly with the help of a private lawyer, without accessing a protection officer; they have also approached the police, who in turn direct them to protection officers. In a few cases, women have also approached service providers and, in accordance with the Act, registered service providers are authorised to register the DIR, which the magistrate considers to be the valid official document in the court (LCWRI, 2009).

Based on the above routes available and the pattern in which the Act was accessed by women in different States, LCWRI has classified these patterns into three modes of access, namely private, public and mixed. The private mode of accessing the Act is when women directly approach the court through private lawyers and do not choose to use or are unable to use the structures made available under this Act. This usually happens when the state key actors, such as protection officers, are not in place or not accessible for various reasons (LCWRI, 2009).

Box 2.1 Various Routes for Accessing PWDVA

Aggrieved Person→Protection Officer→Magistrate→Order

Aggrieved Person→ Service Provider→Magistrate→Order

The public mode of access is when women access the Act by way of multiple routes but through the structures established under the Act. All the key stakeholders respond in a coordinated way; whichever route a woman chooses, her case becomes the responsibility of a Protection Officer or a registered service provider and a DIR is lodged. In this holistic multi-agency response, if women approach the police then police direct them to the Protection Officers and they assist the women to file the

DIR. Examples of this mode of access can be observed in Andhra Pradesh (AP)(LCWRI, 2009). LCWRI claims that this is very successful mode and hence qualifies as a model to be replicated in other States.

Lastly, when women approach the Protection Officer but also utilise a private lawyer or a legal aid lawyer assigned by the State and file their case with the help of both private and public resources, this is a mixed mode of accessing the Act. An example of this model was documented in Kerala State, which has been documented as a case study in the 2009 report (LCWRI, 2009). Delhi also adopted this model: here women contact a protection officer and then get their case processed with the assistance of legal aid or a private lawyer. However, as time has passed, there is more inclination to use a mixed model in many other States.

Progress of Implementation of PWDVA

Since the implementation of PWDVA started in late October 2006 and after its rules and regulations were released by the Ministry of Women and Child Development, PWDVA has been accessed in huge numbers by women. The UN Trust Fund to End Violence against Women immediately released resources for the monitoring and evaluation of this Act and the task was undertaken by LCWRI, the key stakeholders in drafting this Act and having it passed into law. From 2007 onwards, LCWRI started a project to monitor the progress and document its findings annually in a series called '*Staying Alive*'. Up until 2013, *Staying Alive* reports were published six times (not released in 2011), and provided exhaustive details on the progress of PWDVA, which are easily accessible online. This research has used the five reports from the years 2008, 2009, 2010, 2012 and 2013 to assess the status of PWDVA.

Although there is other literature pouring in to inform on and critically appraise the progress of PWDVA, the *Staying Alive* reports are by far the most elaborate documentation of PWDVA. Hence these reports will be used extensively throughout the research. Following is the status of PWDVA for various indicators, as informed by *Staying Alive* and other sources wherever applicable:

Budget allocation for implementation

PWDVA implementation requires special systems and structures to be set up. Even though the law mandates the State to appoint systems and structures, the central government has not provided a budget and have left it to the States to allocate the budget. This lack of initiative from the central government has been criticised, as it has led to diverse responses from the States. Of the 28 States, 15 of them have allocated a budget for the implementation of PWDVA (LCWRI, 2010, Jhamb, 2011). There are still 12 States that, as at 2010, have not allocated a budget for the implementation of PWDVA. The States that have allocated a budget vary dramatically. While Karnataka, for example, has allocated 72 million INR, States such as Orissa, Meghalaya and Sikkim have budgets in the order of 0.2 million INR.

Apart from the fact that budgets have not been adequately allocated, the most worrisome trend is that the expenditure patterns are very low. Most of the States, except Karnataka and Tamil Nadu, have shown very low expenditure. For example, Madhya Pradesh, which has launched a separate scheme for implementation of PWDVA, reported spending merely 35 percent of its budgeted allocation (Jhamb, 2011). Further, little information is available on what amounts are to be spent on which aspects of implementation in given States. A few States, like Andhra Pradesh

and Karnataka, have specified that the budget is to be spent on infrastructure for protection Officers, as well as their travel and hiring a computer operator. Delhi and Tamil Nadu appoint full-time protection officers hence the budget is spent on their salaries and other infrastructure support for these officers. The other issue that has been flagged is the lack of resources allocated to service providers and shelter homes registered under the Act (Jhamb, 2011). All these issues have been observed to be negatively affecting the outcomes of the PWDVA.

Protection Officers as key implementers

Protection officers have given a new dimension to the implementation of this Act. Unlike other civil and criminal laws relating to violence against women, which depend on the police and the judiciary, PWDVA bridges that gap by introducing another stakeholder to increase the accessibility of the Act. Protection officers are critical to the implementation of the Act. State governments are responsible for appointing protection officers and the criteria for appointment have been elaborated in the rules of the PWDVA.

One main consideration in the appointment of protection officers is whether they discharge their duties as full-time officers or not. In the first few years of implementation, most of the states assigned the duties of protection officer to already-existing government positions. While the additional charge of being a protection officer increases their workload and puts time constraints on the officers, they have also been documented as enjoying certain advantages. Being a recognised government officer, they are able to use various resources already available to them, such as an official vehicle, or may have other staff working for them. Already having some capacity as, for example, a development officer, they have often built networks

and had recognition within community which they are able to use while dealing with a domestic violence case. Although the contractual full-time protection officers are able to devote all their professional efforts to implementing the PWDVA, they lack the resources and the established networks that could help them in dealing with cases efficiently and effectively (Jhamb, 2011, LCWRI, 2010).

All the States have appointed protection officers but their number and level of placement varies among the States. Some states have appointed many protection officers at a district level, for example Maharashtra has appointed 3,910 protection officers for 35 districts, which is the highest number of protection officers among all the other States. Some States have appointed only one protection officer for one district, for example Uttar Pradesh and Bihar, thus making them the States with the fewest protection officers (LCWRI, 2008, LCWRI, 2009). However, reports show that there is no significant correlation between the numbers of protection officers and the number of cases handled by them. Even though Maharashtra appointed the most protection officers, it has reported significantly fewer cases. Delhi reported the highest number of cases dealt with by each individual Protection Officer, with each officer dealing with 203 cases on average per year. It is worth noting that Delhi also has full-time Protection Officers appointed on a contract basis. Similarly Kerala's Protection Officers dealt with the second largest average number of cases, at 103 per officer per year. Like Delhi, Kerala has full-time Protection Officers (refer Table 2.1) (LCWRI, 2010, LCWRI, 2012).

There is an ongoing debate about whether having full-time protection officers offers a greater advantage than charging existing officers with the additional responsibilities of a protection officer. Section 8 of the Act requires the appointment of a full-time protection officer, having experience of at least three years in the social sector. However, only Delhi, Haryana, Bihar, Tamil Nadu and West Bengal have appointed full-time officers, while all other States have vested the responsibility of protection officer to an existing officer, for example ICDS (Integrated Child Development Scheme) officers and Social Welfare officers of the Ministry of Women and Child Development. From an analysis of the workload, it is evident that full-time Protection Officers are able to handle many more cases than Protection Officers with other responsibilities. This suggests that full-time officers should be more able to contribute to the implementation of the Act (LCWRI, 2009, LCWRI, 2010, Jhamb, 2011).

However, these reports do not consider the quality and quantity of time that the different kinds of protection officer are able to provide, and how this affects the outcomes of each case. If handling more cases means compromising on the time given to each case, this would defeat the purpose.

Table 2.1: Protection Officers and Budget Allocation by State

States	Population of women in the State*	No of Protection Officers	No of cases dealt with by Protection Officers	Number of cases per Protection Officer	Budget allocation in million INR 2010-2011
Uttar Pradesh	166,197,921	72	3,892	55	No allocation
Bihar	82,878,796	38	454	28	No allocation

Maharashtra	96,878,627	3,910	400 (2006- March 2008)	Less than .01 case	No allocation
Madhya Pradesh	60,385,118	453	2,072	5.6	30.9
Rajasthan	56,473,122	574	Not provided	-	No allocation
Andhra Pradesh	76,210,007	104	1,984	19	5.0
Gujarat*	3,609,276	50	804	31	No allocation
Karnataka	3,481,893	214	2,933		72.2
Kerala	1,950,023	31	3,190	103	25.0
Chhattisgarh	1,767,627	18	136	7.5	No information
Haryana	1,543,201	20	138	7	8.0
Punjab	1,481,088	148	249	1.68	10.0
Delhi	909,298	17	3,463	203	5.0
Himachal Pradesh	390,120	377	660	1.75	No allocation
Manipur	152,576	9	208	26	0.8

Table 2.1 Compiled from information from LCWRI 2010, 2012 and from Jhamb (2011)

Reporting under the PWDVA

All of the *Staying Alive* reports (2007, 2008, 2009, 2010, 2012, and 2013) point out the lack of reliable data at State or national level on the progress of PWDVA (LCWRI, 2008, LCWRI, 2009, LCWRI, 2010, LCWRI, 2012, LCWRI, 2013c). The Act in itself does not mandate reporting from the State level to the nodal

national department, the Department of Women and Child Development. The format provided by central government to State government is being filled by the Protection Officers and is submitted directly to the Department of Women and Child Development. But the protection officers' reports may not present the complete picture, as they are able to provide data only about the cases they themselves have handled, and might not include the cases that have gone to the court directly. A coordinated compilation of information, including that generated by the police and service providers, does not exist. The data collection from the courts on the cases filed under PWDVA is not easily available as there is no central depository of data. Also, the bureaucratic procedures of getting permission from the relevant departments for primary data collection is time-consuming and has limited the availability of data up to now.

Capacity-building issues

Weldon (2002) emphasises that government responsiveness requires more than just introducing appropriate policy. Capacity-building of implementers on the issue of violence against women and associated policies is the most important requirement for effective implementation (Weldon, 2002). Given that the Protection Officers are such important stakeholders in the implementation of this Act, the capacity-building of these officers is an essential requirement for effective implementation. Unfortunately, no systematic information is available about training protection officers in the States. Several states (Delhi, Rajasthan, Andhra Pradesh, West Bengal, Madhya Pradesh and Kerala) have reported that they conduct training. However, information on the exact number or percentage of officials trained is not available for any State. The only conclusion that can be derived is that training of

some kind is happening in many States. However, due to lack of information about the nature and coverage of training, it is unfortunately difficult to compare the results achieved by trained protection officers with those of untrained protection officers, in relation to the impact assessment of outcomes for the end user.

Women's Organisations/Service Providers involved in implementation

Earlier sections of this chapter has described that women's organisations played a critical role in influencing the state to pass the PWDVA. However, all these organisation and many others are also playing a critical role in the implementation of PWDVA. The policy itself provides a platform for women's organisation to be registered under the PWDVA by the implementing agency which is Department of Women and Child Development (DWCD) in each State. However, even if the organisations are not registered by DWCD, NGOs are involved in implementation of PWDVA.

To find an estimate on how many NGOs would be involved in implementation of PWDVA is an challenging tasks given that there are more than 3.1 million NGOs operating in India and are registered under Societies Registration Act of India(Anand, 2015). According to an government website that lists NGOs which has provided their details to this site, there are 4256 NGOs in Delhi, 3367 NGOs in Madhya Pradesh and in 11435 NGOs in UP. According to this site there are about 20589 organisations that work on human rights issues and about 22405 NGOs that work on women's development and empowerment and another 19321 NGOs that work on legal awareness and legal aid(NITI AYOOG, 2009). There are other

overarching issues that NGOs work on who are expected to be playing some role in implementation of PWDVA Act.

A rough estimate gathered from the NGOs working in the States, there would roughly be couple hundred NGOs in Delhi alone, few hundred in MP and over a thousand or so in UP that would be working intensively for the implementation of PWDVA. Hence they are very accessible to women and PWDVA implementation will hardly be possible without their presence. Details of few of these NGOs playing prominent role, will be described in Chapter 5 under State Actors section.

Service providers registered under Act have a role to play in the implementation of the Act that is almost equal to that of Protection Officers. As per section 10(2) of the Act, service providers registered with State governments can record a domestic violence report, get the aggrieved woman examined by a medical facility and forward a copy of the report to a magistrate, the Protection Officer and/or the police. They can also refer women who have experienced violence to shelter homes. Hence it is very important for the State to register service providers and provide information about them to protection officers, the police and magistrates.

By 2010, about 20 States have registered service providers, while three States, including Delhi, are in the process of registering them. However, it is still not clear how effectively these registered service providers are being used in the implementation of this Act. Jhamb reports that the service providers have not been allocated sufficient resources by the State and hence are unable to render the services as envisaged under the Act (Jhamb, 2011). Other reports suggest that service providers are unaware of their roles and responsibilities (LCWRI, 2010).

In most States, service providers are not completing the DIR and are instead sending aggrieved women to Protection Officers or lawyers to file a case. This may hamper the smooth functioning of PWDVA. In India, it has been documented that the implementation of laws cannot be assured entirely by government systems and structures, due to the existence of an entrenched bias. Therefore, in practice, the responsibility for getting laws related to women implemented effectively still lies with women's organisations, which must be vigilant and create pressure through a number of networks and the use of the media (Tandon and Mohanty, 2002). PWDVA is the first law in India that recognises the role that can be played by service providers in the form of women's organisations and incorporates them as stakeholders. It will impact negatively on the implementation of PWDVA if their involvement is hampered by lack of resources and awareness.

Medical facilities

Section 6 of the Act specifies the duty of medical facilities to examine women and provide adequate treatment. As per the Act, the State has to notify medical facilities of their role: that on request of a protection officer or service providers they have to provide the aggrieved person with the appropriate medical treatment free of charge (Uma, 2010). Most of the States have notified government hospitals and health centres that they are designated medical facilities, but how far this information is available to the medical officers in the hospitals and health centres and how much this facility is being used is still not clear. According to LCWRI 2010, the medical facilities seem to be underused in the implementation of the Act.

PWDVA: Perceptions and Practices of key stakeholders

PWDVA in India has been welcomed by most but also criticised by some sections of experts and activists. Sceptical views are posed about the feasibility of the objectives of what PWDVA is trying to achieve. Given the past experiences of the law in addressing the issue of violence against women, doubts are being raised as to whether this law will serve the purpose. Much is also said about the use and misuse of the law (Basu, 2008, Jaising, 2009, Ghosh and Choudhuri, 2011, Kishwar, 2006b, Kishwar, 2006a, Kaushal, Mahajan, 2011). Some sections claim it as ambiguous, dangerous, discriminatory and controversial, even claiming that, due to its ambiguity, some provisions are prone to be misused and can have ‘hazardous implications’ (Karanjawala and Chugh, 2009 p298). People have already started lobbying, criticising the gender specific nature of the law, with almost five petitions pending in the court challenging that this law defies the equality granted by the Constitution of India to all its citizens (Mahajan, 2011). Amidst various opinions, speculations, assumptions, hopes and frustrations, PWDVA has completed its seven years in 2013 and has been used by thousands of women all around India.

Getting policy on board had been a great challenge however, a greater challenge of implementation of PWDVA 2005 began after the rules and regulations were notified in October 2006 for PWDVA 2005.. Civil laws for domestic violence have been claimed often to lack commitment on the part of implementers as compared to that given a criminal law and hence may not prove to be very effective (Jaising, 2009, UN Women, 2013, Hornbeck et al., 2009, Franceschet, 2010). The first assumption of the limitation of the PWDVA has been made about its civil nature. It has been

expressed in *Staying Alive* that the systems set up under civil law might be too weak to bring the speedy justice and relief that women are seeking (LCWRI, 2008, LCWRI, 2009). However, there is also an assumption made here that all stakeholders concerned, involving law implementers, service providers and the aggrieved person herself, are aware that the domestic violence law is civil in nature. With PWDVA, there is an added confusion, as it is a civil law that is tried under criminal legal systems (Mahajan, 2011, Kothari, 2013). Due to this fact, I argue that often there exists a confusion regarding the notion of whether domestic law is civil law or criminal law in the minds of people who are interacting around it. This confusion is evident when there are arguments and debates about the misuse of the law, when it is speculated that this law gives women an advantage as there is no onus to provide proof of violence. Men can be framed under this law and are at a disadvantage (Kishwar, 2006a, Mahajan, 2011). The very premise that men can be ‘convicted’ or ‘framed’ generates from the premise that they are being penalised under criminal law and so undermines the fact that this law is just to protect the applicant and not convict the respondent.

On the other hand, there are literatures which criticise PWDVA, claiming that PWDVA has failed to take care of cases of violence over women which have serious consequences. For example, Gadkar-Wilcox argues that by providing too broad a definition, putting even ridicule or verbal abuse in the category of domestic violence, PWDVA trivialises the serious violence that women are facing in India (Gadkar-Wilcox, 2011). Perhaps her argument stems from the confusion over whether PWDVA is a civil law or criminal law, as acts of violence of a serious nature do attract criminal proceedings that cannot be initiated under this act and

require filing as criminal cases. Some very recent literature also points to the fact that even in the mind of law implementers, especially judges, there is an impression that PWDVA is a criminal law and they are adopting criminal procedures (Kothari, 2013). Similar observations have been made in other countries also, for example Sri Lanka where concerns have been raised about how adopting criminal procedures in domestic violence cases may damage the effects that the civil law is intended to bring (Wijeyesekera, 2011) (Wijeyesekera 2011). In my view the confusion of assuming a civil law to be a criminal law might be more injurious to the objectives of the civil law than the actual fact that it is not a criminal law in itself.

However, assuming that civil laws are indeed prone not to be implemented very effectively, the fact that India is comprised of 28 State Governments and seven Union Territories (managed by Central Government) can worsen the situation, and this civil law is bound to get a diverse response. Since PWDVA requires the setting up of some extra structures, it requires resources and those, too, vary widely when such generation of resources is left to the States. Considering that this is not a State-initiated and owned piece of legislation⁴ and is an issue which might have not been accepted as a priority, probably the State will not be willing to invest. The experiences of the different State governments implementing and allocating the resources have already demonstrated that there will be huge differences in the way this law will be treated (see Table 2.1 for budget allocation for PWDVA).

Literature on the subject has argued that understanding the nature of the problem shapes how the problem will be responded to (Bacchi, 2006). It will be interesting to

⁴Unlike Australia, where each State and Territory government owns their own DV law.

explore how much the understanding of what this Act is trying to achieve also influences the way the States respond to implementing the policy. Does it influence the resources that are committed or the model that is adopted to implement the policy? Overall, the literature seems to suggest that there is inherent inefficiency in both criminal and civil domestic violence laws. However, there is not much literature to trace the effect a law may generate when a criminal law on domestic violence already exists when a civil law is introduced, for example in countries like India and Bangladesh.

Bacchi has proposed that the way the problem is understood influences the way the problem is responded to by the state and other actors when it comes to developing policy (Bacchi, 2006). The state as the enforcer of the law and the law implementers that actually translate the policy into action to achieve the objectives are two levels that may influence the effectiveness of the law. Diverse responses from the States have already shown that the law is not being treated in a uniform manner. The other level, the law implementers, are also very critical as to how they perceive the law and hence act on it. It has already been indicated that there are differences in the attitudes and practices of the law implementers, but it can be concluded that overall there is an inherent lack of the sensitivity required on the issue (Lahiri, 2009, LCWRI, 2009, LCWRI, 2010). LCWRI (2010) reports on the attitudes of the police and protection officers on the issue of domestic violence in three States, Maharashtra, Rajasthan and Delhi. It hardly needs to be emphasised that the attitude towards the issue of domestic violence is not at all at the level it should be. Among the three States, the officials in Delhi seemed to have a better understanding of the law and some sensitivity towards the domestic violence issue (LCWRI, 2010). Since

in Delhi a protection officer is hired full-time, perhaps that is the reason they exhibited a better understanding than did those in Maharashtra and Rajasthan. However, there has not been any significant change in the capacities of the protection officers and the police over time. Nor does this report analyse the difference in attitudes based on the resources of the State and the position of the protection officer (full time/contractual). However, since of these three States, Delhi is one which has invested more resources and can be rated as a better enforcer, it seems that better State commitments and resources result in a better understanding and hence better knowledge, attitudes and actions by the law implementers (LCWRI, 2010).

These differences in the understanding of the law among the law implementers will finally be reflected in the efficiency of the objectives met in the States. However, to reach such a conclusion it is important to explore whether the differences in the attitudes of the police/protection officers match the experiences of women who used the act. For example a police officer when surveyed on his views on domestic violence may give answers that are politically correct but in actual practice he might not show that sensitivity to women. Hence women experiences in those States where police and protection officers were surveyed, needs to be taken into account too so that it can be established that what the protection officers and police officers are reporting, is actually reflected in their actions. LCWRI(2010) seems to have conducted interviews with 61 women, but there is no mention of whether what those women experiences matched with what the law implementers had to say during the survey(LCWRI, 2010). Hence, the end user satisfaction level provides much stronger evidence to comment on the influence of difference of understanding of the Act

among State-level stakeholders and law implementers of the state on the effectiveness of the law.

PWDVA implementation issues

Since the first year of its implementation, many issues have been documented. Most of them are centred around the lack of resources and infrastructure provided by the States for the implementation of the Act (Lahiri, 2009, LCWRI, 2008, LCWRI, 2009, LCWRI, 2010, LCWRI, 2012, LCWRI, 2013c, Kishwar, 2006b, Mahajan, 2011, Ghosh and Choudhuri, 2011, Badrinath, 2013). While there are some good models of implementation that have been appreciated, for example of in Andhra Pradesh where the public mode of access (described earlier) exhibits the coordination between various departments, there is a faint possibility of these models being replicated by other States. The central government will need to take a lead in getting them replicated by all States by providing implementation guidelines and matching grants for the implementation.

Most of the implementation issues can be classified under: the lack of resources, the level and type of protection officers appointed, issues within the judiciary system resulting in delays in the release of interim or final orders, and lack of awareness and sensitivity about the domestic violence issue and the Act (LCWRI, 2009, LCWRI, 2010, LCWRI, 2012, LCWRI, 2013c).

What remains missing?

Given that PWDVA is being implemented in 28 States and 9 Union Territories of India, trying to measure the progress of it is indeed a huge task. Despite the fact that

six exhaustive monitoring and evaluation reports have been published covering the period up to 2013, there remains much to be explored. This section argues that, although glimpses of structures and systems are provided in the *Staying Alive* Reports, they do not tackle the complete task of monitoring and evaluation as suggested by the UN Framework. Nor do they meet the standards set out in a recently published resource document by LCWRI itself which sets out an exhaustive framework for measuring the implementation and for the monitoring and evaluation of the Act (LCWRI, 2013b). There is a need to evaluate the impact of PWDVA and to assess its effectiveness on the ground. In accordance with the UN framework, monitoring and evaluation guidelines should address two questions:

Question 1: Are the mechanisms effective in facilitating access to legal and other remedies? This is done by observing whether systems and structures are efficiently placed and are working as designed.

Question 2: Does the law provide effective redress? This is done by measuring the effectiveness of the outcomes that have been gained by the use of this law.

Study of the *Staying Alive* reports shows that for PWDVA the monitoring done by LCWRI has focussed more on Question 1. These reports also map best practices and discuss some judgements which were a setback as well as some landmark judgements, the influence they may exercise on other cases, and what patterns and trends they signify. However, the main limitation of these reports is that they report patterns that are not from a fixed sample. For example, LCWRI 2013 makes an observation that there has been an increase in the number of protection orders. However, the evidence on which this claim is based is not clear, as it is possible that

this increase is in part due to the greater number of cases studied from the previous year so in fact it may not reflect the actual increase in the protection orders granted. Also, the analysis of orders is just focussed on the contents, whether the relief granted was adequate or not and whether relief granted expressed that judge's gender progressive stance on domestic violence or not. This analysis when it is not supported by what were the experiences of women while accessing the courts, and what happened after the orders were passed, is incomplete as it does not provide detail whether order was executed adequately or not. It is extremely important that an order be implemented in the spirit it was passed for the woman to gain any benefit from it. Therefore, I find that even though these reports represent a monitoring report they are not actually evaluating a program. Evaluation reflects on the impact of the law, which means more than simply how the present infrastructure and implementation level is progressing. The voices of the women involved are completely missing from these reports.

To conclude, although the *Staying Alive* reports contain some anecdotes from all over India, they do not provide any comparative analysis of what is happening at the level of the end user. A comparison of how many protection orders are sought in comparison with the total number of orders made is more helpful in assessing impact than the analysis of some landmark cases throughout India. In general, there is a lack of reporting about how the loopholes in the systems and structures, the attitudes of law implementers and the lack of resources are impacting on the outcomes for the end user. These gaps in the available literature are discussed in more detail in the next chapter.

Chapter 3: Literature review

There is a vast amount of international literature around domestic violence or gender-based violence. In this chapter, I will focus on those parts of the literature most directly related to my thesis – namely that relating to policy responses to domestic violence and the implementation of relevant laws. I will then focus on the Indian literature relating to domestic violence and, in particular, that directly related to the *Protection of Women against Domestic Violence Act* (PWDVA). I will draw mostly on political science literature and legal studies as well as on official publications, resources generated by international organisations working on violence against women. Finally I will identify the gap in the implementation studies of the PWDVA that this thesis aims to fill.

There is a large body of literature focused on defining domestic violence, its causes and consequences (for example, (Kurz, 1998, Hague and Wilson, 2000, Johnson and Ferraro, 2000, Ashcraft, 2000, ICRW, 2000a, ICRW, 2000b, UNICEF, 2000). These publications also highlight the complexity of the issue and the vulnerability of the survivors (Murray, 2008, Buel, 1999). Due to the implications of domestic violence for health, a significant literature comes from medical, health and population studies (Kimuna et al., 2013). This stresses the urgency of addressing domestic violence and the need for adequate management of domestic violence in the health sector by health sector professionals (Babu and Kar, 2009, Babu and Kar, 2010, Grossman and Lundy, 2007, Kimuna et al., 2013).

Another significant body of literature from political science is devoted to the agenda-building that results in states responding to the issue of domestic violence. It deals with when and how states respond to such demands and create policies to address the issue. This includes the relationship of the women's movement and activism to the emergence of violence against women in mainstream public policy making (Weldon and Htun, 2013, Weldon, 2002, Joachim, 1999, Chappell and Costello, 2011, Htun and Weldon, 2012, Krizsan and Popa, 2010, Montoya, 2009). Another body of literature is from legal studies, where law professionals have highlighted various concerns about the contents and provisions of such policies and raised various issues concerning implementation (Mullally, 2004, Vyas, 2006, Kothari, 2005, Kothari, 2013, King and Batagol, 2010, Kishwar, 2000, Kishwar, 2006b, Kishwar, 2006a, Lahiri, 2009, McQuigg, 2010, Menard, 2001, Shetty et al., 2012, Sherman and Cohn, 1989, Suneetha and Nagraj, 2006, Badrinath, 2011, Burman and Chantler, 2005, Jaising, 2009, Karanjawala and Chugh, 2009). Lastly a significant literature comes from international multilateral organisations working on violence against women, for example the UN. These organisations produce resources that are important for managing domestic violence. In particular, the UN has developed a model framework for policy addressing domestic violence and provided various capacity-building handbooks or manuals for the key stakeholders (UN Women, 2013, UNICEF, 2000, LCWRI, 2013b, Coomaraswamy, 1996b, Coomaraswamy, 1996a, UN, 2009, Uma, 2010).

Implementing DV policies: Efficiency debate

Once states responded to the issue of domestic violence, scholars began focussing on how effective these laws were in responding to the issue. This includes looking at the

social dimension, where a patriarchal mindset may hamper implementation of the law, the political dimension, where political architecture will influence implementation, and the legal dimension, where the judicial framework under which the law is implemented will influence the law, which are all crucial when analysing the efficiency of domestic violence policies.

There is also a possibility that the conditions that create a conducive environment for the development of policies to address violence against women, may also facilitate the effective implementation of the policies. A federal system has been documented as creating opportunities for women-related policies in some cases (Sawer and Vickers, 2010). In fact, in Australia women activists used examples from different States to pressurise other States to match or even perform better on domestic violence policy (Chappell and Costello, 2011). Another condition is the presence of more women in the governance of the nation and the linkages of this with progressive policy outcomes (Mackay, 2010). However, the most favourable situation is when there is both pressure from women within state institutions and from outside state institutions (Sawer, 1996). Existing research explores whether such conditions are conducive to policy implementation or not – for example, where political architecture provides more opportunities for civic engagement or the presence of more women in political institutions. Studies are already showing that factors like the role of the state, women's policy machinery and civil society will affect the implementation of the domestic violence policies (Franceschet, 2010).

The biggest pool of literature on the effectiveness debate comes from the legal perspective, where the role of the judiciary is of prime concern. The judicial framework, for example civil or criminal, and how that influences the domestic

violence issue being efficiently addressed has been debated in many studies (Badrinath, 2011, Garoupa et al., 2010, King and Batagol, 2010, McQuigg, 2010, Dugan, 2003).

The law is claimed to be universally applicable to all, however it is not free from social and political reality. Feminists have challenged the notion of universality and have highlighted the state's role in maintaining the subservient status of women (Charlesworth et al., 1991). Gradually, due to the globalisation of domestic violence awareness, domestic violence has been incorporated into the human rights framework, along with the feminist claim that the state should be responsible for treating domestic violence as a criminal offence (Murray and Powell, 2009, Franceschet, 2010). As in criminal law, it is the state versus the offender rather than a case between the affected and the offender; the assumption is that criminal laws are more efficient in curbing the issue of domestic violence, making domestic violence an offence against the state. This can be traced in the United States, where there has been a progressive evolution of domestic violence laws by criminalising domestic violence and bringing in strict measures like mandatory arrest and no-drop prosecution policies (Shahidullah and Nana Derby, 2009). Though the efficiency of such measures is debatable, feminists agree that it is a start (Frantzen and Miguel, 2009). Elsewhere, in other countries, feminist advocates are also demanding that domestic violence be treated as a criminal offence, where at present it comes under civil laws (Franceschet, 2010).

However, this does not account for situations where criminal laws for specific forms of domestic violence, like dowry violence in the Indian sub-continent, were introduced before the civil laws and due to their stringent nature created a huge

backlash, being regarded as a biased law often misused by women (Suneetha and Nagraj, 2006, Kothari, 2005, Hornbeck et al., 2009). Introduced in the 1980s in a patriarchal society like India, where male respondents had no escape due to the cognizable⁵ and non-bailable nature of these laws, there was a chilling effect on the minds of the law implementers (Shetty et al., 2012). Similarly, in Bangladesh, the criminal law of Bangladesh provided for the death penalty in 12 offences of domestic violence under the *Prevention of Repression of Women and Children Act* of 2000 (Shahidullah and Nana Derby, 2009). In both countries, these laws, though stringent and punitive in nature, fell short in addressing the issue of domestic violence. Hence, in India after 22 years and in Bangladesh after 10 years of criminal law implementation, civil laws were passed. However, being implemented in the same environment where there has been a very negative image of these laws, there is the question of how this legacy will affect the efficiency of civil laws. This question has not yet been explored in the literature.

Indian Protection of Women from Domestic Violence Act

The literature in India on domestic violence during the 1980s and 90s was centred on the women's movement and the response from the state (Bush, 1992, Gandhi and Shah, 1992). This literature tackled the patriarchal nature of the state and how the women's movement succeeded in garnering a response to issues of violence against women. Since the Indian government responded on dowry-related violence by passing Section 498 of the Indian Penal Code, literature started pouring in about the

⁵The offences under any law (mostly the Indian Penal Code) are classified as cognizable and non-cognizable where the word "cognizable" means that a police officer is empowered to register an FIR, investigate, and arrest without warrant".

efficiency of this policy. However, much of this literature is about the misuse of Section 498A or is by feminist activists responding to the claims of misuse (Kothari, 2005, Shetty et al., 2012, Kishwar, 2000, Agnes, 2006).

Around the same time, many studies in India were making a case for a more holistic domestic violence law by providing evidence of domestic violence in various parts of India, by assessing the impact and cost of domestic violence to the nation, and by highlighting the shortcomings of 498A in curbing all forms of domestic violence apart from dowry-related violence (Babu and Kar, 2009, Babu and Kar, 2010, ICRW, 2000a, ICRW, 2000b, Jejeebhoy, 1998, Martin et al., 2002, Panchanadeswaran and Koverola, 2005, Paul, 1999, Rao, 1997, Shetty et al., 2012, Visaria, 2008).

Since 2005, the year when PWDVA was passed, the literature on domestic violence in India has focussed on the Act. Studies began appearing even before the Act was passed, mostly discussing the challenges faced in its passage (Rajan, 2004). Most of the literature is from legal studies and some from women's studies. The most significant element, however, comes from the monitoring and evaluation reports published annually by LCWRI through the UN Trust Fund, as noted in the previous chapters (LCWRI, 2008, LCWRI, 2009, LCWRI, 2010, LCWRI, 2012, LCWRI, 2013c, LCWRI, 2013b). The LCWRI consists of a team of lawyers, monitoring the law from both legal and human rights perspectives. The other kind of literature consists of the project reports and other action research documents from the organisations that are implementing PWDVA, available on the organisations' websites (Lahiri, 2009, Wu, 2009, Kaushal). This literature is expanding continuously and is contributing to advocacy within India and other countries.

Overall, the early literature on the PWDVA is about the general analysis of the Act; there is also a modest amount of literature on the implementation and monitoring of the Act; and a negligible number of evaluative or impact studies.

General analysis of the Act

The literature that is centred on a general analysis of the Act is mostly content analysis, analysis of provisions, feasibility of implementation and possible issues that the Act will face. This was early literature, when there was less information available on the implementation of the Act.

Most of this literature has welcomed the PWDVA in India, but on the other hand has also criticised it in various aspects. Mostly the literature is sceptical about the feasibility of the objectives of PWDVA. Quoting the past experiences of criminal laws addressing the issue of violence against women in India, which were claimed as controversial, the present literature about PWDVA voices doubts about whether this law will be able to bridge the gaps that previous laws were unable to address (Basu, 2008, Jaising, 2009, Ghosh and Choudhuri, 2011, Hornbeck et al., 2009, Kishwar, 2006b, Kishwar, 2006a, Kaushal, Mahajan, 2011). Some claims are made that it is ambiguous, dangerous, discriminatory and controversial or even that some provisions, due to ambiguity, are prone to be misused and could have ‘hazardous implications’ (Karanjawala and Chugh, 2009 p298). However, literature to support such claims is absent. Amidst this furore of opinions, speculations, assumptions, hopes and frustrations, a few empirical studies are emerging on implementation; the PWDVA had been in existence for seven years by 2013, and has been used by thousands of women all around India (Bhatia, 2012, Lahiri, 2009, Ghosh and Choudhuri, 2011).

Other supportive literature agrees that PWDVA is very progressive and could be a strong tool to address domestic violence if implemented in the spirit of its genesis. However, the warning is raised that if lacunae occur in the implementation, then it will be lost and misused, defeating the purpose of this law (Kadam and Chaudhari, 2011). Hence, how the implementation progresses has come to be regarded as critical in assessing any results that this law may bring. However, most of the early literature is just informative in nature, provides the contents of Act and presents analysis on why it was important to bring in this civil measure. Some literature provides critical analysis of where PWDVA might fall short, based on the content of the Act and the rules for its implementation (Kishwar, 2006a, Kothari, 2013, Jaising, 2009).

The literature which is apprehensive concerning the feasibility of the PWDVA often starts from the position that civil laws for domestic violence indicate a lack of commitment on the part of implementers when compared to a criminal law. From this it is concluded that PWDVA may not prove to be very effective (UN Women, 2013, Hornbeck et al., 2009, LCWRI, 2008, LCWRI, 2009, LCWRI, 2010). This section of the literature claims that systems set up under civil law may be too weak to bring the speedy justice and relief that women are seeking. However, there is also some literature around PWDVA going back to the narrative of the misuse of law, speculating that this law gives an advantage to women as there is no onus of providing proof of violence, or suggesting men can be framed and punished under PWDVA and are at a disadvantage (Kishwar, 2006a, Mahajan, 2011, Vyas, 2006). On the other hand, there is a section of literature critical of PWDVA for not giving sufficient priority to the most serious violence against women. For example Gadkar-Wilcox argues that by providing too broad a definition, putting even ridicule or

verbal abuse under domestic violence, PWDVA trivialises the serious violence that women are facing in India (Gadkar-Wilcox, 2011). This argument, however, does not clarify whether the confusion exists among those who are analysing the PWDVA and its implications or also among those who are implementing the PWDVA. The next section reviews the PWDVA implementation and monitoring literature.

Implementation and monitoring literature

The literature on the implementation and monitoring of the PWDVA is quite modest when compared to that on similar DV Acts in nearby countries. As already mentioned, the Indian implementation literature is centred on *Staying Alive*, an annual publication of LCWRI through the UN Trust Fund to End Violence Against Women. As discussed earlier, LCWRI is a national legal women's organisation that played a key role in the drafting of the Act. *Staying Alive* is the only document available in India which provides a detailed account of the implementation of the Act. Given the limited literature available, '*Staying Alive*' is an important publication series for identifying constraints and the barriers in the implementation of PWDVA 2005. Both this series and other publications on the implementation of PWDVA are centred on assessing the efforts of different states and the lacunae in the systems and structures that have been set up for the implementation of the Act (Kishwar, 2006b, LCWRI, 2008, LCWRI, 2009, LCWRI, 2010, LCWRI, 2012, LCWRI, 2013c, Ghosh and Choudhuri, 2011, Lahiri, 2009, Mahajan, 2011, Badrinath, 2013, Badrinath, 2011). Apart from *Staying Alive*, a few other legal perspectives on the implementation of the PWDVA are available, which again discuss the bottlenecks within the judiciary from the legal perspectives (Ghosh, 2013, Ghosh and Choudhuri, 2011, Kothari, 2005, Kothari, 2013).

The *Staying Alive* series has mainly focussed on measuring annual progress on various indicators of the implementation of PWDVA, for example the hiring of protection officers, allocation and utilisation of budget, training of law implementers and documenting of best practice and landmark cases. Early volumes (2007 and 2008) of *Staying Alive* provide useful base-line information about the allocation of resources by different Indian States for the implementation of PWDVA. However, they provide little qualitative information. Hence my literature review is focussed more on volumes released from 2009 to 2013. Despite the fact that *Staying Alive* is the largest source of information on PWDVA, there are some shortcomings. The biggest is that, despite the fact that annual reports are published, one report is not an addendum to another. For example, it is difficult to track any one State on the same indicators over a period of time.

For example, each year the number of States that are reported from keeps changing. One year data from 20 States is reported, another year it is from 23 States, and another report has 30 States. In 2010, the number of States reported from was reduced to 16, and in 2012 it was 15 States (LCWRI, 2009, LCWRI, 2010, LCWRI, 2013c). The lack of consistency in relation to the number of States being reported means that if one particular State is being tracked, data for that State might be missing in another year's report. This becomes its weakness as it does not present a comprehensive picture of any specific location in India. Three volumes that do have repeated case studies of three States, Delhi, Maharashtra and Rajasthan (in 2009, 2010 and 2012), try to give a progressive picture. They document the changes in the knowledge, attitudes and practices of protection officers and the police in relation to PWDVA (LCWRI, 2009, LCWRI, 2010, LCWRI, 2012).

The other issue with the *Staying Alive* series is that even though it contains a large amount of data, it does not provide systematic comparative tables. For example, in 2013, it studied about 9,526 court orders to evaluate the judiciary performance. Such a huge amount of data would have been a useful basis for quantitative findings, for example the number of protection orders passed out of the total 9,526 court orders (LCWRI, 2013c). However, the report does not tell us how many protection orders were passed; it tells that protection orders were the second most granted orders, but a quantification of these protection orders is not possible.

Regarding the budget allocation for PWDVA, the literature highlights the issue of the scant allocation of resources by most of the States and also the issue of the low expenditure of those allocated resources (LCWRI, 2009, LCWRI, 2012, LCWRI, 2010, LCWRI, 2008, Jhamb, 2011). However, there is a lack of documentation of impacts on the quality of service delivery, which services were most affected and whether the States that did have adequate expenditure provided more satisfactory services. Further, little information is available as to on what items the budget was spent.

When it comes to the mode of accessing PWDVA, LCRWI has classified access routes as public, private and mixed models of implementation. They have applauded the public model of Andhra Pradesh in their initial reports and have listed it as a best practice (LCWRI, 2009, LCWRI, 2008), although claims for this model have not been supported by evidence of positive outcomes or increased efficiency. It had been assumed that better coordination between stakeholders is an efficient model.

However, later due to failure of Andhra Pradesh to provide reports, LCWRI in their 2010 and 2012 reports expressed their disappointment that Andhra Pradesh had not actively reported back to LCWRI, despite such an excellent coordination model.(LCWRI, 2010, LCWRI, 2012). Hence there is no evidence of whether or not it resulted in higher satisfaction among women who have used this model, so no conclusions can be drawn about the effectiveness of this model.

Various publications have highlighted issues related to the roles and responsibilities of protection officers (Jaising, 2009, LCWRI, 2009, LCWRI, 2010, LCWRI, 2008). This literature points out that protection officers are often not hired full-time but it lacks a comparison of the different types of appointment and how they meet the objectives of the Act (LCWRI, 2010, Jhamb, 2011, LCWRI, 2009, Lahiri, 2009, Ghosh and Choudhuri, 2011, Jaising, 2009). Overall, the literature suggests that protection officers are critical to the implementation of the Act, but they are unable to perform their roles due to issues such as appointment as part time staff, training and skills, and lack of involvement in courts.

All of the *Staying Alive* reports point out the lack of reliable data at State or national level on the progress of PWDVA. Lack of coordination between the judiciary and the PWDVA implementation agency has been reported to have resulted in a situation where consolidated information about the status of PWDVA cases cannot be achieved. This issue has been raised as a big concern by LCWRI (LCWRI, 2009, LCWRI, 2012, LCWRI, 2010, LCWRI, 2008, LCWRI, 2013c).

Studies have pointed to the lack of capacities of different stakeholders, like protection officers who lack the skills and experience required, and judges who are unaware of the provisions of the Act and lack the sensitivity required to handle domestic violence cases (Wu, 2009, Lahiri, 2009, Kaushal). Even though building capacities and raising awareness about PWDVA is mandated, no systematic information is available on what is happening on this front from the various reports and studies available on PWDVA. A few States, Delhi, Rajasthan, AP, West Bengal, Madhya Pradesh, and Kerala have been reported as conducting training of different stakeholders (LCWRI, 2009, LCWRI, 2012, LCWRI, 2010). However, the exact percentage of officials trained is not available for any State. So a review of existing literature only reveals that some training has happened in some States. But due to lack of information about the nature and coverage of training, it will be difficult to assess the results of training on the outcomes of PWDVA.

It has been indicated that there are differences in the knowledge, attitudes and practices of law implementers and overall that there is an inherent lack of the sensitivity required for the issue (LCWRI, 2009, LCWRI, 2010, Lahiri, 2009). Not surprisingly, police have been one of the law implementers documented as not having the capacity to deal with the issue and highly lacking in sensitivity (Lahiri, 2009, Hornbeck et al., 2009). LCWRI (2010) reports on the attitudes of the police and protection officers on the issue of domestic violence in three States, Maharashtra, Rajasthan and Delhi. The attitude towards the issue of domestic violence was not encouraging. Among the three States, the officials in Delhi seemed

to be having a better understanding of the law and some sensitivity towards domestic violence issues (LCWRI, 2010).

LCWRI has also reported that compared to their baseline, no significant change in the capacities of the protection officer and the police was observed (LCWRI, 2012). However LCWRI does not offer possible reasons for the difference in attitudes reported. Were these due to differences in resources invested by the States? Delhi fared better, so was it the result of more commitment and resources, reflected in knowledge, attitude and actions from the law implementers? LCWRI mentions conducting interviews with 61 women, but what the findings were that emerged from it are not clear (LCWRI, 2010). Did the experiences shared by the women match with what the law implementers reported about their knowledge and practices? There is the possibility that the responses of the protection officers and the police were influenced by the very fact that they were being surveyed and gave answers that seemed politically correct rather than being what they really believed. Hence, end-user satisfaction provides much stronger evidence on the understanding of the Act among State-level stakeholders and law implementers and its influence on the effectiveness of the law.

Historically in India, it has been documented that, due to the biased approach of Government agencies, the implementation of laws cannot be assured entirely by government systems and structures. The responsibility to get laws related to women implemented effectively still lies with women's organisations being vigilant and acting as a pressure group through a number of networks and the use of the media (Tandon and Mohanty, 2002). PWDVA is the first law in India that recognises the role of women's organisations in the form of service providers working on the issue

and incorporates them as stakeholders. However, reports are hinting that the lack of resources and awareness of PWDVA is hampering the involvement of women's organisations (Jhamb, 2011, Wu, 2009, Kaushal).

The Act mandates the registration of suitable organisations as service providers for the implementation of the Act. However, the registration of these service providers has been documented as a slow process, with many States still not finishing this process (LCWRI, 2010, LCWRI, 2012). Moreover it has been documented that it is completely within the discretion of State as to how they choose to register an organisation, which means this process lacks transparency (Kaushal, 2010). Among the service providers that have been registered, there is a lack of understanding of their roles and responsibilities, and in most States they are not filing DIRs as mandated in the Act. They have been recorded as sending aggrieved women to the protection officer or lawyers to file their cases (LCWRI, 2010). Also there have been cases where even Magistrates are not encouraging the acceptance of DIRs lodged by the service providers (Wu, 2009). All these problems are compounded by the fact that, even after being registered, the service providers have not been allocated sufficient resources by the State and so are unable to render services as visualised under the Act (Jhamb, 2011). Overall, after protection officers, service providers are the most accessible stakeholders for women; the lack of resources and understanding of their role may hamper the smooth functioning of PWDVA.

According to LCWRI 2010, the medical facilities are underused in the implementation of the Act. It has been pointed out earlier that even though the public health system is critical in addressing violence against women, it has hardly been in a position to play this important role in India. There is also no health policy

addressing violence against women in the public health system of India and it is limited in the capacities and sensitivities required to deal with the issue (Deosthali and Manghnani, 2005) (Deosthali et al., 2012). It has also been documented that the women's movement in India has not included the health system in their struggles (Deosthali et al., 2012). PWDVA, which incorporates medical facilities as an important service to the aggrieved has fallen short in involving the health systems. LCWRI reports that most of the States have notified government medical facilities about the Act, however that has not resulted in any involvement of medical facilities and they continue to remain the least-used stakeholder in the Act (LCWRI, 2012, LCWRI, 2013c).

Since 2012, apart from reporting on the effectiveness of systems, some analysis of the status of relief being granted under the Act has started coming in. LCWRI reports that protection orders are being granted frequently (LCWRI, 2012). However, in another study done by Bhatia in Delhi, it was reported that only 50 percent of women who sought protection orders were granted protection (Bhatia, 2012). Apart from protection orders, women are seeking maintenance and residence orders the most. Residential orders have become the most controversial, with many high-profile judgements, both positive and negative. Though some have been lauded for fair interpretation of the provisions of the law, some cases have set a dangerous precedent, among which is the infamous case of Tarun Batra, in which the Supreme Court withheld the right to reside in the shared household in 2007. This became a cause of concern all over India as it created a precedent for residence claims of women to be denied (Dube 2009, LCWRI 2009, 2010). There are also concerns that interim orders are not being promptly granted, which defeats the purpose of

immediate relief to women. There is also concern about the timeframe in which the cases are being disposed and orders being released, most of the literature suggesting that the mandated 60 day timeframe in the Act is rarely being met in the courts (Ghosh and Choudhury 2011, Kaushal 2010, Lahiri 2011, LCWRI 2010-2012). The trends being reported are overall not very encouraging and may result in poor effectiveness of the outcomes for women.

Some very recent literature points to a confusion in the minds of law implementers, especially judges having a prior experience of criminal laws like 498A; they are adopting criminal procedures thus reflecting the impression that PWDVA is a criminal law (Kothari, 2013). Similar observations have been made in other countries, for example Sri Lanka, where concerns have been raised that adopting criminal procedures in domestic violence cases may damage the effects that civil law is intended to bring (Wijeyesekera, 2011). It will be interesting to explore whether this also applies to policy implementation. How much does their understanding what a civil law of domestic violence is trying to achieve influence the way state actors respond while implementing the policy? Does it influence the resources that are committed or the model that is adopted to implement the policy?

Evaluation and impact

Given that PWDVA is being implemented in 28 States and 9 Union Territories of India, trying to measure its progress is indeed a huge task. Despite the fact that six exhaustive monitoring and evaluation reports had been published by 2013, there remains much to be explored further. This section argues that though glimpses of structures and systems have been presented by *Staying Alive* reports, they do not tackle the complete task of monitoring and evaluation as suggested by the UN

Framework. A very recent resource document of LCWRI itself sets out an exhaustive framework for measuring the implementation, monitoring and evaluation of the Act (LCWRI, 2013b). There is a need to evaluate the impact of PWDVA and whether it provides any direction about the effectiveness of the domestic violence laws.

The first gap in relation to the monitoring and evaluation of the Act is that most of the literature available, including *Staying Alive* reports, is focussed more on measuring the effectiveness of mechanisms and access to legal remedies. This is despite the fact that the UN framework guidelines suggest monitoring and evaluation at two levels: (1) that the mechanisms are effective in providing access to legal remedies; and (2) whether the outcomes through the law were effective in addressing the problem (UN Women, 2013). Only a couple of assessment studies are available which have been done on a small scale, involving mostly one State. Bhatia (2012) has made an assessment in Delhi State where it was reported that, of a sample of 99 women applicants under the Act, 88 of them found it to be useful. This study suggested that a large number of women did make use of this Act, however whether they were satisfied or not cannot be determined from this study (Bhatia, 2012). In another study, Ghosh and Choudhuri(2011) assessed 20 cases in West Bengal, and there is also a paper by Wu, where three women from Delhi and five women from Kerala State were interviewed (Ghosh and Choudhuri, 2011, Wu, 2009). Both these studies, based on small samples, assess experience of the PWDA and make some analysis based on that. However there is a lack of studies with larger samples and broader coverage.

As noted earlier, only the *Staying Alive* reports cover large geographical areas and samples when it comes to monitoring and evaluation. These reports map best practices. They also discuss landmark judgements and others that were a setback, the influence they can exercise on other cases, and what patterns and trends they signify. However, the main limitation of these reports is that they report patterns that are not from a fixed sample. For example, LCWRI 2013 makes the observation that there has been an increase in protection orders, however the evidence for this claim is not clear. It is possible that the increase is due to a greater number of cases studied than in the previous year and may not actually reflect an increase in the protection orders granted. Also, the analysis of the orders does not include the experience of women while accessing the courts or what happened after the order was passed. It is extremely important that an order be implemented in the spirit it was passed for the woman to gain any benefit from it. Hence, I find that even though these reports are presenting a monitoring report they are not actually evaluating the program. Evaluation reflects on the impact that the law has had, which is more than how the present infrastructure and implementation level is progressing. The voices of women are completely missing from these reports.

To sum up, although *Staying Alive* reports and other literature give some anecdotes and an account progress of systems and structures in place in different parts of India, they do not give any comparative understanding of what is happening at the level of end users. A comparison of how many protection orders are issued in comparison with total orders released tells us more about impact than does the analysis of some landmark cases happening throughout India. Also, there is a lack of understanding of

how the loopholes in the systems and structures, attitudes of law implementers and lack of resources are affecting the outcomes for the end user.

Conclusion

The passage of PWDVA has been welcomed by many and criticised by others. Popular opinion is that the Act is progressive, albeit trying to achieve too much. Apprehensions exist on the misuse of the law. However, the advocates of PWDVA are concerned about the implementation of the Act. The lacks of resources and inadequate systems have been cited as lacunae. Law implementers such as protection officers have not been adequately appointed and trained. Police and judges have been cited as not being aware of the provisions of the Act. Service providers have not been adequately resourced and involved in implementation. Extensive monitoring all over the nation has been happening through the UN Trust Fund to End Violence against Women. However, there is a significant gap – a systematic evaluation of the PWDVA which reaches end users and brings in the voices of the women who have used the Act.

Chapter 4: Research Design and Methodology

Women's movement activism all around the world has resulted in policy responses from government to address violence against women. However, having an adequate policy is just the first step towards addressing the issue. It is a means and not an end in itself. Much depends on the proper implementation of the policy and on the environment in which implementation occurs. There is plenty of evidence to suggest that policies addressing unequal gender relations are prone to influence from the gender bias of law implementers and hence do not yield the desired outcomes. Therefore, to evaluate the effectiveness of the domestic violence policy we need to study its results in the context of the environment where it is implemented. Kabeer and Subrahmaniam (1996) have argued that the success of gender redistributive policies depend on the perception of the law implementers.

In relation to gender-based violence, policy effectiveness would mean there is:

- a) Visible and positive change in the gender relations that users of the policy experience in their lives, in particular, reduction in violence and higher agency in life.
- b) Change in society at large regarding the way the domestic violence issue is approached. This would mean raised consciousness about the complexity and sensitivity of the issue, for example a decrease in the social acceptance or tolerance of domestic violence and more preparedness of the state to address the issue. Essentially, this means the law implementers treating domestic violence as a human rights violation and not merely as a family dispute that law implementers have to mediate and fix themselves.

The UN framework guidelines suggest monitoring and evaluation at two levels: whether the mechanisms are effective in providing access to legal remedies and whether the outcomes obtained through the law are effective in addressing the problem (UN Women, 2013). Hence the first task is to check whether proper implementation of the policy is occurring and the second is to assess the impact on the lives of the beneficiaries of the policy. My research is focussed on the second level and involves contact with end users to assess the changes in their lives.

Assessment of implementation by noting the systems and structures put in place would be duplication of effort, since in India the monitoring of implementation is already being done on a large scale. My research uses feedback from the end user on quality of experience while accessing the Act and treats this as a reliable source of information on how effectively the systems and structures are working. The end users' feedback will complement existing findings and provide additional insights. It will also test the assumption that better resource investment leads to better satisfaction. In addition, it will compare views of implementation on the part of end users and implementers.

Research question

The overall question that is being addressed through this research is:

Has the PWDVA improved the women's lives in India? Has it changed the gender relations that women experience in their lives?

The specific or smaller questions are:

Do differences in terms of resources invested in implementation by States impact on the end users? What are their experiences of accessing the Act in different States?

What is the role of women's organisations in the effective implementation of the Act?

How do the gender attitudes of law implementers affect the outcomes for women?

These questions will be answered on the basis of the assessment framework (Table 4.1) illustrated on the next page.

While some indicators assess the implementation of the Act, most of the indicators relate to the possible impact on the life of the end user. The theoretical concepts behind this impact assessment framework are described later in this chapter in the section *Theoretical concepts and framework of gender impact assessment*.

Table 4.1 Impact assessment Framework

Indicators for Impact Assessment of PWDVA	
Indicators addressing strategic gender needs	Indicators addressing practical gender needs
• Recognition of domestic violence as women's human rights issue. • Impact on applicant: - reduction in violence - better negotiation power with respondent	• Adequacy of enabling environment and support services in meeting needs of applicants while seeking legal redress: – Accessibility of remedies to the applicant. – Ability of applicants to sustain themselves during legal proceedings – Impact of the relief granted by PWDVA: maintenance for economic sustenance; residence orders
Beneficiaries will also provide feedback on what has changed and what are the causes, both direct and indirect, of these changes from the PWDVA intervention.	
Beneficiaries will also report on the law implementer's behaviour towards them, their satisfaction with the process, the time and resources required and the effectiveness of the outcomes.	

Research methods

The methodology chosen for this research relates to the researcher's personal philosophies and approach. There are diverse views (Letherby, 2003) as to whether there is a specific feminist approach to conducting social research (Letherby, 2003, Maynard, 1998). Feminist empirical epistemology incorporates use of traditional research methods while critiquing the practices and retaining the base concept of

scientific exercise (Letherby, 2003, Olesen, 2000). Study of a research problem having little prior documentation requires exploratory research, as the objective is first to comprehend the problem. By using qualitative methodology, especially the semi-structured interviewing process, the researcher gains flexibility to explore a subject within a given framework (Blaikie, 2010). Interviews can be reliable sources of qualitative data and consequently are most commonly used. Dependence only on secondary data sources would not be sufficient to accomplish the research objectives, as in-depth research has not been conducted earlier on the actual impact of the PWDA.

The following sections outline in what manner this research was conducted and the appropriateness of the techniques chosen to answer the research questions. Limitations of the research process are also evaluated.

Research approach and philosophy

This research aims to assess the impact of PWDVA using an interpretivistic approach. In an interpretivist approach the researcher's personal beliefs significantly guide the solution of the research problem. Often, small sample sizes are used for evaluation as emotions and feelings are involved and the subsequent results are then generalised to a large group. The research subject originates from the researcher's personal knowledge base and is influenced by her individualistic interpretation and her personal perspectives. Qualitative data is collected and an effort made to comprehend individual actions and motivations (Lester, 1999). In feminist research such as this it is the feminist standpoint that influences analysis of the research problem, especially when women's experiences are understood in the light of feminist concepts of gender relations (Allen, 2011).. The feminist standpoints

research are the ones that takes women's interests as primary and the focus is on getting their lives better than what present societal context allows. These researches though present the experiences of women as they narrate it or as they share it but for analysis, these researches uses frameworks and tools that are designed by feminists (Allen, 2011). Hence this research though presents the accurate narratives of women, the analysis is done on the basis of gender frameworks as discussed in later section of this chapter under 'Theoretical Concepts and Framework of Gendered Impact Assessment'.

Research purpose

Research can be descriptive, exploratory or explanatory and can include multiple purposes related to the research objective (De Vaus, 2014). The purpose of this research was to assess the *Protection of Women from Domestic Violence Act* and include the voices of women who have used this Act to advocate and recommend the improvements related to implementation of the Act. For a topic such as this one, which has been researched less, exploratory research is best suited. Exploratory research initially aims to understand what the problem is and how best it can be investigated (Blaikie, 2010). As little documented information was available on PWDVA and its impact on women who had suffered domestic abuse, an exploratory approach was considered most suited to the requirements of this research. Finding appropriate subjects (women who had been victims of domestic violence) for investigation was difficult as few agreed to speak about a matter which was considered highly personal. Semi-structured interviews were used to gather the data that clarified the research subject. The exploratory approach additionally helped in

connecting macro and micro variables during the research procedure (De Vaus, 2014).

Research strategy

Research strategy is a methodical approach used for answering the research. This research undertook the evaluation of policy which addresses gender-based violence and the data and the findings are analysed from a feminist standpoint. Since there are no explicit feminist research methodologies, selection of appropriate methodologies is critical so that the goals of feminist researchers are adequately met (Allen 2011). According to Olesen, feminist qualitative research often requires the removal of gender filters that mask the different life situations of men and women and their impacts. Rather than taking a gender-neutral approach, feminist qualitative research takes a gender-specific approach, aimed at “consciousness-raising” concerning the invisibility of unequal power relations between men and women (Olesen, 2000).

Further, for researches involving violence against women, Allen advocates the use of constructivist grounded theory as the preferred method. Allen says that feminism provides the perspectives from which the research is taken and the disciplines often provide the methods (Allen 2011). My own research is exploratory and centred on grounded theory, which means data generated in the course of the research is simultaneously used to refine and fine-tune the focus of the research.

The main research tools were of an in-depth qualitative nature. Only a small mix of quantitative analysis was used. Therefore, for collecting empirical data on the experiences of women and service providers, qualitative tools like interviews were used, while for analysing the relation between usage of the Act and the extent of

resources invested in its implementation quantitative tools were applied(Olesen, 2000).

Comparative case study method

During qualitative research a case study is not essentially a method but is the selection of what is being analysed and why(Stake, 2000). In this research, then, the aim is not merely to measure effectiveness of the policy but also to contextualise the environments which produce the different policy impacts. Since India is a diverse country, the different States provide different environments for the implementation of the Act. The variation in the environment can be observed, as there are differences in the:

- Budget allocation for the implementation of the Act.
- Appointment of key stakeholders (protection officers (POs) and service providers):
- Involvement of the key stakeholders (full-time/part-time POs, role of police).
- Capacity building of the key stakeholders.
- Involvement or the presence of a women's policy agency, such as National and State Women's Commissions and Women and Child Development Ministry.
- Involvement of external monitoring mechanisms, such as strong women's organisations.

Undertaking case studies of three States where we measured the impact at the point of end user not only gave us solid documentation of the effectiveness of the policy,

but also of which environments proved to be effective or not so effective for policy implementation.

Data collection

Qualitative research is mostly suitable to evaluate social problems, as it collects rich data which is not easily quantified and evaluates it. It brings a multi-dimensional representation of research objectives, since participant behaviour can be contextualised while still maintaining the integrity of individual opinions (Denzin, 2000). However, critics note that qualitative methodology can have room for insinuation, researcher bias and an unwitting filling of gaps-in-facts, which can influence the results (Morse, 1994). This method is considered labour intensive and time-consuming. Furthermore, sample sizes are small, which may affect the generalisability of the results.

This research conducted semi-structured interviews to collect primary data, which is a common interviewing technique (Denzin, 2003) (Denzin and Lincoln, 2000). Exclusive dependence on secondary data could have yielded misleading results, as little documented data exists on PWDVA and its impacts. Considering the resource limitations, semi-structured interviews were considered to be most suitable for answering the research question.

Semi-structured interview

The semi-structured interviewing technique is non-standardised and it allows flexibility to explore themes that could arise during the conversation itself. A template questionnaire was used to guide the interview and deviations were made as required (see Appendix 01). Comprehensive data was gathered from interviewees

during this research to understand the research participants' experiences and attitudes towards PWDVA. During the interview, questions were added or altered to accommodate new themes arising from the conversation and to facilitate conversational flow. The interviewees were encouraged to share their opinions and experiences in detail to gain in-depth results even from small sample sizes. Few women victims of domestic violence want to talk freely about their experience, the reasons ranging from fear of repercussions from the respondent to feeling shame and embarrassment on discussing such a personal issue. The sample size was by nature limited, and thus it became more essential to get reflective and insightful responses from each (Bowen, 2008).

The semi-structured interview was used to gather in detail the experience of women on the following indicators:

- The ease of accessing the Act
- The time and resources invested
- The quality of experience during the process
- The effectiveness of the outcome.

Interviews

The interviews centred around the women's personal story, their experience with PWVDA and the help and support they received, as well as the potential opportunities available for them in the future. The interviews were conducted face-to-face as most of the interviewees were only comfortable discussing such personal matters after a rapport was built with the interviewer. Face-to-face interviews bring an added dimension of body language and the insights it provides into the words

spoken. Bryman, (2012) points out that telephonic interviews have strict time limitations but even then interviewees may become distracted, however in face-to-face interviews this is not the case (Bryman, 2012). Furthermore, by pre-informing the respondents and by ensuring the proceedings were simple yet professional any further issues were circumvented. Furthermore, risk of interviewee or interviewer bias was further reduced by not prompting answers or filling gaps with unnecessary comments, making unfitting interpretations and also by remaining attentive throughout to gather non-verbal clues from interviewees. However, it can be noted that such exchanges are individualistic in nature and separating facts out of context would yield incorrect results (Mason, 2002). The technique of summarising was thus applied to confirm the understanding of the opinions during the interviews.

Ethics clearance

In accordance with the NHMRC National Statement on Ethical Conduct in Human Research, 2007, as this research involved human participation, an application was made to the Human Research Ethics Committee of ANU. Although as per the guidelines the research came under the low to medium risk category and so eligible for expedited review, I deliberately chose to submit the application under full ethical review as an extra precautionary measure due to the nature of research involving survivors of domestic violence. Hence I was able to plan in detail about the ethical considerations that I needed to take during my research. The protocol numbered 2010/641: *'The Indian Protection of Women against Domestic Violence Act: Stumbling or Striving Ahead?'* was cleared on 29 March 2011. The protocol submitted informed the committee of the possible harm or risk to the participants, strategies to minimise or manage them, listed the protocols to be taken for consent,

with a request for verbal consent, and attached the consent form and the information sheet about the research that would be shared with participants, together with the sample of the interview questionnaire. These documents, the consent form, the information sheet and the interview questionnaire are provided in Annexures 1, 2 and 3.

During the fieldwork, all the ethical considerations, mainly informed consent, confidentiality details, limitations of confidentiality under Australian law, use of data collected through participants, its storage and their right to withdraw at any time, were taken to all the interviews. The follow-up monitoring reports were submitted for two years in 2012 and 2013, as per the NHMRC National Statement on Ethical Conduct in Human Research requirements.

Sampling

Sampling for this research concentrated on gathering diverse opinions rather than results that were strictly transferable and generalisable (Neuman, 2011). A purposive sampling technique was considered most suitable as it chooses suitable individuals who are most likely to answer the research questions (Neuman, 2011). Women who had accessed PWDVA were identified and contacted mainly through three sources:

- Service providers (NGOs) working on the implementation of the Act
- Ministry of Women Child, responsible for the implementation of Act
- Independent lawyers and State Legal Aid Services.

The experience of the researcher as a development professional, who had worked for international and national NGOs on women's issues in close proximity with the government for 13 years, proved an invaluable resource in this research. The NGOs

working on the implementation of the Act helped to make contact with potential interviewees; however, none of the NGOs that participated in this research had worked directly or indirectly with the researcher in the past. Details of the 12 NGOs that participated in the research can be seen in Annex 05. Further, the details of this recruitment process are provided later in this chapter under the *Research sample* section.

Selection of the cases

For this study three States were selected that provided different environments for policy implementation in terms of budget allocated, the level at which POs were appointed and the nature of PO commitment (full-time POs vs officers with additional duty).

The other consideration for the selection of the State was language. As Hindi is my first language, to facilitate the research Hindi or similar dialect-speaking States were considered as the sample for the selection. Since there are about seven such States (Delhi, Uttar Pradesh, Rajasthan, Bihar, Haryana, Madhya Pradesh, Himachal Pradesh), a further selection had to be made. Delhi and Madhya Pradesh are States that have provided a favourable environment, while Uttar Pradesh is the one State which historically has not. Between Delhi and Madhya Pradesh, Madhya Pradesh has allocated high-level resources and Delhi has allocated middle-level resources. Uttar Pradesh has not allotted any budget and has been included as a State with an adverse environment for implementation of the Act for the purpose of comparison.

Table 4.2: Resource allocation in the three States

State	POs	No. of POs per district	Budget for 2010-2011	No. of service providers registered
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Delhi	Full-time	2	3,300,000 INR	None
Uttar Pradesh	Additional duty at district level	1	No budget	112
Madhya Pradesh	Additional duty at sub-district level	10	30,998,000 INR ⁶	52

Compiled from LCWRI 2010,2012

Taking the State as the unit of analysis for the focused comparison would also take into consideration that, although the State boundaries offer uniform and unique mechanisms of operation, there are differences in the results achieved within those boundaries. This means that in the unit which is selected, it cannot be assumed that one district would be representative of the whole State. For example, the State of Uttar Pradesh has 71 Districts (cities and towns) and there might be differences in the environments of those districts. Therefore, it was decided that the unit of State be divided into sub-units. Thus for each State, at least two to three districts with differences in the performance were targeted for gathering data. However, district selection was not possible on a random selection basis. The reason was that I was dependent on government officials and the availability and willingness of service providers to help in the search and identification of eligible women.

Number of observations

In each State a minimum of 25 observations were conducted, by contacting the women who have accessed PWDVA in the past two years. Since the focus of the

⁶ This is the second highest budget allocated by any State after Karnataka which has the highest budget allocation for year 2010-2011

research was to see the impact of PWDVA on their lives, it was decided that these women should have received orders from the court at least six months before the time of observation. This would also allow me to observe whether the orders received from court were adhered to or not and what had been the follow-up from the service providers and protection officers. A total of 75 women were targeted to be observed through intensity sampling for data collection. Apart from these interviews, some interviews and discussions with law implementers were also conducted for background and context on how PWDVA implementation works in each State,

Validity, credibility and reliability of research

Validity, generalisability and reliability are necessary for any valid research process. To maintain the credibility of this research, only reputable and established NGOs were chosen to help during the respondent selection process and the secondary sources used were largely from academic or official sources.

Research process reliability questions the methods used for data collection and analysis to assess their consistency in generating similar results each time (Babbie, 2013). However qualitative methodology does not use numerical data which can be easily compared; human emotions being variable and complex are neither quantifiable nor are they consistent. This means that the process and methodology can be replicated, but the results cannot be repeated exactly in subsequent research (Sarantakos, 2012). The inherent subjectivity of this topic also becomes a consideration in this case. By ensuring accuracy and authenticity of the research process, however, reliability of the findings can be optimised.

Potential threats that can impact research reliability are interviewer or interviewee error, interviewer or interviewee bias besides observer error or bias. To reduce the probability of these errors, interviews were recorded and then transcribed word for word. Additionally, throughout the research process the quality standards were maintained and secondary data sources were verified whenever possible. Interviewee responses form the basis of the results and it is difficult to gauge if interviewees have been completely honest. At best, the researcher can ensure the interpretations are accurate. Researchers sometimes unintentionally fill gaps in the research with their own creativity, but this was consciously avoided during the analysis process here. On the other hand, I have made clear my own assumptions and beliefs and how they may affect the objectives and process of the research.

Research limitations

All research has issues and limitations and this research was no exception. Some of the limitations that were faced by this research are:

- Due to language constraints, the cases were taken from only Hindi-speaking States. Thus this research is not representative of all possible models of PWDVA being operated in India.
- A major issue in the primary data collection was accessibility. Women who met the research criteria were not located easily and quickly. If located, not all were ready to participate in the research. Moreover, appointments with some potential participants proved impossible to arrange, even though the interviewees had been contacted well in advance. This severely hampered the research, and further details of the challenges faced during sample recruitment are discussed in the ‘Research sample’ section below.

- There were also location-based limitations as it was not possible to include representatives from all the districts in a chosen State.
- Bias during data collection due to the human element is impossible to completely eliminate. Interviewee bias may occur if a respondent sub-consciously tries to say what they believe the interviewer wants to hear instead of being frank and true in giving their opinion.
- Finally, as limited secondary data was available there could be questions about its reliability, and so the figures reported may not always be accurate. To lessen the impact of this limitation, care was taken to only use the latest information from reliable sources.

Findings of qualitative research, being subjective, are not easily replicable as changes may occur over time and with different respondents (Sarantakos, 2012). Furthermore, while opinions and interpretations of the respondents were considered accurate when this research was conducted, they may change or be modified by the respondents themselves as their circumstances change or when new information comes in. However, exploratory research set in specific times and settings is not expected to produce results that can be exactly replicated in the future. The results thus should be considered indicative rather than absolute.

Researcher's position

The researcher's approach, analysis techniques, theory and methodology are always likely to be influenced by her gender, economic standing, class, and cultural ethnicity (Maynard, 1994). In conducting this research, I faced the quandary of being an insider as well as an outsider. I have worked on gender issues with NGOs in close proximity to the government and have also observed domestic violence closely in my

personal life. But then feminist researchers have always straddled the thin line that separates subjectivity and objectivity (Olesen, 2000). As a researcher whose consciousness is raised and who is sensitive about gender-based violence, I may have a disadvantage, as there may be a tendency to be positively biased towards the survivors of violence or negatively biased towards the systems that manage them. While interviewing women, I found I immediately emotionally connected with them, and there were also instances when I felt that I was more sensitive to the situation that they faced and felt frustrated at the helplessness the women felt. But by using reflexivity in my research methods I have used my experience and the experiences of women within the current context of how the law is implemented to present a more enriched analysis of the findings. I have used my passion and sensitivity concerning gender-based violence and knowledge of the working structures of NGOs and government to my advantage. My previous experiences equipped me to notice small nuances which were sometimes missed by the women themselves as they considered them as a part of a system that they were struggling in, rather than as an exception. Moreover, my past experiences make me passionate about the subject in such a way that there is a desire to contribute in a constructive way to the knowledge that would help address the issue of domestic violence.

Having acknowledged that I straddle the thin line of subjectivity and objectivity, I think that having a strong research design, the right tools to collect data and a supervisory panel that guides me in maintaining objectivity, makes this research productive and enriching. The systems and structures that I created around myself, including peer review, feedback from the supervisory panel and seminar presentations were helpful in ensuring that emotions were set aside while I worded

my findings. Hence, I attempted to maintain an unbiased approach, to minimise the possible impact on the research outcomes.

Research sample

The research aimed at interviewing 25 women from each State who have accessed PWDVA and have received some relief from the court in the past two years to six months. However, the task of identifying these women became much more challenging than anticipated. The first challenge was access to these women and the second challenge was the realisation that the pool of eligible women was much smaller than estimated. Due to these challenges some modifications were necessary to the research design. According to the plan, women had to be identified through the different stakeholders, that is protection officers and service providers. However, it was found that, in all the three States, identifying women through the government implementing agency was extremely difficult. In MP, protection officers were less approachable as they were posted in remote areas of district while, in UP, they were posted to a district but they were very busy. In both the States, even when protection officers were approachable, they were only able to provide contact details (which would not include a phone number) of women and due to workload and time constraints they were unable to help the researcher by making first contact with these women. This made it almost impossible for the researcher to contact all the women, as contact could only be achieved by going to remote physical addresses just to confirm whether they still lived there and whether they would be willing to take part in this research or not. Assistance of the service providers/NGOs became a necessity at this point in the selection of the research sample, as NGOs were in touch with most of the women who had accessed the PWDVA through them. They had better

contact details, which included phone numbers, and were able to devote time to the research and support in terms of following up with these women and organising the meetings with the women who were willing to provide the interview. Of the total 78 women interviewed, 55 were recruited through the help of NGOs. Only 23 women came through other sources, protection officers and private lawyers/legal aid services. Since about 70 percent of the cases documented came via NGOs, these cases have the added influence of having the NGO presence; most of the women who have received the support of an NGO have reported some, mostly positive, influence on the outcome of their cases and also on their agency, such as an enhanced level of confidence and security.

Table 4.3: Sources for recruiting the research sample

State	NGO	Protection Officer	Lawyers/Legal Aid
Delhi	18	6	2
MP	17	4	5
UP	19	2	5

The other challenge was the pool; it was extremely difficult to find women who had received court orders, interim or final, six months before. Even the NGOs who were assisting me were introducing me to women who had lodged their case under PWDVA but had not yet received any orders. It became evident that there was a large pool of women who had invested more than one or two years into their case and were still unable to get any relief from the court. The assumption that, even if her case had not been disposed of, a woman might have got interim orders from the court also did not work well. There were women who had not received any orders, even interim, and had been running to the courts for more than a year or so. For example, a report of cases filed in the Saket court of South Delhi shows that in the

year 2012, during July and August, only 11 cases (1.29 per cent) were disposed of and 841 were still pending (see Table 4.3).

Table 4.4: Status of PWDVA cases, July-August 2012, Saket court of South Delhi*

Opening Cases	New cases filed	Cases disposed of	Cases pending
758	94	11	841

*Information provided from the court records by the Protection Officer of South Delhi.

It was very hard to track the small number of women who had received orders to ask them for an interview, and this would have left out the experiences of women who had been in the same process for a long time waiting for orders to be passed under PWDVA but had received no benefits from the process. In UP, during the initial selection of districts, one district was visited where a service provider had agreed to help in making women available for interviewing. However, when the researcher reached the district to conduct these interviews, it became clear that although many women were accessing PWDVA there were hardly any who had received even interim orders. At least, according to the NGO there were none that they were aware of. Visits to the Probation Officer's office did not yield any fruitful results either. The researcher did meet two women who had accessed the PWDVA but they were in the initial stages, that is they had not even received interim orders. It was evident that they were highly frustrated and dissatisfied by the long wait they were forced to endure.

For this reason, two decisions were taken regarding the course of the research, one was to involve some women who had not received any orders or had just received

orders but had filed their case about one-and-a-half years before or more, and the second was to visit more districts than planned initially to find a suitable number of women who had received court orders. In MP, three districts Bhopal, Seedhi and Chatarpur were included. In UP, five districts Lucknow, Kanpur, Barabanki, Banda and Sonbhadra were included. In Delhi, the district boundaries are not very clear as all nine districts almost functionally operate as one big capital city even though it is demarcated administratively in nine units. In Delhi, out of six courts that operate there, women from five courts were included. These five courts were Saket Court, Kakadooma Court, TeesHazari Court, Rohini Court and Patiala House. Since these nine administrative units do not have one court exclusively for each and share only six courts, in the end women selected in Delhi came from almost all areas of Delhi. Overall, the recruitment of women participating in this research was done more by following any leads of eligible women from the above sources who had received court orders and were willing to be interviewed, rather than randomly selecting women from a large pool of eligible women. The major selection criteria still remained that they should have received court orders so that they able to share the impact of those orders on their lives. Details about the different forms taken in the recruitment of interviewees in each State is provided in Appendix 04.

Profile of women

Age: In all the States, the women selected for interviews represented a diverse range of groups. However, more women represented the younger age group and were below 35 years. In Delhi 16 women were below 35, in MP 18 and in UP 19 women. This amounts to a total of 68 percent of the sample. The youngest women to be interviewed were a 19 year-old from UP, a 20 year-old from MP and two women

who were 23 years of age in Delhi. The oldest woman interviewed was 62 years of age from Delhi. Very few women were found to be over 50 years of age and only three women in Delhi and two women in UP were from this age group. This is just 19 percent of the sample.

Table 4.5: The age profile of women

State	19-25 years	26-30 years	31-35 years	36-40 years	41-50 years	51-62 years	Total
Delhi	2	8	6	4	3	3	26
MP	4	10	4	4	4	0	26
UP	7	6	6	4	1	2	26

Education: About 28 percent or one quarter of the women interviewed were illiterate. The most number of illiterate women came from UP (11 women) and the fewest were from MP (four women). In Delhi more women (about 50 percent) had moderate to high literacy levels (high school and above), while MP and UP had about 38 percent of women with moderate to high levels of literacy. Delhi had more graduates and postgraduates (30.7 percent), compared to MP (19.23 percent) and UP (23 percent).

Table 4.6: Education Profile of Research Participants

State	Illiterate	Year 6-9	High School	Intermediate (Year 12)	Graduate	Post-graduate	Total
Delhi	7	6	5	0	3	5	26
MP	4	11	4	2	3	2	26
UP	11	4	2	3	2	4	26

Their education did have a clear correlation with the social background of the women, where graduate and post-graduate women belonged to an upper-middle class or affluent class. Women who had completed high school belonged to the lower middle-class and all illiterate and women of low education had a struggling social background and lived in slum localities in Delhi or rural areas in UP and MP.

Employment status: In Delhi, 20 women interviewed were not employed or preferred themselves to be documented as not employed (about four women had started some means of earning income but had not disclosed that status in the court and wished to be registered as not employed) for the purpose of research. Only six women interviewed were employed, about half of them working as government employees and half of them in private organisations. In MP also, 20 women were reported as unemployed and six women were employed. However, UP reported 15 women who were either employed or were in casual employment as daily wage workers; of these, nine women reported to be employed, while six women reported to be working as daily wage workers or in some casual employment.

Violence profile: All 78 women from the three States reported facing emotional and mental violence. Most of them (73 women), in Delhi all 26, in MP 23 and in UP 24, also reported economic violence where they were deprived from accessing the income of the family or of their own. Many women had to resort to their parental home to get their basic economic needs addressed. Physical violence was rampant and was reported by most of the women. In UP 25 women and in MP 22 women reported physical violence while in Delhi 20 women reported physical violence. Three women from Delhi, two women from UP and one woman from MP disclosed that they faced sexual abuse from the respondent too. These three women had put

their incidences of sexual abuse on record in the court too. A few women did not disclose sexual violence openly but might have faced sexual abuse too as they commented, “I faced everything possible which I cannot even name”. Though it was not the focus of the research to know the details of the violence faced, women voluntarily shared their stories of violence during the interview as they thought it necessary to provide that background before moving on to discuss their experience with PWDVA, and mostly their stories were extremely horrifying. A violence profile of these women also shows how fundamental and prevalent emotional and economic violence is in addition to physical violence, as most of them were also affected by it. Many women interviewed had put up multiple cases in court under CrPC section 125 (for maintenance), IPC section 498 and 498A (cruelty related to dowry), and divorce cases.

Other information

A large number of the women (68 out of 78) were from the mainstream religious background of India (Hindu), however about 50 percent of them belonged to the disadvantaged section (known as ‘Other Backward Caste’ in India) of the religious mainstream. In Delhi two women, in MP five women, and in UP three women were from religious minorities (Muslim). In Delhi seven women, in MP ten women, and in UP six women interviewed did not have any children and the rest, 55 of them, had children under their care if still minors. For these 55 women, the results of PWDVA had an impact on the lives of their minor children as well.

Theoretical concepts and framework of Gender Impact Assessment

The gap in the literature identified in the previous chapter meant that not many studies were available which measured the impact of the domestic violence policy on

the prevalence or awareness of domestic violence or on the users of the domestic violence policy. Moreover, the studies which have been done are from a legal perspective and usually conducted by law professionals, focussing on the legal effectiveness of the Act. There was a gap when it came to policy assessment measuring the gender equality goals that the domestic violence policy is trying to achieve. This section discusses the various gender concepts and gender analysis tools which inform the impact assessment framework used in the study.

Gender analysis

Incorporating gender analysis in the planning and implementing and the monitoring and evaluation frameworks has been a focus for development planners since the 1980s. Realising that programs and policies do not affect men and women equally, gender analysis is the main tool used to ensure that the gender equality goal is achieved (Bacchi, 2010, Moser, 1993). The next section of the chapter will briefly cover the dominant models and concepts of gender analysis currently being used in policy analysis and program evaluation, so as to present the background from which the gendered impact assessment framework for this research was derived.

For policy analysis, the two dominant models of gender analysis are rational policy and gender relations. The rational or social relations policy development model applies gender analysis at each stage of policy development and evaluation in order to prevent policy failure due to existing gender differences between men and women.

In the other model, the gender relations approach, the problem is identified not as differences between men and women but as unequal power relations between men and women (Bacchi, 2010). The rational policy model treats men and women as

separate categories of people having different needs, while the gender relations model focuses on men and women sharing unequal power relations and not on neutral examination of gender disaggregated data. Both models have been criticised, the rational policy model for focussing more on responding to gender differences and not on doing much to eliminate them, and the gender relations model for focussing on the potential impact a policy will have on gender relations rather than the role of policy itself in creating gendered processes while being implemented (Bacchi, 2010).

Gender-aware monitoring and evaluation of policies

Moser suggests that to do gender-aware monitoring and evaluation, a project or policy should have gender-aware goals, as evaluation is conducted to measure whether the original objectives of the policy have been achieved. However, even if the goals have not been gender aware, bringing in gender-aware monitoring and evaluation helps in making the future cycles of the policy or project more gender responsive (Moser, 1993). Gender-aware monitoring and evaluation emphasises the impact of the policy on women in different ways. One way Moser suggests is to look at the impact of the policy on the productive, reproductive and the community roles that women play (Moser, 1993).

On similar lines, Molyneux has suggested that policy either caters to the practical gender interests or the strategic gender interests of women. She says that practical gender interests are the interests that women have due to accepted gender roles for them. Addressing those interests helps them to perform those roles in a better way and improve their living conditions; however, those roles are not challenged.

Strategic interests on the other hand are the ones that arise due to the unequal power relations that women share with men in the society, and meeting those needs helps in changing their subordinate position in the society at large. Violence against women is an example of the unequal power relations women share with men in society at large, and the elimination of this violence directly caters to their strategic gender interests.

Often it is said that practical gender interests help in fulfilling short-term goals, and strategic gender interests help in fulfilling long-term goals for women (Molyneux, 1985). Moser, in 1989, evolved this concept of strategic gender interests giving rise to strategic gender needs, and it is these needs that should be addressed in gender planning. However, this adoption of the term ‘needs’ was criticised by many, for example Wieringa has argued that this terminology dilutes feminist approaches which are feared by the policy planners and practitioners and avoids the real transformative process that is desired (Wieringa, 1994). Further, the distinction between practical and strategic gender interests is not useful as it is the process that matters more in achieving the transformation.

However, it is claimed that this critique of the distinction between practical and strategic gender needs or interests has done nothing but confuse the actual development planners, who continue to use these terms, as do international organisations, governments and NGO practitioners (Moser, 2014, Moser and Moser, 2005). Hence, this research uses the terms ‘practical gender needs’ and ‘strategic gender needs’, while acknowledging that there are feminist critiques of them. Because it is aimed at practitioners and governments, it uses the terms that are widely accepted and used by these institutions.

Assuming that the right to live a violence-free life caters to strategic gender needs, domestic violence policies are geared to catering to the strategic needs of women. Thus, during the evaluation of a domestic violence policy it will be important to measure whether it has met the strategic gender needs of women or helped in changing the gender relations that women share with men, as emphasised in the gender relations model.

Kabeer and Subrahmanian propose that it is important to take into account intersecting realities in evaluating a program. Three perspectives, those of the outsider, the agency and the beneficiaries are important in assessing the outcomes of the intervention (Kabeer and Subrahmanian, 1996). The indicators that are derived from the outsider's perspective are the ones that have been established by experts worldwide on the issue. The indicators that result from the agency's perspectives will be the one that has been put in place by the implementing agency itself to monitor and evaluate its progress on that particular policy. The beneficiaries' indicators are the ones that have been brought forward by those who benefit from or use the policy. Kabeer (1992) suggests that, while evaluating a policy through the beneficiaries' feedback, it is important to examine what has changed and what are the immediate and underlying causes that resulted in this change. It is important to collect this information in order to ensure that the changes in the wellbeing of the beneficiaries are correctly traced as resulting from acts of the institutions, policy and actors involved (Kabeer and Subrahmanian, 1996, Kabeer, 2005).

Bacchi also proposes that community participation in the policy discussion is important to open up new channels of information (Bacchi and Eveline, 2010). Community engagement and participation is widely acknowledged as an important

part of policy decision-making. In contrast to the expert bureaucratic approach to gender impact assessment, where gender experts located within or outside the bureaucratic setup assess the project in a centralised top-down fashion, community engagement is called the participative democratic model, which involves consultation with the large variety of community groups as an essential step in assessing a policy to promote gender equity. It is also in the interest of government to garner public opinion as the government represents the community's interests and should be aware of public responses on the policy (Osborne et al., 2010). Moreover, consultation has been justified as a redistributive mechanism which promotes empowerment of the disadvantaged groups and enhances a greater social justice (Osborne et al., 2010).

Involving community participation reduces the limitations which come from the perspectives of insiders who themselves are 'law implementers'. It has been realised that lay knowledge of community members is also valuable as opposed to the earlier trend of giving importance only to expert knowledge. According to Kabeer, it also reduces the chances of falling into a 'project trap' where the focus is on the effective implementation of the policy rather than the outcomes and goals of the policy (Kabeer and Subrahmanian, 1996).

The impact assessment proposed in the research will focus on the beneficiary-level evaluation suggested by Kabeer, rather than on the agency's own indicators. The beneficiary will be asked to respond in relation to the effects of the intervention of PWDVA in her life. The analysis will take components of the gender relations model to see whether the PWDVA intervention helped bring any changes in the relations shared by the women with men. This examination will reveal how much of the

strategic gender needs of women are met. In the case of PWDVA, a protection order granted from the court to help the complainant have a violence-free life is a step in meeting gender needs and changing relations with respondent. Using the social relations gender analysis model, it will be observed how much PWDVA has helped them from the viewpoint of gender needs requiring special provisions. The PWDVA grants maintenance and the right to residence and these cater to the special needs of women in the present societal structure; hence they can be classified as the practical gender needs.

The other main focus of the impact assessment framework will be to gauge the law implementer's behaviour towards these women and its influence on the outcomes for them. According to Kabeer, gender-aware policy goals do not always translate into gender-aware policy outcomes (Kabeer and Subrahmanian, 1996). She argues that a gender redistributive policy's success depends on how policies are conceived by those who design and implement them. Bacchi proposes a similar view in her 'What's the Problem Represented to be' (WPR) approach, which states that how a problem is perceived by important stakeholders will have an influence on the outcomes generated by the policy (Bacchi, 2006). Bacchi and Eveline state that the representation of the problem assigns meaning and value to the things at hand. So according to Kabeer it is, the law implementers' bias, and according to Bacchi it is their perception of the nature of the problem, that will often result in failure to achieve the goals of gender-aware policies. Incorporating gender analysis in evaluation is essential to detect such gender bias concerning the nature of the problem, which is inbuilt in policies and in the people responsible for its delivery. Hence when analysing the behaviour of law implementers, the focus will be on

identifying what they thought what the problem was and how they addressed it according to their perceptions.

Monitoring and evaluation framework for PWDVA

Historically, India has made very limited attempts at monitoring and evaluating its laws on women's rights. Civil societies have played the role of watchdogs and have raised concerns when laws were not implemented effectively or failed to meet the objectives (Tandon and Mohanty, 2002, LCWRI, 2013b). PWDVA is the first women's rights act in India that is being systematically monitored at a national level by external agencies, other than the government, through the UN Trust Fund. Even though this monitoring is not government initiated, it has been very well received by the government. This monitoring project addresses the fact that enacting legislation is only the first step in trying to address the issue of domestic violence; the real challenge is ensuring that objectives of the legislation are met. This is especially the case given the diverse implementation practices in the different States of India, which may mean different outcomes from the same law. Though the previous chapter showed that there are lacunae in this monitoring, LCWRI has set a positive trend in India and provided ample information about the usage of this Act.

In 2013 LCWRI released a monitoring and evaluation resource manual which suggested a framework for the monitoring and evaluation of PWDVA (LCWRI, 2013b). Although the impact assessment framework for this research was formulated on the above gender analysis concepts and tools and the fieldwork was conducted before the release of this document, it is still worth discussing it here as it has great resemblance to the indicators designed for this research.

The framework proposed by LCWRI has a good combination of legal perspectives along with the gender-aware indicators for monitoring and evaluation. As suggested by Kabeer, they have made the outsider's perspectives the basis for designing their framework. This provides them with a direction recommended by experts worldwide.

Following are the international principles on the effective implementation of laws on domestic violence that inform their framework: (LCWRI, 2013b p.11)

- Zero tolerance of domestic violence
- Legal provisions to protect women, including provisions on reliefs and remedies
- Provisions facilitating access to justice and support services
- Implementation of laws in a manner that gives effect to women's agency
- Effective implementation measures including links with action plans/strategies/policies, adequate budgetary allocations, preparation of protocols, provisions for training and capacity development of enforcement agencies
- Measures for prevention including awareness creation, publicity, campaigns etc.

Taking guidance from the above principles, following are the objectives of PWDVA on which LCWRI has based its monitoring and evaluation framework (LCWRI, 2013b p11):

- Recognition of domestic violence as a violation of women's human rights and not a family dispute that needs to be settled
- Ensuring infrastructure that will facilitate women's access to timely court orders and the enforcement of such orders
- Providing an enabling environment through support services which are easily accessible to victims / survivors.
- Creating awareness of the law and building the capacity of implementing agencies to respond to the applicant's needs in a gender-sensitive matter.

However, these are the objectives proposed by external agencies and adopted by those closely involved in training and monitoring of the Act. The Act itself does not specify these objectives, nor do the rules laid down for the implementation specify these objectives. Mostly, the obligations of the States fall under the duties related to implementation of the Act and do not include any obligation for evaluating its impact. Some reference to monitoring can be inferred from the Section 11c. of the PWDVA Act, where coordination committees of various ministries dealing with law, home affairs, health and human resources are made responsible for reviewing the progress of the Act. The monitoring reports collected by the implementing agency are limited. It is the external agency monitoring the project that is providing monitoring and evaluation reports nationwide.

Key questions for monitoring and evaluating the implementation of the PWDVA

LCWRI has identified key agencies in the implementation of the Act, such as protection officers, service providers, medical facilities, shelter homes, police, lawyers, legal service providers and Magistrates. They have then listed the duties of these agents in three stages of the entire process. These stages are the pre-litigation, litigation and enforcement stages. The pre-litigation stage is when the complaint is received by any of the agencies listed under the PWDVA until the application is made before a magistrate. Any services provided during this period fall under the pre-litigation stage. The litigation period starts when the application is made before the magistrate and lasts till a relief is granted by the court. The enforcement stage involves the order that is granted being enforced and also the appeals, if any, made by respondent. Also, any breach of order filed by the complainant and the criminal proceedings that such a breach of order involves fall under this stage.

For monitoring the progress of PWDVA, the following indicators have been suggested:

- Infrastructure established under the PWDVA
- Nature of assistance and support provided to protection officers and other PWDVA agencies to perform their duties under the PWDVA
- Functioning of protection officers
- Methods of coordination between implementing agencies and service delivery mechanisms
- Methods of record-keeping by PWDVA agencies

- Training and capacity development
- Publicity and awareness creation
- Allocation of funds for the implementation of the PWDVA.

For evaluating the efficiency of outcomes of the PWDVA, the following indicators have been proposed:

- Whether there was recognition of domestic violence as women's human rights issue
- Extent of needs met of applicant
- Adequacy of infrastructure to meet the needs of applicant
- Adequacy of enabling environment and support services in meeting needs of applicants while seeking legal redress
- Access of remedies to the applicant
- Ability of applicants to sustain themselves during legal proceedings
- Impact on applicant of the relief granted by PWDVA.

The indicators for monitoring and evaluation can be loosely arranged in two groups: one set of indicators examines the adequacy of the State's response and whether implementing agencies function properly; the other group of indicators examines whether the implementing agencies response to women was adequate to meet their needs. When the impact assessment framework of this research was planned, the indicators corresponded to LCWRI's second group, where the main focus was to examine the implementing agencies' response to women and whether it was adequate to meet their needs.

LCWRI (2013) suggests that when assessing the impact of PWDVA, the following questions must be examined:

Has there been an increase in the number of orders granted? Women's right to reside in the shared household protected? Were non-physical acts of violence recognised as domestic violence? To what extent has the right to compensation been recognised? Did PWDVA reduce the multiplicity of forums? Were orders granted under PWDVA able to prevent domestic violence? (LCWRI, 2013b p.41)

How much *do* courts rely on the protection officers and the service providers in dealing with the applications? Has this assistance enhanced the judiciary process?

Are the applications being disposed of in a timely manner? Do protection officers, service providers and police contribute to the efficient disposal of cases?

How have the orders granted by courts been enforced? To what extent do protection officers and police assist in the enforcement of orders?

Are victims able to sustain themselves during legal proceedings? Do applicants get access to the necessary support services (shelter, counselling, medical aid, legal aid)? (LCWRI, 2013b p.42)

Most of the above questions in italics have been covered in my own research and will be discussed in the findings. They are the ones to which beneficiaries can respond.

This research will use an impact assessment framework that incorporates gender analysis derived from the two gender impact assessment models rational policy and gender relations, along with the indicators from the LCWRI framework.

Impact assessment framework for PWDVA

Indicators for Impact Assessment	
Indicators addressing strategic gender needs and impact on the gender relations women share	Indicators addressing practical gender needs addressing gender differential needs
• Whether there was recognition of domestic violence as women's human rights issue • Impact of the relief granted by PWDVA to applicant: reduction in violence, better negotiation power with respondent	• Extent of needs met of applicant • Adequacy of enabling environment and support services in meeting needs of applicants while seeking legal redress • Applicant's access to remedies • Ability of applicants to sustain themselves during legal proceedings? • Impact of the relief granted by PWDVA to applicant: maintenance and residence orders
Underlying these indicators, beneficiaries will provide feedback on what has changed and what are the causes, direct and indirect of these changes as a result of the intervention.	
Beneficiaries will also report on the law implementer's behaviour towards them and how satisfied they are with the process.	

The assessment will be focussed on evaluating the extent to which the needs of victims of domestic violence were met by PWDVA, while providing some assessment of the impact of the PWDVA on the gender relations that women shared with men.

Chapter 5: Implementation context and models in the three States

As described in the first part of this chapter, the research was conducted in three different States so as to assess the impact of the differences in the resources committed and implementation models on the outcomes. This part provides some detailed background on the three States that were selected and the differences in the implementation models used. Firstly a demographic profile of the States selected is given and then the PWDVA implementation status of each State. The profile of the State will focus on several gender indicators. Several gender indicators are worth taking into account as these are closely linked with the unequal power relations that women share with men in India. The most critical is the female sex ratio. The female sex ratio has always been a cause of concern in India, where many States have a lower number of females per 1000 males. Normally the number of females should be higher than males in any given population. The other gender indicators are female literacy, the age of females at first marriage, and the total fertility rate. Some other indicators like very young age at marriage and the number of children a woman bears during her reproductive years are some of the factors that indicate the status of women in these States. Indicators of crime against women and domestic violence data of the States will also be presented.

The background of the States will emphasise that although Delhi and Madhya Pradesh are taken to be the States providing a more favourable environment for the implementation of Act, it does not mean that they have progressive gender indicators. In particular, Madhya Pradesh, which has provided the most favourable environment for implementation, has some poor gender indicators which are described in detail in the next section. Delhi is a State that has allocated modest

resources and appointed fewer protection officers at the district level. However, while it does have some progressive gender indicators, it does not do better in the most important indicator which is sex ratio. Uttar Pradesh, on the other hand, which has allocated no resources for implementation, has been classified as providing an unfavourable environment for implementation, and also has poor gender indicators.

Case 1: Madhya Pradesh

Madhya Pradesh (MP) was chosen as one of the three States covered in this research for two main reasons: firstly, it is the State which has allocated a high level of resources for the implementation of the PWDVA. Of all the Northern States of India, MP has allocated the largest budget for this purpose. The second reason was the reach of the protection officers. The officers appointed for the implementation of PWDVA are more accessible to women as they are appointed at block level in a district (unlike UP and Delhi, which have appointed PWDVA officers at district level). This means that in MP there are about nine or ten protection officers per district. MP was also an early implementer of PWDVA and ratified the Act in January 2007, within three months of its enforcement nationwide. The implementation of the PWDVA in MP is under the Integrated Child Development Scheme (ICDS) of the Department of Women and Child Development (DWCD).

Geographically, MP is the second largest State of India and with over 72.62 million inhabitants it is the sixth largest State in India by population (Census of India 2012).

Gender Indicators in MP: MP State is one of the Indian States with a lower number of females compared to males. For every 1000 males there are only 931 females in

the State. This is lower than the national sex ratio (see Table 5.3). Female literacy is close to 60 percent, which is again below the national literacy rates. It is about 20 percentage points below the male literacy rate in the State. The median age of first marriage for women from the age group of 20 to 49 years of age is 15.9 years. This is the lowest of all the three States. In MP, about 57 percent of girls age 20-24 have married below the country's legal age of 18 . The total fertility rate of women is 3.1, which is higher than the national fertility rate.

Violence against women: The State of MP has a high rate of crime against women and ranks 11th when compared to the other State and Union Territories of India (see Table 5.1). It also has a high incidence of domestic violence. The only credible source to assess the status of domestic violence is the National Family Health Survey of India (2005-2006). According to Madhya Pradesh report, about 49.1 percentage of women of age group 15-49 years had experienced physical/sexual/emotional forms of violence committed by their husband in the 12 months preceding the survey.

According to the same NFHS report on MP, out of all women who suffer violence (physical or sexual, or both) only 23.4 percent of women seek help. Among help seekers, 79.7 percent of them seek help from their own family (refer Table 5.2). This highlights the low number of women who take steps to address the issue of domestic violence outside their own family.

Table 5.1: Incidence & Rate of Crimes Committed Against Women in Delhi, MP and UP during 2013

State	Rank of State as per Rate of Crime	Total incidences of crime (A)	Percentage Contribution to All-India Incidence	Total Female Population (in lakh) (B)	Rate of Total Cognisable Crimes* (A/B)
Delhi	1	12888	4.16	87.8	146.79
Madhya Pradesh	11	22061	7.13	357.89	61.64
Uttar Pradesh	24	32546	10.51	988.31	32.93
All of India Total (35 States,UTs)	NA	309546	100	5925.68	52.24

*Rate of total cognisable crimes = (Incidence of crimes against women / population of women) x 1,00,000 i.e. incidence of crime per one *lakh* of female population.

Source: National Crime Records Bureau of India, 2013

Case 2: Delhi

Delhi was chosen for the research because of its medium level of resource allocation and unique model of implementation, where protection officers are hired full-time on contract. Only a couple of States in the whole of India had this model at the time of selection in 2011-2012. Among the three States selected, Delhi is the only State where protection officers are employed full-time and have no other responsibility.

Delhi is the National Capital Territory of India and has a population of 16.78 million, according to the 2011 Census, with a population density of 11,297 persons per square kilometre. Females comprise 46.41 percent of the population. Delhi is a metropolitan city and is among the largest and most populated cities of India. Though a Union Territory, the political administration is similar to that of any other State in India. It is jointly run by Federal and State Governments. Delhi is a

cosmopolitan city with a population coming from every part of the country. The city is divided into nine districts. Geographically, Delhi is a very small unit compared to the other States studied in the research, UP and MP.

Gender Indicators: The female literacy of NCT Delhi is 80.93 percent, which is much higher than the national average. However, the female literacy rate is still lower than Delhi's male literacy rate which is 91 percent. In contrast to the high literacy rates, the Delhi sex ratio is 868 females per 1000 males, which is less than the national ratio of 940, and it is the lowest of the three States selected. The skewed sex ratio is estimated to be due to two main reasons: male-dominated migration to the city and the high incidence of female foeticide. The other indicators, median age of first marriage for women of age group 15-49 is 19.7 with only 23 percent of women of age group 20-24 getting married below 18 years of legal age. This indicator in Delhi is much better than the national figures and is also the best among the three States.

Violence against women: Delhi is considered to be the most unsafe city for women in India, with a high incidence of violent crime, such as rape, molestation, dowry death and domestic violence. According to the 2013 report of the National Crime Records Bureau of India, Delhi had the highest crime rate against women of the whole of India (refer Table 5.1). The domestic violence reported by the 15-49 years age group of women in the State is 17.2 percent. This is the lowest of the three States (refer Table 5.2). The other States have more than double the number of women reporting domestic violence. However, when it comes to help-seeking

behaviour, this is very similar to that in the other two States, MP and UP. Less than a quarter of those affected seek help, and of those who do seek help, 79.8 percent seek it within their own family. That means that only 20 percent seek help from external resources.

Table 5.2: Percentage of women aged 15-49 who have ever experienced physical or sexual violence or emotional violence in the past one year

	Delhi	Uttar Pradesh	Madhya Pradesh
Any form of physical and/or sexual and/or emotional violence	17.2	45	49.1
Never sought help for physical violence*	75.4	69.9	71.7
Those who sought help	24.6	31.1	28.3
Those who sought help from family**	78.9	78.4	79.7

* of the women who suffered physical violence, those who never sought any help.

** of the women who sought help, those who sought help from their own family.

Source NHFS-3, (2005-2006) India

Case 3: Uttar Pradesh

Uttar Pradesh (UP) was selected as the case with neither a good implementation model nor allocated resources. The intention was to see how the lack of commitment and resources affects the outcomes for women in this State. Of all the northern states in India, UP is the State which has committed the least resources, or possibly no resources, as there has been no budgetary allocation till now. The nodal agency for the implementation of PWDVA in this State is the Social Welfare wing of the

Department of Women and Child Development. The officer responsible for the implementation of the Act in each district is a district-level officer of the Social Welfare Department, who now has the additional charge of PWDVA. Uttar Pradesh ranks high in the prevalence of spousal violence; however, the commitment of allocating the resources to address the issue is not visible.

UP is the State with the largest population in India and if considered as a separate country it would be the fifth most populated in the world, ahead of Brazil. UP is also among the most densely populated States of India with 828 people per square kilometre.

Gender indicators of UP: UP lags behind in most of the gender indicators compared to the national average figures. The literacy rate among females is the lowest among the three States and is 57.18 percent. The female sex ratio is 912 which is better than that of Delhi but worse than both the MP and the national figures (refer Table 5.3). The median age of marriage is quite low, 16.2 years, and about 59 percent of women aged 20-24 were married before they reached the legal age of marriage (NFHS-3). The total fertility rate (children per woman) is 3.8 and is the highest of the three States.

Violence against women: The crimes against women in UP are low compared to the two other States. Of the 35 States and Union Territories UP ranks 24th. However, the total incidences of crimes against women here are the highest in India. This is because UP is the most populous State of India. However, the prevalence of spousal violence in UP is 45 percent, which is among the highest of all the States of India, including MP in India (refer Table 5.2). In Uttar Pradesh, about 31 percent of

women sought help for the domestic violence they faced and, like in MP and Delhi, 78.4 percent of the women who sought help did so within their family.

Table 5.3: Gender indicators of the States: Delhi, UP and MP

	National	Delhi	UP	MP
Female Literacy Rate (%)*	64.64	80.93	57.18	59.24
Female sex ratio per 1000 males*	943	868	912	931
Median age at marriage (female 20-49)**	17.2	19.7	16.2	15.9
Percentage of 20-24 year-olds who married before age 18 (legal age)**	47	23	59	57
Total fertility rate (TFR)(child/woman)**	2.7	2.1	3.8	3.1

*Source Census of India 2011

**Source NHFS-3(2005-2006), India

The UP and Delhi data on violence against women contrast in an interesting way. While Delhi has the highest rate of crime against women in the whole country, it has a very low reporting rate of domestic violence compared to the other States. UP, on the other hand, has a low rate of crime against women but a high incidence of domestic violence. This shows that in Delhi there is a raised consciousness of crime against women in public spaces, including rape and violence, which can be registered under the Indian Penal Code and thus reflected in the records of the National Crime Bureau. But perhaps there is not the same awareness of domestic violence. In UP, crimes against women are reported to be low, but surveys of domestic violence reveal a high incidences of spousal violence.

Model of implementation

All three States selected for the research have a different model of implementation. Though the implementing agency is the same in these States, the Department of Women and Child Development, the Department employs different officials for the implementation of the Act. There is also a difference in the area and population covered by these officials and in the way the courts deal with PWDA cases.

Delhi: The Department of Women and Child Development (DWCD) in Delhi has appointed two full-time officers for each of its districts. These protection officers have been provided with an independent office and resources. Delhi has nine districts and there are 17 officers appointed, about two officers for each district. These protection officers report to the Assistant Director of the Women Empowerment Cell of the Department of Women and Child Development in Delhi. The officers are responsible for assisting women at every stage of the case: pre-litigation, litigation and post-litigation. Under this model, the protection officers have an advantage over those from the other two States they are qualified social workers, with a relevant background and they are working full-time as implementing officers under PWDVA. In Delhi, one officer covers on an average about 0.98 million of population. In Delhi, these protection officers regularly visit the court and often have a room in the court where they meet women and file DIRs. The other States' protection officers did not have such a setup in the court. In Delhi, there are separate courts assigned as 'Women Courts' and PWDVA cases are handled through these courts.

Table 5.4: Model of implementation through protection officers (PO)

State	MP	Delhi	UP
PO per district	10	2	1
Level of Appointment	Block Level	District Level	District level
Nature of role	Part-time role, PO as additional charge to existing government officer	Full-time role, hired as contractual employee for PWDVA implementation	Part-time role, PO as an additional charge to existing government officer
Population covered by each PO (million)	0.2 - 0.3	0.98	3.0 - 4.5
Budget allocated	High	Medium	Nil

Source: The author

MP: In MP, an entirely different team of the State Department of Women and Child Development has been assigned as the nodal agency for the implementation. The Integrated Child Development Scheme (ICDS), an entity under the DWCD, mostly functions to address the child malnutrition issue and has the deepest reach at grassroots level of any government agency in India. In ICDS, there is one district-level officer known as the District Program Officer, who is the monitoring authority, while Child Development Project Officers (CDPOs) posted at block level are the implementing authorities of the Integrated Child Development Scheme. A block is the smallest development unit generally encompassing about 100 villages, each with about 1000-5000 population, so a block has an average population of 200,000 to 300,000. A district may be comprised of 10 to 15 blocks. In MP, CDPOs have been assigned as protection officers, making it one of the few States where protection officers are based at block level. Thus, compared to Delhi and UP where there are

just one or two protection officers in each district, MP has about 10-15 protection officers in each District making them more accessible to women. However, these protection officers already have a role as CDPO and the role of protection officer is an additional responsibility. They are not available to act as protection officer full-time.

This model of implementing the PWDVA through ICDS, in place at the time of research has been undergoing change. Via a directive issued on 29 July 2011, ICDS would no longer be responsible for the implementation of PWDVA. There would be a new appointment of an independent protection officer on a contract basis in every district. This full-time protection officer would be based in the family counselling centres in each district of MP. It was estimated that, by March 2012, all the protection officers would be recruited and the new model of implementation would be launched. This means MP would have just one protection officer in one district, although this one protection officer would be full-time and qualified. This change of model followed reviews done by DWCD, where feedback from women's organisations and experience from other States suggested that having a full-time protection officer was better than having a current government official taking on this role as an additional responsibility. Having a relevant background in dealing with violence against women was also found to be a necessary prerequisite for protection officers. However this change did not materialise until the end of 2013; during this research, the old model was still functional.

In MP, the courts do not have separate women's courts and, the PWDVA case goes to whichever magistrate is appointed for a particular area. Hence the entire magistracy of the district deals with PWDVA cases.

UP: Implementation in UP is carried out by the ‘Women’s Welfare’ wing of the Department of Women and Child Development; this unit is responsible for providing services to women, especially vulnerable sections of the community like Scheduled Castes, Scheduled Tribes, backward castes, elderly women, below-poverty-line women, widows, disabled women etc. This unit has one officer based at district level and known as a probation officer. This probation officer has been given the additional role of protection officer as envisioned in PWDVA. So this probation officer has to assist women in accessing PWDVA in all the cases of domestic violence which are reported to them in the pre-litigation, litigation and post litigation stages.

As described by the chief probation officer in Lucknow, these probation officers are already burdened with other, extra responsibilities as they are also Dowry Project Officer and Child Protection Officer. Now they are protection officers for the implementation of PWDVA as well. Furthermore, these officers are based at district level and cater to a huge population. Evidently, the duty of protection officer involves serving notices to respondents. It was commented by the chief officer that serving a notice even to one respondent in a case may sometimes require a whole day, as the respondent may live in a remote area. There were about 1,365 cases pending in the State according to his information, and he wondered how a protection officer could possibly do this job. Further, if the notice is not served, the protection officer faces a penalty of Rs 20,000 according to the instructions issued by the Department. This kind of pressure makes the job of protection officer more difficult and, instead of being motivated, protection officers are demotivated in fulfilling their

duties. In accordance with the implementation model of UP, all the cases are routed through the protection officer, which poses a problem. In many districts, if a woman accesses the Act directly (through a private lawyer), the judge sends it back to the protection officer for his/her observations on the case.

The courts in UP have a similar system to MP where the assigned magistrate receives the PWDVA cases. However, in the capital city, Lucknow, only one magistrate had been assigned to the PWDVA cases and he was dealing with all the cases of the entire district.

Resources and budgets

As already noted, the three States selected for research differ in the pattern of allocating resources for the implementation of PWDVA. MP is the State allocating the most resources, while Delhi has allocated moderate resources and UP has made no allocation of resources.

Of all the States of India, MP is the State to allocate the second highest resources to PWDA implementation. The Department of Women and Child Development (DWCD) which is responsible for allocating this budget has provided budgets for protection officer travel and travel costs for women through this scheme. However, up until now, most of the budget allocated has remained unspent each year and this has led to budget reductions. With such a low expenditure rate, a huge budget hardly makes sense. This low budget expenditure is another reason that DWCD decided to change the model of implementation and to recruit full-time protection officers who can be based in a central place in the district and be responsible for managing cases and the resources that need to be spent for that district.

Delhi is the State which has allocated medium-level resources, ranking 10th in the allocation of resources for the implementation of PWDVA. Of the three States selected for research, Delhi is only State which has reported maximum expenditure of the allocated budget (see Fig 5.5). This is mostly due to the fact that two protection officers have been hired for each district and their salaries are drawn from this budget. They also receive some travel reimbursements. Delhi has also invested in creating media awareness about the protection officers and PWDVA. Banners and posters on roads and in metro trains can often be seen, which display the phone numbers of the protection officers.

UP is one of the eight States of India that have not allocated any kind of ad hoc budget for any activity. In UP, responsibility for the implementation of PWDVA is managed within the existing infrastructure and resources of the Women's Welfare wing of the DWCD. The existing probation officers do not even receive travel reimbursement if they have to serve notices or are required to go to court.

The resource allocation of all States will soon be influenced drastically by a new massive budget for PWDVA announced in 2013 by the Central Government. From 2014, the Central Government will provide 75 percent of the PWDA implementation budget for each State, and the State government will have to provide the remaining 25 percent.

Table 5.5: Budget allocation and expenditure

State	2008-2009		2009-2010		2010-2011		2011-2012	
(figures in million INR)	B.Est.*	Exp.**	B.Est.	Exp.	B.Est.	Exp.	B.Est.	
Madhya Pradesh	29.2	10.87 (37 % of allocated)	25.0	8.53 (34.1% of allocated)	30.99	9.59 (31% of allocated)	22.179	-
Delhi	0.5	0.40 (80% of allocated)	2.2	0.6 (27.3% of allocated)	4.5	4.0 (88.9% of allocated)	40	
Uttar Pradesh	Nil	-	Nil	-	Nil	-	Nil	-

*Budget Estimated/Allocated

** Expenditure

Source: *Staying Alive* 2012 p.37.

State actors

Even though the Department of Women and Child Development is the nodal agency for implementation, the actual implementation involves the coordination of many other State actors. The Act itself holds responsible many stakeholders, including both the police and service providers which include active NGOs working on the issue of violence against women, medical facilities and shelter homes. However, each State is at a different stage of involving these stakeholders. This section describes the involvement of other actors in the Act.

Delhi: Delhi has the least engagement with service providers and has not even notified the service providers registered under the Act. It does not mean that service providers are not operational. In fact, Delhi has vibrant women's organisations working actively on the issue of violence against women. This activism was visible

to the whole world recently when Delhi rocked with the protests organised by the women's organisations over the 2012 gang-rape case. On the issue of domestic violence, Delhi has many active organisations which were instrumental in bringing into existence the PWDVA itself. Two of those organisations, LCWRI and Action India also helped in collecting research data. It is worth mentioning here that as mentioned in the earlier Chapter 2 'Women's Movement and State Response' and specifically under 'State responses versus feminists demands' many organisations were from Delhi, and had led the campaign for this policy in the first place. Even before the passage of the PWDA they were working on the issue of violence and helping women to address this issue through both community-based methods and legal avenues..

Despite the fact that the registration of service providers under the PWDVA has not been done in Delhi and no special resources have been allocated, civil society is still actively involved in implementation of PWDVA. Further, in Delhi, the State Commission for Women is actively involved in running the Family Counselling Centres that manage the cases of domestic violence. The community-based model, developed by the NGO, Action India of New Delhi (listed as organisation 1 in Appendix 05) had been successfully running for a number of years. This model named as '*Mahila panchayats*' runs in many areas and is presently being supported by the Delhi Commission for Women (DCW), whereby a group of elderly women called a '*panchayat*', supported and groomed by a Action India, manage family disputes. Action India has a long history of working on violence against women and these groups are known to deal with domestic violence cases at the local level in a very gender-sensitive way (Magar, 2003). There are many other NGOs, for example

like CSR(Centre for Social Research) also an organisation which helped in this research (listed as organisation number 6 in appendix 05), who through some funds or other, are actively involved in implementation and monitoring of the PWDVA. Hence, registered or not, women's organisations in Delhi are playing a key role in progress of PWDVA.

Delhi also has special women's cells in police stations, and a special initiative to strengthen these cells was launched by a project called 'Save Home Save Families' with the collaboration of the National Commission for Women, the Crime against Women Cell of the Delhi Police, and the Tata Institute of Social Sciences, Mumbai. However, LCWRI (2012) reports that these cells have not been effective in strengthening the PWDVA (LCWRI, 2012). Despite training being conducted for the police officers, these cells are still focussing more on counselling than on referring women to PWDVA. As the name suggests, they are focussed more on saving families than on keeping women safe. Lastly, the Delhi Legal Aid Services play a very active role in the implementation of PWDVA, and free legal help from the State helps women lodge their cases in court.

MP: In the State of MP, every district runs a 'Parivar Paramarsh Kendra' (PPK or Family Counselling Centre) managed by the District Police. The funds for running these centres are derived from various sources, for example the UNFPA funds five of them. Since 2011, PPK has been declared a default service provider for PWDVA by order of the Ministry of Home Affairs. Other non-government service providers can also apply to be a registered service provider under the Act but are required to have three years of experience in managing cases of violence against women and running shelter homes. This rule of having experience in running a shelter has posed a limit

to getting service providers registered under the Act as only 25 districts have shelters. The State has also mandated a monitoring and coordination committee at district level to review the status of PWDVA. It was evident in MP that much planning had been done and there was a huge allocation of resources for appointing special judges, setting up the infrastructure for service providers and appointing full-time protection officers. But everything remained in the planning stage and budgets had not been spent. Legal aid service lawyers were available but were not as active or widely available as in Delhi. Women's organisation were also visible as they were working actively with international funds, however, the NGOs were small and spread out in the huge State and were not as visible as they were in Delhi

UP: There are 34 Government-funded short-stay homes and 61 Counselling Centres functioning under the Social Welfare Board and Women's Welfare Board, which have been designated as default service providers for PWDVA. In addition, about 102 service providers have been registered in the State; these do not have government funding but are using other resources. However, in UP, registered or not, these NGOs who are working on women's issues are the only strong anchor that provide PWDVA implementation an momentum. As described earlier the data collection in UP was only possible due to the support of some very old and experienced NGOs working in the field on violence against women. For example, all NGOs Vanangana, Humsafar, AALI and Sakhi of Uttar Pradesh had strong presence in the area they were operating and were effectively supporting women in accessing PWDVA.

In Uttar Pradesh, the implementing agency, the Department of Women and Child Development and Social Welfare, has taken some initiatives to support the

implementation of PWDVA. For example, it has published the Domestic Incident Report (DIR) Format in Hindi, and this can be accessed in the District Probation Office of every district. The Act and Rules are available in Hindi for use by service providers and for wider distribution. This DIR format has been shared with the police, so that they can assist women to lodge their complaints of domestic violence.

Conclusion: This chapter presented the context of the three States selected for case study. The chapter reflected on various gender indicators that provides a context to the status of women in the State and the details of model of implementation of PWDVA.

It can be seen that women of Delhi are much better educated than the national average, they marry not so young as compared to UP and MP and they have reported less domestic violence incidences than UP and MP. However Delhi has the worst sex ratio among three States and reports the highest rate of crime against women in the whole country.

MP has a good implementation model but does not present a very good status of women in the State. They have low literacy rates, younger age at marriage and reported high incidences of domestic violence.

Similarly UP has lowest female literacy rates among three States; it has highest fertility rates and high incidences of domestic violence. The State does not report high rate of crime against women, however due to high population of the State, it has maximum cases of crime against women reported.

With this context of three States where the PWDVA is being implemented, the next three chapters will present the findings of the research.

Figure 5.1 Map of India



Chapter 6: Courts, judges, lawyers and PWDVA

Chapters 2 and 5 presented the context in which the PWDVA operates and identified the gaps in the monitoring and evaluation of this Act. This chapter will now present the first part of the findings of the research, which is divided into three chapters: courts; other supporting environments outside the courts; and overall impact of the Act. This chapter presents an overview of the court environment that women face when they access PWDVA and the effect of that environment on the outcomes of their cases. The two main actors inside the courts on which the women reported in this research are the judges and the lawyers, as discussed in this chapter.

Judges directly influence the time spent on their cases and in meeting the expectations women have of the PWDVA. Judges not only influence the outcome for women in getting relief from the courts, but they also influence the outcome after the relief has been granted to a woman, as they influence the respondent's compliance and the execution of the order, if the respondent has not complied with the order. However, the judges do not operate in a vacuum, and they are the product of the environment and culture that exists in the Indian judiciary system. Many issues that emerged were not unique to PWDVA cases, and they have been very well reported as being an integral part of how the judiciary system works in India. The long period of time that a case takes before it is settled is one such example.

The other supporting agent inside the courts for women is the lawyer who puts forward their case. According to PWDVA they are not the stakeholders, as access and relief from PWDVA should not depend on the counsel. However, this research found that women referred to lawyers as an important stakeholder. The contribution

that lawyers make to the whole process of accessing PWDVA was included in the research later on, when the interviews began.

Influence of the court environment on PWDVA case management

The behaviour of judges and the environment that they operate in both seem to be responsible for the quality of outcomes for women. The court environment and the way that the courts operated was not uniform in the three States. This was evident in the experiences of the women in the courts and had a bearing on the outcomes for them. This chapter presents a comparative analysis of the experiences of the women and some background information on the courts, as observed by myself during the research, which influenced the effectiveness of the court system in delivering the PWDVA. One aspect of the environment involves the infrastructure and facilities of the court, while the other aspect involves the system and manner in which the procedures operated.

Of the three States, Delhi had a better environment around the court for both the judges and the women. Some features that were unique to Delhi were a better court infrastructure (building, cleanliness, furniture, facilities and overall space), better records maintenance and the uploading of all final judgements of all district courts on to an official judiciary website (judis.nic.in). In Delhi, each district court had three or four judges assigned to women-related crimes, known as ‘women courts’, and PWDVA cases came to these courts. One crucial facility that was more efficient and accessible in Delhi compared to other states was legal aid services. Known as Delhi Legal Services Authority (DLSA), this body, as the research showed, was efficient in providing a free lawyer to women to represent their cases. More women had accessed free legal aid lawyers in Delhi than in the other two States.

On the other hand, MP and UP had comparatively less convenient space and facilities inside the district courts. In one district of UP, Lucknow, it was found that one judge dealt with all the cases of PWDVA. Though this exposure meant an enhanced expertise in dealing with PWDVA, it also meant work overload for that judge. In other courts, judges were looking after PWDVA cases for their respective areas, which meant a lack of expertise in dealing with cases of gender-based violence and the sensitivity needed for women who were victims of domestic violence.

The records maintenance also seemed to be poor in MP and UP. For example, in the court of Lucknow, UP, when I tried to retrieve information on how many domestic violence cases were disposed of in a particular quarter or month, those in charge of the records archive room were unable to provide me with that information; they had not prepared any compilation of PWDVA cases. Meanwhile, in Saket court of Delhi, the records manager in charge provided that information instantly from a computer. In both MP and UP, only judgements of the high court are uploaded online, while for courts at district level the records and judgements are maintained in paper files in records archive rooms. This poor maintenance of records in UP and MP results in a lack of transparency in relation to the progress of the cases, and makes the monitoring and evaluation of PWDVA difficult.

In MP and UP, the legal aid services were not as efficient as in Delhi State. During the research in MP some women reported having accessed the MP State Legal Services Authority, but in UP none of the women interviewed had used the State legal services. They either hired a private lawyer or were represented by a lawyer through the NGOs. UP State's free legal services was reported by NGOs as almost inaccessible. This corroborates the findings of a needs assessment study done by the

Ministry of Law and Justice India (MLJI) and UNDP, which shows that in the year 2010 the use of State legal services by women dropped significantly in MP and in UP, with overall use dropping by 50 percent when compared to 2006 (MLJI et al., 2012).

The environment under which judges operated had some effect on their behaviour and the administration of the cases. Most of the judges in all three States were overloaded with work, and on an average dealt with about 40 cases every day. However, as discussed later in this chapter, we will see that the way that judges worked contributed to increasing their workload.

Judges' behaviour influencing the outcomes for women

Of the three States, fewer judges from Delhi State were rated as indifferent or bad when compared to MP and UP, where more judges were reported as showing indifferent and disappointing behaviour. It was evident that the behaviour of judges had a close correlation with the effectiveness of outcomes for women. If a woman was satisfied with the judge, her chances of being satisfied with the outcome achieved under PWDVA were high. All women who rated their judges as very good or good were extremely satisfied with PWDVA outcomes.

Table 6.1 Women reporting behaviour of judges

State (no. of women)	Very good	Good	Satisfactory	Indifferent	Not satisfied/ disappointed/ bad	No. of Judges
Delhi (26)	4	4	10	7	2	27
MP (26)	0	8	6	11	3	28
UP (26)	0	7	10	11	3	31

In Delhi, about two-thirds of judges were rated as satisfactory, good or very good. The remaining one-third were rated as indifferent or bad. All women who rated judges as very good or good were satisfied or extremely satisfied with PWDVA, however about half of the women who rated judges as satisfactory were partially satisfied with the outcomes of PWDVA (Table 6.2).

In MP, half of the judges were rated as showing good or satisfactory behaviour, while half of the judges were rated as indifferent or bad (Table 6.1). Of the women who rated the behaviour of judges as good or satisfactory, most of them were satisfied or extremely satisfied with the outcomes of PWDVA (Table 6.2). Three women found their judge's behaviour satisfactory, however reported their overall experience with PWDVA as partially satisfactory.

In UP, 26 women reported on 31 judges. Since, in UP, the same number of women (26) rated more judges (31), this signals to the fact that judges changed more frequently in UP. A change of judge delayed the progress of the cases and generally had a negative influence on outcomes affecting women. Of these women, seven reported at least one of their judges as good (Table 6.1). However, results for these women relating to outcomes of PWDVA do not correspond to those of the women in MP and Delhi. Only one woman was extremely satisfied with the outcomes of PWDVA, three were satisfied, another two were partially satisfied and one was not satisfied. UP is the only State where, despite rating one of her judges as good, one woman was not satisfied with PWDVA. I will discuss her case in the section on the negative influence of judges. The other two women who rated judges as good and

were partially satisfied said they had got only an interim order so far and were waiting for a final order. Looking at Table 6.1, it seems that more judges were ranked well in UP than in MP (17 judges ranked as good or satisfactory, compared to 14 judges in MP). However, these women had more than one judge hearing their cases. When a good judge was replaced by one showing indifferent or bad behaviour, it reversed the progress made in their cases, leaving them extremely frustrated and dissatisfied. So, in UP, while four women rated one of their judges as satisfactory or good, the other judges on their cases were rated as indifferent or bad, which made the outcomes they received from PWDVA less satisfactory.

Table 6.2: Overall satisfaction from PWDVA in three States

	Extremel y satisfied	Satisfied	Partially Satisfied	Not satisfied	Worse off than before	Total
Delhi	4	10	5	7	0	26
MP	4	7	6	7	2	26
UP	1	3	7	15	0	26

Instances of judges positively influencing the outcomes for women

Women considered the judge's behaviour as good when they a) expressed sensitivity and generosity towards the applicant, b) adopted stern behaviour towards the respondent, and c) gave attention to speedy disposal with orders in favour of the women. Any of these three behaviours positively influenced the outcomes for women.

a) *Sensitivity and generosity towards the applicant*: When the Judge communicated with women, it reflected sensitivity, a feeling of being heard. The good behaviour from the judge made women feel cared for and supported. Whenever judges communicated well with the women and listened to what they had to say, women felt good about the process. Small kind gestures and sensitivity shown by the judges went a long way in boosting the experience for the women. Most women said that the process of accessing justice for themselves and reaching the court was a hard process for them. Often they reached the courtroom after facing resistance from their families and the community. At this stage, women appreciated sensitivity from the judge, whom they considered was in a position to give them better outcomes. If we compare States, women in Delhi reported more such instances than did those in MP. However such experiences of sensitivity and generosity by the judges were least reported from UP.

Box 6.1: Positive behaviour reported in Delhi

Soni from Delhi said, *“the judge was so good with me that I felt as if she has a motherly relation with me”* she also reports that through PWDVA *“I did get some stability in my life. My children have a home now.”*

Ananda and Sunita reported that the judge was supportive and gave advice on what else they could do about their case. Sunita said that her own lawyer from legal aid was not very committed to her case, however; it did not matter much as the judge was supportive. Her judge asked her to put up a list of dowry items in her application so that she can also retrieve them during proceedings.

b) *Stern behaviour towards the respondent*: Almost all the women who reported having a judge who was strict and stern towards the respondent were appreciative of that fact. They could clearly see that this behaviour resulted in better compliance from the respondent both in and outside the court. Better compliance with the orders by the respondent resulted when judges reprimanded them during a case, expressing that violence would not be excused. This resulted in better outcomes for the women. The women happily narrated those incidents when they were able to see the respondent as powerless in front of the higher authority of judges. According to the women, traditionally their husbands had exercised sole authority within their families, and they were not exposed to situations where they were weak in power relations inside the home.

The women also reflected that such strict behaviour towards the respondent made them realise that the wife is not alone and has some support. It made them realise that the respondent cannot escape the law and that what they have done is not a personal matter anymore but comes under the purview and enforcement of the law. In a couple of cases where the judges were female, the women especially mentioned that fact that it was the first time in their lives that they had seen the respondent rebuked by a female. Breach of order notices issued by the judges also attracted compliance from respondents who had earlier not complied with the interim and final orders. In two cases reported from MP, a breach notice issued by the judge was the step that forced the respondent to comply, thus improving the outcome for both the women. I was able to see that for many men these incidents go a long way towards changing them forever, as quite a few women reported having reduced violence in their lives as a result of these

experiences. It was clearly visible that these incidents have worked to raise gender consciousness and confidence, while for the respondent they have challenged deeply entrenched patriarchal values. Again, if we compare at State level, such incidents came up most often in Delhi, then in MP and least often in UP.

Box 6.2. Stern behaviour of judge towards respondent

MP: Sushma said: *“Judge scolded my husband saying ‘Have some shame, does this reflect well on you? Take her home with you and keep her well and see that she does not need to come here again’ My husband said ‘yes sir, I will keep her well’.”*

Arti, from MP, said: *“He (judge) took my side. My father-in-law accused me of having loose moral character. I asked judge that why is he speaking, why doesn’t my husband speak, I married him. Judge said to my father-in-law that despite of being so much better off than your son is, she has tolerated for ten years and she is not there for you so why do you keep touching her and eyeing her. Judge seriously reprimanded my father-in-law so I am happy with whatever judge said and the way he treated my case.”*

Ashma, from Delhi, said: “at one hearing my husband and his sister’s son came. Then the judge scolded them with such ferociousness that they all got scared. She said all those who are listed here as respondent (my mother-in-law and sister-in-law were also listed), they all need to come. She put penalty for all those who did not come for 500 rs each. My husband said that this penalty is too much; she said that it is not and you have to pay it and all those who are listed as respondents need to

appear in next date or police will go to arrest and bring them. My husband and his family members got very scared of the judge; they were initially thinking that nothing can happen to them and were threatening me. Now they know that they cannot get away with that. Good lawyer and judge can really make this process fast. I was well supported by good people that made the process easy”.

Sunita, from Delhi, said: “the judge enquired of my husband as to why he did not appear for the counselling? She (judge) also asked him to show proof of his attempts to communicate with me during the long period I had been away. When NGO staff told judge that he has said that he will not keep me, the judge threw his file and said to him, ‘keep quiet, I will not hear even one word from you,’ I felt so good that despite our lawyer not being present, I was sure that the justice will surely be done. When my husband said to the judge that he is highly educated, then she (judge) said ‘do not tell that to me. I can clearly see how you have been taught to talk to women’.”

UP, Kishori: *“When my husband pleaded that I have grown up son who can support me, the judge said ‘keep quiet and listen to me. You are her husband and you will pay maintenance and not your son’.”*

c) *Attention to speedy disposal with orders in favour of women*: It was very clear that women appreciated the speedy disposal of their cases. If their case was settled quickly, they attributed it to the judge. In many cases, respondents were delaying the process but an early *ex parte* order given by the judge meant a speedy disposal of the case. There were also instances where judges gave importance to the statements provided by the NGO professionals and protection

officers and used them to take decisions and pass orders. In this way judges used the NGOs for the speedy disposal of the cases. There were instances where, based on feedback given by the NGO, the judge dealt with the respondent very strictly. In one instance, the judge ordered the respondent to pay the maintenance amount to the petitioner at the NGO office every month. This made collecting payments from the respondent easy and transparent for the petitioner, saving her a trip to court for collection, thus providing a better outcome. This woman appreciated the quality of the order, the way it was phrased and how strongly it demanded compliance from the respondent. Similarly, some other women reported that they were pleased with the crisp, stern language in their order, compelling the respondent to abide by it.

Box 6.3. Speedy disposal of cases

Mukta, from Delhi: *“Judge said that you have been married for so long. The house is in the name of your husband. You have every right to stay there. She (judge) gave me a stay order for one month. On the second date when my husband came to the court, she told him that he cannot evict me from the house and on the next date, she will talk on the maintenance. She also instructed him that my papers have been put in his file, and that he needs to reply to those accusations”.*

Usha, from Delhi, said that her judge was very sensitive. On her first hearing, she got the residence order, even before the notice to the respondent was dispatched. On the very same day, she was brought back to her home escorted by the police officers and the protection officer. It was only possible due to the instant action taken by the judge, passing the order on the first date of hearing. Her case was finalised in three hearings.

Overall, in the research, the three positive behaviours from judges, listed above as a, b and c, were practices that significantly improved the outcomes for women. These examples show the slight positive change in the perception of the law implementer on the issue of domestic violence. However, out of 78 women interviewed, only 23 (who rated judge's behaviour as very good and good) came across either one or more of the three positive behaviours listed above. Overall, in my research, a much higher number of judges (37) showed indifferent, bad, very bad or disappointing behaviour to women, and I will discuss in the next section the adverse impacts of this.

Instances of judges negatively influencing outcomes for women

Behaviour or work practices of judges often had a negative impact on outcomes for women. More than the good behaviour of a judge resulting in good outcomes, there was a clear correlation between the bad behaviour of a judge and negative outcomes for women. Of the 37 women who reported judge behaviour as indifferent, bad, very bad, disappointing or not satisfactory, not one was satisfied with the outcomes through PWDVA. There were cases where women had more than one judge. If the later judge on the case exhibited indifferent or bad behaviours, it reversed the progress of the case even if the earlier judge was good. In one unique case from UP, the woman reported that she had a good judge and a very favourable order in the lower court. However, the respondent appealed against that order in the upper court. The judge in the upper court played a negative role and sent her case back to the lower court for revision! The lower court again upheld the previous decision, which the respondent again challenged in the upper court. Finally, in the upper court, a third

judge upheld the lower court decision. However, this whole process took four years, leaving the woman dissatisfied with the process even though the order was in her favour. A few other cases also showed that if there was more than one judge, and if one judge exhibited negative behaviour, it negates the progress of case. In Delhi, among the 26 women interviewed, all those who reported the judge's behaviour as indifferent or unsatisfactory reported being dissatisfied, except one who was partially satisfied (Table 6.1).

In MP, of those women who rated judges as exhibiting indifferent, bad or unsatisfactory behaviour all except for three, who were partially satisfied, had unsatisfactory results from PWDVA. In UP, all the women who reported judge behaviour unsatisfactory were dissatisfied with PWDVA. UP reported the worst figures for dissatisfaction and the longest duration of cases. Service providers in UP reported their dissatisfaction at the standard of judges and reported various work patterns of judges which were not conducive to effective outcomes for women. These behaviours are not unique or different from those in other States, but perhaps more prevalent than in other States. Such behaviours I will discuss in detail in the next section.

However, before I start presenting incidences of negative behaviour shown by judges, there was an issue during the data collection that I had to grapple with. This issue was the mismatch between what women described as the behaviour of judges and other law implementers and the corresponding rating that women assigned to that law implementer. There were instances where women described behaviours that

would be considered as rude or being indifferent to women, however when asked whether the women were satisfied with the law implementer, most of them would say yes they were. This response was perhaps due to the extreme tolerance towards the system that does not work well. For example, there was unawareness among women of the fact that they had a right to the timely delivery of services to them. They seemed to be used to the behaviour that they received. Reporting the exact sentiments of the women would have skewed the results, as they often reported satisfaction, even when their experience was indifferent or in some cases negative. As a researcher, it was hard to put these two things together. Even though it meant that a discussion on this issue might mean that the researcher appeared to coach the interviewees, I had to do this to see how women would respond after this discussion.

After a general discussion with the women, not directly about the judges but about other service providers they met, for example a doctor in hospital, it was agreed as to what behaviour constituted being indifferent and what should be satisfactory. After this, the women were themselves able to point to the nuances of gender bias in the behaviour of law implementers of PWDVA. Hence, if the responses had been taken as they were provided and without the discussion, then the analysis of the data would have been contradictory, thus generating incorrect results. Now, in the next section, I will present the behaviour of judges that had a negative influence on the outcomes for women.

The first part discusses the behaviours that women listed, and the later part will discuss the behaviours and practices observed by myself and reported by service providers and lawyers during my research. Negative behaviours listed by women, are divided into four main categories: d) Lack of communication; e) Rude or insensitive

behaviour; f) Insisting on a settlement that women did not want; and g) Negligence and delay in passing orders.

d) *Lack of communication*: The most common concern of the women was the lack of communication from judges. Many women reported that the judge did not exchange a single sentence with them throughout the process. They restricted directing queries and conversation to the legal counsel of the women. Women with a high level of literacy were somewhat able to understand the process inside the courtroom, however many women with a low level of literacy had no understanding of the progress of their case. Judges, by not talking to the women, had increased this gap in understanding. Some women even reported that, when they tried to put a particular point across, the judge asked them to keep quiet. Lack of communication further intensified in Delhi where most of the judges chose to use English as their language of communication, both inside the courtroom and when releasing orders.

During my research, a woman that I interviewed in Saket court, Delhi, showed me her interim order, having no idea of what was written inside it (refer Box 6.4). She only knew one line, as told to her by her counsel, that she had received maintenance of 1,500 INR per month. When I read out two pages of the order, translating it into Hindi for her, she discovered an error in some important information about her case. When we contacted her counsel to enquire about it, the counsel said that he would put up an application for correction. She later thanked me, saying that if I had not translated to her then perhaps the incorrect information in the order would not have come to her notice. This was a big issue in Delhi. Fortunately, in MP and UP the language of communication was Hindi,

which was accessible to women both of low and high literacy. Orders released in Hindi had an advantage even if the women were illiterate, because they had people around them in their family and communities who could read for them. If they were in English, like in Delhi, it was hard for women to find someone who could read and understand English. However, in UP and MP, the women reported judges as uncommunicative inside the courtroom.

Lack of communication was an important concern for women as it meant they were being ignored, not heard and not supported by judges. It was the main cause for them to rate a judge as indifferent. It signalled to them that judges did not care about their situation and were not eager to resolve the matter swiftly. From the responses, I did not find any significant relationship between the judges being female and being more communicative or sensitive to the applicant. Even though some women judges were deemed communicative and sensitive, equally other women judges were reported to be uncommunicative and insensitive to the trauma that domestic violence brings to women. Similarly, some male judges were communicative and some uncommunicative. However, the burden of showing sensitivity lies more with women judges, since lack of communication and insensitivity from female judges was reported as more traumatic for women than from male judges. When they see a female judge on their case, women applicants have an expectation that being a woman she will understand and empathise with their situation. However when that expectation is not met, it results in hopelessness and anger (refer Box 6.5)

Box 6.4 Women complaining about behaviour of Judges

(Parvati) a young women from Delhi, with low level of literacy, reported: “No, I had never talked with judge. She did not hear anything from me as she did not have time for that. When I tried to say anything, I was told by her to just give reply in yes or no and that too when something is asked from me. I have not given any statements till now. My lawyer does not speak much Hindi, he speaks in English with judge. I do not understand what conversation goes in the courtroom. The interim order handed to me is in English. I cannot read or write English. Things have not moved as expected. I have no idea till what time the case will continue”.

Rani, from Bhopal: *“Now the judge has changed. He never talked to me. He just talks to the lawyer. I have no opinion for him”*.

- e) *Rude behaviour from judges*: Women were clearly disturbed when they felt that the judges were being rude to them. Even if an order was later passed in their favour, an instance of rude behaviour by the judge reduced the quality of the experience for them. During the research, it was seen that the tolerance level of women was very high, and many actions that would be considered rude in other cultures were not considered rude, although perhaps considered as an indifferent attitude, by many of these women. Therefore, whenever a woman reported that she had received rude behaviour from a judge, it meant that she had received derogatory treatment. Mainly, the rude behaviour consisted of judges asking

women to keep quiet or making comments which were derogatory and uncalled for in the situation.

Box 6.5 Rude behaviour of Judges as reported by two women

Nitika, a 61 year-old woman from Delhi: *“My lawyer requested an earlier date saying that the house in question is my mother’s property and I am the one who has been in put in the position to leave the house and at this age I should not be going through all this. And the judge looked at me and said ‘but she does not look old’. That was the wording of the judge! You can make as many laws as you want, but unless the mindset of the people changes, nothing changes. Whether these are judges, or the people in the legal aid, they are nasty. The women coming to you are so traumatised, they need help, they need caring. A judge should be somebody who is there to give them some kind of hope or let us say at least is decent to them. For 20 years I have also been asking for divorce which respondent is not ready to give. When I mentioned this to the judge, the judge turned around and said to me ‘To get something, you need to give something’ this was a woman judge, talking to a woman who has filed a domestic violence case. I was too upset to even say anything at that point. This was nonsense, this was all rubbish”.*

Rajiya, of Chatarpur, reported that the judge said, *“what is the need for you to file a case at this age?”*

f) *Insisting on settlement that women did not want:* Many women complained that judges pressured them to agree to a settlement that was unacceptable to them.

Most of these came from MP and some from UP. Especially in MP, it was

observed that some judges prioritised the return of women to their husbands over their safety, and in some cases judges pressured the women to reach a compromise and give the respondent another chance, even when the women were not ready for the compromise and had expressed that clearly. In one case, an MP woman who had come back to her natal home after facing cruelty from her husband went again to live in her matrimonial house on the judge's insistence. After living there for six months, she came back to her natal family again beaten, bruised and pregnant! She is clear that she will not go back to her husband ever, but this woman now has a forced pregnancy to cope with. All this happened while her case was still in process in court. She is one of the two women who reported their situation as worse off due to PWDVA. In another case in MP, one woman reported being threatened by a judge to reach a compromise with the respondent (see Box 6.6. story 6.2). In Delhi also, women reported that judges were encouraging compromise at the expense of the demands put up by the women. The judges were willing to overlook the violence women faced if they believed that compromise could be reached. Gudiya had faced extreme mental, physical and sexual cruelty from her husband. The husband in court was ready to compromise and said that from now onwards he would behave. The judge asked Gudiya to compromise. The point here is that why did the judge not grant a protection order, which would have been a better alternative than a compromise since a court order has a greater value than a mutual compromise sheet signed by both parties? The compromise did mention that the respondent agreed not to invoke violence in future. Don't compromises make the case of the woman weak?

There were other cases also which were pushed towards compromise, though they were not geared towards forcing women to go back to live with the respondent, as in MP. In Delhi, for some cases it was the other way round. There were cases where women wanted to get a residence order and live in the premises with the respondent and they were not granted that (refer 6.4 in Box 6.6).

Box 6.6. Judges insisting on compromise with respondent

6.1) Rani Ahirwar, MP: *For about six months I was at my parent's home and went back to my in-laws on the Judge's insistence that I go there and give him one more chance. I went there and stayed for about two to three months and during this time got pregnant, he (husband) continued with the beatings and I have to come back again. At that time I had blue and black face and body, I showed it in court too.*

6.2) Shanti, Bhopal: *No, judge was not so good. I had to tell several times about my condition. He sent us to the counsellor. The judge want us to compromise, but then when we were not agreeing then he said that if you can't compromise then we will have to grant divorce and then the daughter will go to father as you do not earn. I asked, he also do not earn then why will the child go to him. But he said no the daughter will be then given to him. I was scared listening to this and agreed to compromise.*

6.3) Shamim: *The judge is going to decide that I go and live with him for one more month. For the next hearing on 5th, his mother has been called; He (judge) wants that I go back. But I do not want to go. I feel the case is slipping out of my hands.*

6.4) Neetu said: *“all through the case I felt as if judge will pass residence orders for me, but I was amazed when the order was read out that I was not granted the residence order, the evidences of the medico-legal report submitted by me were ignored by the judge. I also did not liked the fact that at the time of argument the judge said that if you want to go back to your house then let us not get into cruelties that you faced, let us only stick to maintenance. My domestic violence case only got centred on maintenance, no cruelties were discussed. I was expecting the judge to take a powerful stand for me”.*

g) *Negligence and delay in passing orders:* Many women reported that judges have been negligent in delivering justice to them. A few of the judges had forgotten some procedural steps, which they realised later. For example, at a very late stage in the case, the judge realised that a report from the protection officer was required. Another couple of women reported that there were mistakes in the order released. However, the biggest concern for the women was the unnecessary delay that happened in their cases due to the judge’s indifferent attitude. The women reported that they were made to wait unnecessarily during the court case dates. Furthermore, because by the end of the day the hearing had not yet taken place, they were provided with yet another date (refer Box 6.7).

Many judges did not have enough commitment to dispose of the case in the stipulated time. UP reported the longest duration of cases among the three States. Judges seemed to be the key contributors to this situation, as most of the women reported that at each hearing all they got from the judge was another date. Judges

paid more attention to criminal cases than to PWDVA cases. Service providers and lawyers reported that judges adopted procedures that caused unnecessary delay, for example taking evidence from the respondent's workplace when not even required in the situation.

The delay in providing judgement was a major cause of concern, since in most cases there was not even an interim order. Most of the women were dependent partners in the domestic relationship and had children living with them. A major cause of frustration and hopelessness among these women was in fighting cases where judges did not pass even an interim maintenance order.

Box 6.7 Women reporting negligence and delay on the part of Judges

Divya, postgraduate from Delhi, seemed very unhappy with the role of judge. She said, *"I have heard that judge should pass the orders within 15 days of hearing arguments. However despite the fact that arguments have been heard three times, no orders have been passed yet"*. She quoted one instance where she waited until 4.00 pm expecting orders to be passed on that day but at about 4.30pm all they got was another date. It has been more than two years and, without any orders, she feels she made a mistake by applying in this case.

Commenting on negligence on the part of the judge, Nitika said: *"Just before giving orders she (judge) asked whether the protection officer has been to my house and I said no. Then she said that nothing can be done until protection officer comes to my house and submits a home visit report. Then I had to call protection officer myself and ask her to come to my house. So you see seven months down the line the judge is*

waking up to the fact that in my file there is no protection officer report. There seemed to be no consistency, it just seemed to be on whims and fancy of lawyers and judge”.

Vidya, from Bhopal, said: *“One lady judge was presiding over my case and had to take my statement. I took my neighbour for evidence. She asked us to wait as she had other jobs and then later said this statement can be done later and gave us a date after 15 days. She did not even have one word with us, just said if they are sitting let them sit”.*

Monu said: *“The judge says that when the response from bank will come, we will proceed, but the response is not coming and hence nothing is happening.”*

During the research, I encountered other issues centred around judges that were brought up by lawyers and service providers or were also visible to me. These were h) providing too many opportunities to respondents to defend themselves; i) over-reliance on certain kinds of evidence; and j) other administrative issues (reported by lawyers and women).

h) *Providing too much time and giving too many chances to the respondents:*

Judges were seeking evidence for the charges made by women and giving the respondents a chance to defend themselves against the charges. In almost all the cases that continued for more than six months, judges had provided more than adequate time for the respondents to appear in the court. When the court issued the summons to appear, in many cases, the respondents tried not to receive the notice or pretended not to receive the notice by not appearing on the hearing date. In the absence of the respondent at the hearing, judges just defer the

proceedings by providing another date. Ideally, a judge should do this only three times, however, judges repeated this process many times and hence delayed the proceedings.

Special mention needs to be made here of the case of Sumati from Delhi, which has continued for four years without even an interim order. Her husband never appeared in the court. The judge went to so far as to direct Sumati's legal counsel to publish a notice (directing the husband to appear in court) in a newspaper before proceeding to make an *ex parte* decision! Such was the extreme in terms of giving the respondent time and opportunity to defend himself.

Box 6.8 Woman reporting about judges providing too many chances to respondent

Nitika, from Delhi, reported: *"I was coming on each date from Dehradun (a city about 262 kms away from Delhi) to Delhi while he was simply not appearing even though he lived in Delhi. He was not penalised, judge did not ask his lawyers as to what was happening for one whole year. Every time I went, the judge just said, give them a date. So how does that help?"*

In UP, the judges devoted too much time to giving the respondent further opportunities to appear, or were incorrectly following criminal procedures, which gave respondents a more than fair time to defend themselves. Meanwhile, interim relief was denied to the women and their cases prolonged for an average of two to three years.

- i) *Over-reliance on certain kinds of evidence*: Another issue, not mentioned by the research subjects but emerging from discussions with lawyers, service providers

and my own observation of cases was that judges granted or denied relief on the basis of two kinds of evidence and withheld their decisions until such evidence was presented. The first type of evidence was evidence of violence and the other was documentary evidence concerning the respondent, for example, proof of income.

The main purpose of the Act is to provide relief to women under the assumption that most of the time it is difficult for the women to provide evidence for what has happened in the privacy of the home. Mental and emotional torture usually lacks documentary evidence and happens behind closed doors. Evidence of physical violence also gets lost, especially when women do not approach medical facilities for small incidents. Even when they do approach police for severe forms of physical violence, their complaints are not lodged and police do not take a proactive role in sending these women for a medical check-up. However, for most of the cases, the judges were relying on the evidence, such as complaints made at police station and medico-legal reports from the government doctors. In a few cases, it was clear that judges did not believe the women's stories, documented as domestic incident reports, and gave the benefit of the doubt to the respondents. Yet, according to the Act, an assessment from the Protection Officer (recorded in the DIR and home visit report) and an affidavit from the women is enough to establish that the domestic violence happened. There were also cases where visible evidence of violence, such as bruises and injury marks, were present on a woman's body and could have been observed by the judge, however such evidence was often ignored. Take the case of Ashma from Delhi and Rani from Chatarpur MP, where both the women reported having black and blue

bruises on their bodies while their cases were in process. It was not clear why the judge did not order a medical check-up. What was the judge waiting for? What kind of evidence was the judge seeking if visible injuries were not enough? This highlights the paradox of the judges, who insist on evidence when it is not required under the Act and, on the other hand, have a pattern of ignoring evidence when it is present.

Other evidence that judges stressed when deciding maintenance and residence orders included proof of income, proof of shared household, proof of ownership of residence and even proof of marriage in some instances. Lack of this evidence became the main reason for women to have a delayed judgement or a judgement not up to their expectation. Take the cases of Shabnam and Sunitha of Delhi, in which the respondents never appeared in the court and did not provide any reply to the court on the claims made by both women. After a long wait, the judges proceeded to make *ex parte* orders. Still the judge gave the benefit of the doubt to the respondents who were absent from the court and not to the complainants who were present and submitting the affidavit. The exact wording of the court order of Sunitha was: “*As the complainant has failed to file any document pertaining to income of the respondent no.1. Thus, the statement of the complainant cannot be accepted as gospel truth. In absence of any material on record regarding the actual income of the respondent the court has no option but to indulge in guess work.*” (Court order dated 26.07.2011, Rohini court Delhi). In both cases, the judges did not agree upon the income quoted by the complainant and said that, since proof of income had not been submitted by the complainant, the court would calculate the income on guesswork, and for Shabnam it was done on the

basis of the minimum wages act. Her claim to be a shared household was denied because of lack of evidence. When a respondent gets a favourable decision by being absent, what incentive is there for them to appear? Doesn't this action on the part of judges encourage respondents to choose not to appear, rather than to appear and defend themselves?

In most cases, the court did not take any action or accept any responsibility for directing relevant authorities to collect evidence such as proof of income if it was considered necessary. For most of the cases, the petitioner was responsible for providing evidence. In a couple of cases where the respondent was a government employee, the judges did not use their power to ask the relevant department to provide the details. For example, in the case of Manjeet, of Delhi, the judge asked for the salary slip and she was not able to furnish it. It would have been easy for the court to find out the salary of a respondent who was a government employee, possibly by ordering the relevant department to provide that information.

In MP, the legal aid lawyer provided information on another incident to show how the court process was prolonged by judges unnecessarily seeking evidence. In one of his cases, the court sent an enquiry to the respondent's employer to confirm he was employed there, despite the fact that they had already put up the respondent's salary slip, and such an enquiry resulted in unnecessary delay.

In UP, one of the service providers suggested that most of the time it seemed as if judges were not aware of the provisions of the PWDVA. From Kanpur district, the lawyer of the service provider said that in one of the cases the judge asked for

the statements of the respondent documented by the protection officer after the case had been running for one-and-a-half years. As part of their responsibility, protection officers do take statements from the applicant and prepare a domestic incident report, and submit it to the court. However, protection officers do not take statements from the respondent. According to the lawyer, this demand from the judge was completely unwarranted. The protection officer then took the respondent's statement and made a report that the domestic violence did not happen! The applicant's position in the case became weak. The applicant's counsel then pleaded that the protection officer had no authority to make a statement that domestic violence did not happen. That was for the court to decide. The judge accepted that appeal but then the case was transferred to another court and the new judge there again considered the protection officer's documentation of the respondent's statements. According to the lawyer, this has created confusion in the case and progress has again stalled.

- j) *Other administrative issues:* As reported by lawyers, service providers and women themselves, one prominent issue was that judges were often absent on hearing dates, and got transferred or changed during their cases. For example, in Lucknow, UP, where only one judge handles all the PWDVA cases of the district, he went on long leave for personal reasons. During that time, all PWDVA cases were on hold and no other judge was assigned to deal with women seeking orders under PWDVA during that time.

Another issue was that judges were providing a date for the next hearing with a delay ranging from two to three months, or even six months in some situations. A different problem revealed by some women was that they had to come to court

every month on the 10th day to collect maintenance from the respondent in front of the judge. While this worked for some women, for many it was a cumbersome process to come to court every month. In one instance, a woman asked the judge to direct the respondent to pay her money through direct debit to her bank account, but the judge refused her plea saying this was how the court worked. Now she has to come to court every month on the 10th. This is very inconvenient for her and she said that many other women whom she meets in court had the same concern.

In a couple of cases, it was reported that the judges in the lower courts in the remote areas of the districts were more lax than the judges in the court of the main Chatarpur district.

Box 6.9 Women reporting the absence of judges

Tara, Bhopal: *“The judge has asked me to bring his address. The judge took leave and for seven months there were no dates. A new one has now come, but I have had no interaction with him.”*

Vidya said, *“judges get transferred or they remain on leave, I have faced three judges in last one and half years”.*

There were also cases where there was evidence of chaotic administration along with the change of judges. Take the case of Nitika, from Delhi:

‘That was my third date. Meanwhile my judge was changed and this was date with new judge. When I reached courtroom, my name was missing from list and they could not locate my file. I found myself in a situation where, my file was missing,

my judge was missing and they had no record that I had a date. The staff were totally clueless as to when I have next date. They said that they will look into the matter.'

Many of these points highlight the culture of the judiciary system of India. Judges unnecessarily increase their workload by delaying processes. Recent events in the December 2013 Delhi rape case have again highlighted that it is not as if some good laws to protect women from violence do not exist, it is the implementation and the way that the judiciary system works in India that needs reform.

Judges influencing the relief granted

Judges influenced the relief that women applied for under the Act and a pattern emerged in the research. Judges have the power to grant various forms of relief, such as protection, residence, maintenance, custody and compensation orders. They also have an overarching power to grant any other orders that assist in rehabilitating the women who have suffered from violence, as mentioned under section 19(2) of the Act. However, the various kinds of relief granted under the Act were dependent on the judges and overall, judges were cautious in granting relief to women. The relief most often granted under this Act was maintenance, while the least granted was a compensation order. Some findings of this research on the relief granted are presented in Table 6.3. The findings differ from those reported by LCWRI and are discussed in next section.

Table 6.3: Orders received by women

State (number of women)	Protection n	Maintenanc e	Residenc e	Compensatio n	Custod y	Othe r
Delhi (23)	8	16	12	0	1	3
MP (26)	13	19	9	0	1	4
UP (23)	4	20	8	0	0	2
Total	25	55	29	0	2	9

Protection orders

In 2012, LCWRI reported that protection orders were liberally granted (LCWRI, 2012 p.173). However, without any comparative figures, the meaning of ‘liberally’ remains ambiguous. Contrary to the report, I found that judges granted protection orders sparingly, as only 25 women out of the 78 in my sample received a protection order. This was even less than the residence orders which I had assumed, based on the reading of the literature, would be a cautiously granted order (LCWRI, 2012, Dube, 2009, Badrinath, 2011). Almost all the women applied for protection and in more than two-thirds of the cases judges denied it (refer Table 6.3.). UP reported the fewest protection orders, only four out of 26, while MP granted the most, 13 out of 26. That means that even in MP, judges denied a protection order to half of the women. The protection order is the first basic entitlement that this Act provides for women suffering from domestic violence. Only this kind of relief directly assists women in preventing future violence. The other types of relief are for the rehabilitation of women. Denying women protection dilutes the effect of other kinds

of relief that are granted under the Act. Going through some of the orders received, it was evident that judges did not see it necessary to provide a protection order by saying that the woman concerned did not live in the matrimonial home any more, which was the location where she feared the violence. However, there were cases where the woman did receive a residence order, and a protection order was necessary; however, there was no instruction to the respondent to stop the violence.

The PWDVA Judge of Lucknow district, who agreed to meet me, said that he did not grant protection orders as women did not ask for them and as judges they could only grant what had been asked. However, the women interviewed and the service providers did not agree that protection was the least requested form of relief.

Maintenance orders

The most popular and most granted relief provided by the court has been maintenance. Of 78 women interviewed, about 70 percent of them had been granted maintenance orders. Many of these women had applied for other relief, such as protection and residence orders, however, they were only able to get maintenance. For claiming maintenance, other provisions exist in the Indian Penal Code. This relief can be claimed under section 125 of the CrPC, however, it is limited only to married women and is not for any domestic relationship. Many women had already filed a parallel case under section 125. A few women reported that they had been granted maintenance under section 125 earlier, while their PWDVA case was continuing without orders. For these women, section 125 of the Penal Code has proved to be more beneficial than PWDVA. This partially defeats the purpose of having the PWDVA, where maintenance is one of the forms of relief available, and women affected by domestic violence should be able to apply for all forms of relief

needed under one ‘umbrella’. Despite this, in all three States, it seemed that PWDVA was the most popular Act under which to claim maintenance. The other important issues related to maintenance orders were that there was a considerable delay in granting them and when granted they were of a very low amount, much below the woman’s expectation. Most of the time, the low amount was because the woman was not able to prove the respondent’s income. In many cases, the respondent appeared to have submitted false statements claiming to have a much lower income or no income, contrary to the applicant’s statement.

Maintenance relief targets two aspects: the recognition of economic abuse as violence, and also to provide the woman with all her crucial needs, as a victim of violence, within a single window. The need for maintenance seemed critical as most of the women interviewed, whether they had left the respondent or not, were struggling to manage their livelihood. In this situation, most of them were worried about the delay in the maintenance order being granted at least as interim order. Rarely, women complained of the protection order not being granted as an interim order. Also, there were instances where even the protection order had been granted as interim and the breaches of the order were not followed up by the women in court. The execution of court orders and the strict follow-up of breaches of court orders were found to be weak. Women reported that initially, after the passage of the order, there was a reduction in violence but, as the time passed, the effect of the order ceased. This suggests that initially women did get some leverage out of the protection orders, but with time the value of protection orders was lost. Also, it was seen that more than that of the police, the presence of NGOs was more effective in getting the orders executed. The case of penalisation of the respondent for the breach

of orders was only found in two cases among the sample. One woman only reported the notice of breach of court orders. Only two women reported the notice of breach of court orders. As many as 23 women reported their cases pending in courts for the hearing on execution of court orders.

Residence orders

Residence orders were granted cautiously, however they were more frequently granted than were protection orders, as referred to above. This was despite the assumption of it being the most controversial order, due to the well-renowned Taruna Batra case. The aftermath of the Taruna Batra case handled by the Supreme Court has resulted in many women being denied this right (Dube, 2009). Since the Supreme Court denied a residence order to Taruna Batra in 2007 when the respondent appealed against the High Court residence order, a cautious approach has been taken by judges in granting residence orders. This cautious approach was evident in this research too, where there were cases in which the residence order was not entertained because the shared household belonged to the wife's in-laws. In one case, the judge granted residence after explicitly mentioning the fact that the house belonged to the respondent and the petitioner had been married to him for more than 20 years. In another two cases in Delhi and MP, judges granted a residence order because the house actually belonged to the petitioner or to the petitioner's natal family (Chinta from Bhopal, and Nitika from Delhi). Most orders were granted in Delhi, where 12 women reported receiving a residence order and the fewest were in UP, where eight women received them. In MP, nine women received them. However, in both MP and UP, there were cases where women did not wish to go to the respondent's house, but the court granted them orders asking them to go back

and live with the respondent. During my research, I felt that awareness of the fact that an applicant is entitled to claim rent for a separate residence if she fears her safety was less prevalent among lawyers, and perhaps even among judges.

Compensation orders

The form of relief least often granted under the Act was compensation for mental and physical violence. Not one woman was granted compensation out of the 78 from all three States. In most of the cases, the lawyers had applied for compensation for the mental and physical injuries and trauma, but compensation was denied by the judges in all cases. The main grounds for denying compensation was lack of evidence of cruelty. The counsel of Shabnam and Meena shared this: *“We had asked for the damages due to mental agony, torture and harassment and emotional distress. But since we had not produced the medical documents in the court it was not given to us.”* However, in another case in Delhi, Soni, who had been hit by the respondent resulting in damage to her eardrum, had submitted medical records to prove this claim. She had also faced huge emotional and mental violence at the hands of the respondent. The order records that *“prima facie evidence that she faced domestic violence was established”*, however the judge only provided her with the residence order and did not provide any compensation for the trauma she went through. So, even if evidence of domestic violence was there and according to the judge it was proven, the compensation plea was ignored. In another case, Ashma of Delhi had visible marks of violence on her body, however they were not considered by the judge and she did not receive any compensation. In fact, she was encouraged to settle the matter with a compromise maintenance figure, much less than what she had sought.

This suggests the judges do not consider domestic violence worthy of compensation. Compensation is usually seen as being sought from someone external, not belonging to your family, who has invaded your space uninvited and caused inconvenience. In the eyes of judges, perhaps domestic violence is not a case to grant compensation, as most of the time the respondent is someone with whom women share a close relationship, and in Indian culture compensation is not asked from family members.

Literature on the subject does point to that fact that there do exist a few landmark cases where a high amount of compensation has been granted (LCWRI, 2013c), although these exemplary cases do not answer how frequently compensations awards have been granted (LCWRI, 2013c). Therefore, a comparison cannot be made *vis-à-vis* what has been documented earlier but, indeed, this finding does point to the fact that compensation, if granted, must be rare.

Other relief

A few women reported being awarded other forms of relief. For example, the return of dowry items, restraining orders against the respondent, a contribution to the marriage expenses of an adult daughter, and litigation costs. The litigation costs granted were much less than the actual amount spent. Custody orders were rare, as most of the women did not have issues with custody. There were at least two cases where women needed it, but it was not granted at the time of the interview.

To highlight the impact the judge's behaviour can have on an applicant's life and her children, I shall present a case which happened in UP. This case illustrates the serious consequences of judicial delinquency. Interviewing this woman was perhaps the most emotionally draining and depressing episode in this research.

Box 6.10 Dhandevi's story demonstrating the grave consequences of a judge's decision

Dhandevi, a 32 year-old woman, now the mother of four children, narrated the shocking story of violence and horror that she and her five children faced. Her case was filed under PWDVA one year ago. She was physically tortured since the start of the marriage. Her husband evicted her last year, and she filed her case soon after that. Her husband snatched all the children from her. She had said in court that she suspected her children's lives were in danger. But she was not given a custody order by the court. Meanwhile, one evening after drinking, her husband beat their 11 year-old son unconscious and then, fearing that he had killed the boy, he buried the son in the backyard of the house. Dhandevi found out about this and came running to dig her child out with her bare hands, but it was too late and her child died in this incident.

Dhandevi's story raises the responsibility of the court in relation to the death of this 11 year-old child. Dhandevi has still not received court orders for custody, but now she, with the help of the police, has rescued her remaining four children. Since police officers had seen that the respondent killed one of her children, the police officers helped her even without court orders in rescuing the children. Now she has received INR 1,500 maintenance from PWDVA, while the respondent is in jail for the murder of his own child.

Judges influencing duration of the case

The duration of the case, from filing to receiving orders, proved to be a good indicator for predicting the outcome. Most of the women who had their cases disposed of within one year, reported high satisfaction from the PWDVA. Duration

of a case also correlates with the performance of the judge, as the women ranked as good the judges who disposed of a case swiftly.

The Act mandates under section 12 (sub-sections 4 and 5) that the magistrate should dispose of a case within 60 days of its first hearing. This happened in no more than 12 cases, six in Delhi, four in MP and two in UP. MP had the most cases which delivered results in less than a year (13 cases), Delhi was second in cases having durations of less than a year (10 cases), while UP had the fewest cases being disposed of in less than a year (4 cases). Overall, MP had the best performance when it came to having a shorter duration in disposing of cases.

Given the normal procedures of the courts where hearings are spaced one month apart, cases should be disposed of in three hearings. My research found that this was not the usual practice for judges. As alluded to above, most cases had multiple deferrals and lasted much longer than the suggested timeframes within the Act. In all three States, cases commonly had a duration of more than one year. Courts took longer to provide women with relief under PWDVA in UP when compared to the other two States (refer Table 6.4).

There was a clear negative correlation between the amount of time spent on a case and the quality of the outcome for the woman. Two women from Delhi and seven from UP, who had cases lasting between three and five years, had a high level of dissatisfaction. Further, the more time spent on the earlier stages of the case, the more frustrating it became for the woman applicant. Given the nature of the Act, which is to provide immediate relief from acts of violence, a PWDVA case lasting for a few years makes no sense for the applicant. Fighting a case for a longer period

also has implications on the expenditure incurred in getting that relief. There was no adherence to the ‘Justice delayed is justice denied’ principle embedded in the Indian judiciary. The judges seem hesitant to provide the *ex parte* orders (also observed in *Staying Alive* 2010/ 2011), and in many cases the respondent took six to twelve months to even make the first appearance or did not appear at all. Ideally, as per the procedures in the Act, by the third hearing the final or at least interim orders should have been released, based on the DIR filed by the protection officer or on the home visit by the protection officer, and the affidavit submitted by the applicant that she is facing domestic violence. However, as described earlier, the judges were providing too many chances to the respondent to appear, thereby delaying the release of the orders.

Some women were not able to specify the exact reasons for the delay. They said that they were not able to understand why the judge gave them date after date. However, some women from Delhi described the nature of the delay very vividly (refer to Box 6.11). Mostly it was the judge who gave a new hearing date either because of minor administrative reasons, or due to the respondent failing to appear or respond to the process. Service providers were of the view that this was happening because the judges were adopting procedures equivalent to those for criminal cases, even though it was a civil law. Judges were requiring an unnecessary level of proof of violence and of marriage.

It is also important to note that it is possible to dispose of a case within the stipulated time frame in the Act, as there were 12 cases, six from Delhi, four from MP and two from UP, which were disposed of in two to three months. One case from Delhi was settled within 30 days. All of these 12 women claimed high levels of satisfaction. All

of them said that they were very happy with the results and the impact on their lives was significant. All of them reported concrete and positive outcomes. If more judges adopted similar practices, much better outcomes for women would be achievable through PWDVA.

Table 6.4: Duration of cases in three States

State (number of women)	Two to three months	Less than a year	One to two years	Two to three years	Three to four years	Four to Five years
Delhi (26)	6	4	8	6	1	1
MP (26)	4	9	10	3	0	0
UP (26)	2	2	11	4	4	3

Box 6.11 Nitika from Delhi describing the court proceedings

“I faced emotional and economic violence for 32 years. I had left him and was living with my mother from 10 years. Yes, my case took almost three years, it is supposed to be a 60 days process. It was just a sheer waste of time. Most of the time, I just got a date, that is all. My husband did not show up even once. On 18 May 2010 filed the case, 10th June was first date, however, summons were not served to my husband. I had to follow up myself on this and serve the summons myself. On 10th of June my husband did not appear. The lawyer representing him said that he was sick and said that there is a certain page in application that is unclear and needs more time. This is a usual thing that lawyers do. So another date was given and also another copy of the application. They did not reply to the application. On next date in August I went there only to observe to my dismay that the judge was not coming and also to know

that my file was missing. Nobody was there in court from my husband's side. We were given another date on 28th of October. Meanwhile the court premises were shifted to a new location in Saket during this period. In new court a new judge was assigned but my name was missing from the list of the cases being heard on that day. The court staff was totally clueless as to when I had the date. They said that they will look into the matter. That was my third date. My file was missing, my judge was missing and they had no record that I had a date. After checking the record of earlier date court proceedings they added my name on the list and granted a new date so that they can replace my file. Luckily, the judge gave an early date however no one from my husband's side appeared. The judge did not seem to be bothered by that fact. The judge informed me that my file has been located and she observed that no one from my husband side is there. I told her that on the previous two dates he had not appeared either. She looked at the file and said that somebody did appear on the first date, let us give them some time. If they do not appear then I will give you judgement. I waited till one o'clock. Then somebody appeared as proxy lawyer for my husband and another date was given for next month and the judge asked them to file a reply. They had not even filed a reply. Six months had gone and they did not file a reply, and nobody seemed to care. Two of my cousins got divorced in the US in a matter of weeks and here I am putting up with this nonsense. This is the judiciary system of India. Three months later judge finally gave me an order and again no one was there from my husband's side. When she gave me the interim order, my husband and his counsel filed their counter case, and that case went on for a year. For one year, the same thing was repeated. I came from Dehradun, I came every single time, and he never showed up.

Despite this, they still kept giving court dates for no reason. I had to keep showing up. Finally my husband does show up and the judge realised that actually my husband had no right to be in my house. She (the judge) said can you reach some compromise or else I will give judgement. I said to the judge, “If he wants to, I can do this (running around the court) for my life time. I have lots of patience. He in any case has made a mess of his life. I have not done this to be vindictive to anyone or to be nasty or to put him on the road. I am doing this just to get my life back. I want to live with some dignity. I need to live and I need to sell this house for that”. Then the judge said you go out and think about it. I went out and said to him, do you want to do this? If you want, this can go on for another 10 years. Then he came inside and withdrew his counter case. My domestic violence case is continuing as after that interim orders, I have still not received final orders and I have a date next month. However I am also filing for divorce now and I will pull out of the domestic violence case.”

Lawyers

Lawyers, though not listed as a key stakeholder in PWDVA, play an important role in effective outcomes for women. Most of the women had their cases represented in court by a lawyer, hired privately or appointed through Legal Aid Services, a free service that women can avail themselves of. Some women had lawyers provided by service providers. Irrespective of the source, sensitive and efficient lawyers helped women in the whole process.

There were five women in Delhi and five women in MP who did not use lawyers for accessing the PWDVA. They relied on the services of the protection officers, who had filed their cases in court directly. In Delhi, this pattern prevailed before 2009. In

most of these cases, the judgement was quick, done within three months. It signals that if cases can be disposed of in two to three hearings, even protection officers can represent women inside the courtroom. However, lately, there has been a pattern of using a lawyer in all PWDVA cases in Delhi, because protection officers report that they have excessive workloads and cannot represent women if the case continues for too long. In MP, only some enthusiastic protection officers had represented women, and generally women do not even contact protection officers. In UP, all the women used a lawyer, either private or through a service provider. In UP, no women used legal aid service lawyers. The role of lawyers was in putting up an application for the woman and ensuring that all the forms of relief are claimed for which she is eligible under PWDVA. They negotiated with the respondent's lawyers. Court proceedings are often tedious and time consuming, so an efficient lawyer helped in reducing the time and tedium and putting up the applicant's case strongly before the judge.

Nine women reported that lawyers had played a positive role in their cases and they were happy with the results achieved. When women hired private lawyers, they reported the expense of accessing PWDVA was high or above their means; however, they were satisfied with their lawyers. Women with legal aid lawyers did report modest and reasonable expenses, but they also reported lower levels of satisfaction with the process. Legal aid lawyers were also associated with a lack of interest in pursuing cases for the women. About 18 women reported that they had a lawyer who had not taken a positive interest in their case. A staff member of an NGO also commented that legal aid lawyers do not work efficiently, because on average they take two months to just prepare the file for a woman, hence it is useless to expect that they will help in the speedy disposal of the case. Of these 18 women, ten were

from MP. Most of these ten women had a legal aid lawyer and they were not happy with the lawyers. There were also three cases where women had private lawyers, but they were not happy with the role that these lawyers played.

Table 6.5: Women reporting satisfaction with lawyers.

	Very good	Good	Satisfied	Indifferent	Bad/very bad/NS	Not accessed	Total
Delhi	1	3	12	4	1	5	26
UP	0	4	19	1	2	0	26
MP	0	1	10	1	9	5	26

Overall, if a woman had a private lawyer or a lawyer through an NGO, she was mostly satisfied; if she had a legal aid lawyer, in some cases she was satisfied while in some cases she was not. In Delhi, about five women saw legal aid lawyers as not taking an active interest in their cases. These women said that they were unable to support their free legal aid lawyers with expenses related to paperwork. Supporting lawyers with paperwork expenses is a way to bribe a free lawyer for better services. Officially, any expense related to paperwork, photocopying, court fees etc. is payable to the lawyer by the legal aid office on production of receipts. However, in practice, lawyers take it from the women as well. They consider that money as additional support towards their daily expenses. This practice is very common, and was reported by most of the women who used legal aid lawyers. The reason behind this practice by the lawyers is that the money reimbursed by the legal aid office is not adequate. In MP, legal aid lawyers complained that few expenses were reimbursed from the office and hence they were forced to take some money from the clients, even though this service should incur no cost to them. Therefore, women who could pay some money to legal aid lawyers received better quality services from

them. According to the women, paying an amount to legal aid lawyers for better services was still more affordable than a private lawyer. Nevertheless, this practice led to low quality services for women who had no means to pay some money to the legal aid lawyers and hence experienced an indifferent attitude from them.

Women who had lawyers provided to them through NGOs in all the three States reported both satisfaction and low or no expense. These lawyers were often salaried staff of the NGO, and court-related expenses were paid by the NGO. As staff of service providers, they supported women well and advised them fairly in their best interest. As NGOs monitor the progress of cases, these lawyers were efficient.

In all the States, the women were mostly satisfied with the services of private lawyers except in UP, where three women were dissatisfied. In two cases, lawyers clearly played a negative role. They kept the women in the dark about the progress of their cases, and perhaps in one case even took money from the respondent while continuing to represent the woman applicant. There were some positive cases where, even though hired as private lawyers and the women did not have the capacity to pay them, they supported the women as a service provider would, for example, as reported in Chitrakoot. In UP, none of the 26 women utilised the free legal aid services of the State government. According to service providers, engaging legal aid is a very cumbersome process in UP, and women are better off finding their own lawyers.

In conclusion, private lawyers were satisfactory but expensive. Legal aid lawyers were satisfactory when women were able to pay some expenses to them. Lawyers provided by the NGOs were satisfactory and came with negligible expenses. The

research also shows that lawyers were accessed more than the protection officers (refer chapter 7 for protection officer), which is surprising as they were not even considered important stakeholders in accessing PWDVA, as this Act provided a greater role to the protection officers.

Analysis of findings

The systemic issues and barriers to the access of women to justice in India has been highlighted earlier (Kumar, 2012). The apprehensions that advocates of PWDVA had expressed regarding its implementation were very much present in the field during the research. This research, through the voices of the women, provides evidence-based claims and shows the direct impact on the lives of women of how the judiciary operates. These findings pinpoint certain behaviours of the law implementers, which influence the outcomes for the women, and therefore these behaviours should be addressed in the training curriculum that is being designed for judges on gender-based violence and PWDVA. This chapter mainly highlights how the behaviours and practices of judges and lawyers and the way the court operates affect the outcomes for women accessing PWDVA. I saw that, even though some judges exhibited positive behaviours and practices, more prevalent were negative behaviours and practices that adversely influenced the outcome for the women. The behaviour of the judge(s), not surprisingly, had a direct correlation with the satisfaction level the women had with PWDVA. The quality of the orders is dependent on the judges. If the judge was active and supportive, the outcome was better for the women, even though other stakeholders, such as lawyers, protection officers or the police, may not have behaved satisfactorily. The sensitivity shown by the judges also influenced the behaviour of respondents. Not only did the behaviour of judges influence the

compliance with the orders, but also it was influencing the future gender relations between the women and the respondents, which I will discuss in Chapter 8.

Criminal courts and civil procedures

The uniqueness of PWDVA is its civil nature and implementation through criminal courts or magistrates' courts. PWDVA had been strategically located in the magistrates' courts, which are supposed to provide speedy proceedings as compared to family courts or civil courts. However, this also means that these are courts that do not handle family cases, for example, matrimonial disputes, maintenance, custody, divorce etc. as these civil cases are handled in family courts. Kothari (2013) states that the reason for this was that the advocates of PWDVA believed that family courts did not offer quick remedies to women, and also the weightage of the metropolitan magistrate orders would be more than compared to those from the family court. However, providing examples of the courts in Bangalore, Kothari points that this move has not gone in favour of women as in the courts, not all magistrates are assigned PWDVA cases and some courts only take up cases for one or two days a week. This makes speedy justice a difficult task due to the bottleneck created by the limited access to the courts (Kothari, 2013).

The findings of this research suggest that indeed in some areas, bottlenecks are created when specific judges are assigned to deal with PWDVA. For example, in Delhi, only special women's courts handling crimes related to women deal with PWDVA, and access is only through two or three judges in one court. However, in most places all the judges deal with PWDVA. In MP also, all the judges were dealing with the PWDVA cases. Barring one exception in UP, in all districts of UP

in the research all the judges were dealing with PWDVA cases falling in their assigned area. The only exception was one district, Lucknow, where only one judge dealt with all PWDVA cases in the district, creating a huge bottleneck in the access to courts for PWDVA. This meant that, in most of the UP and MP, there was no limitation to access to the courts. However, the issue of the long duration of the cases, without speedy interim or final orders, persisted everywhere. The intention that criminal courts would deliver speedy justice did not materialise in the research area. This signifies the procedures judges adopt that contributed significantly to the long wait that women had to undergo to get relief were a greater barrier than the limited access to the courts. The judges adopted criminal procedures that were not called for in civil cases like those under PWDVA. There was a general lack of gender sensitivity among the judges. These factors influenced the outcomes for women more than the limited access to the courts, since in most of the research area there was no limited access to the courts.

Judges interpreting the PWDVA

Badrinath (2011), a lawyer by profession, has highlighted the fact that the higher courts control the interpretation of the Act. This author claims that the neutrality that the higher judiciary adopts actually masks the personal bias and subjectivities of individual judges (Badrinath, 2011). This claim was evident in the research, however this research points to the fact that sessions courts (lower courts) are also not free from biases and subjectivities. Out of the cases of the 78 women, there was only one case that resulted in an adverse judgement at the higher court. In the rest of the cases, the women were still struggling through the sessions courts. Further, Badrinath observes that the courts reinterpret the words of the Act to exclude relief in certain

categories or other procedures (Badrinath, 2011). This study shows that it is not just in certain categories but is almost all the relief granted according to the Act that is being administered parsimoniously. The Act also grants power to judges to grant any other order to assist the applicant in her rehabilitation. Judges have hardly used this power to the benefit of the applicant. The study observes that judges were in fact promoting compromise. It did not reflect that they were treating domestic violence as human rights abuse, they were just mediating a conflict that had arisen in a family. This highlights the Bacchi's WPR approach, that the resolution will be based on what the implementers perceive the problem is. As the judges were viewing domestic violence as the issue arising from the lack of adjustment between the respondent and applicant, the feasible resolution was recognised as compromise. There were also a notion that this lack of adjustment is also a result of western influence where women advancement and empowerment has resulted in greater autonomy of women, ultimately leading to breakdown of Indian family values. Hence judges seemed to view the respondent's need to control the women's autonomy, with sympathetic view and directed the resolutions accordingly. So even in the circumstances where respondent was being lax for example respondent did not appear for the court dates, far from being penalised he was getting the best deal by being absent. These incidences demonstrated perfect evidence for the claims that feminists make that the state is an patriarchal entity and that the institutions and the law favours and safeguards the interests of men rather than women (Charlesworth et al., 1991, Gangoli, 2007)

Badrinath suggests that the Supreme Court has curtailed the rights of residence, through the Batra case where the right of residence was denied because ownership of

the premises in question did not lie with the respondent. Now the judges are being very cautious in providing the residence orders (Badrinath, 2011). However, my research points to another kind of misuse of the residence rights where judges ordered women to reside with the respondent despite their unwillingness to do so, and in a few cases women were forced to go back and reside with respondent.

Issues emerging from the responses

Personal reform: It was evident that the behaviour of judges had a huge impact on the outcomes for women. Women noticed that respondents were getting the benefit of the doubt and not them, which affected their agency in a negative way. Perhaps judges might have had the impression that they were treating respondents and applicants equally, After all as discussed above according to Bacchi's 'what's the problem represented to be', judges were viewing the issue of domestic violence as a problem of adjustment between the respondent and the women applicant. Hence they were treating both respondent and women applicant equally, to address the issue.

But the reality is that when norms are patriarchal in nature, the processes which are assigned value and meaning as per the Bacchi's WPR, the outcomes do not support women with equal justice. To bring about a shift in this approach of judges legal tools which provides women with resolutions and rights, for example PWDVA will not help, it require extensive personal reforms of the judges, their ideas and attitudes about the gender based violence and also the way judiciary system works.

Economic abuse and maintenance: PWDVA has been given credit for its inclusion of economic abuse as a form of violence. Vyas (2006) argues that the judiciary should interpret economic abuse in a broader way and protect women's rights to be

employed and indulge in economic activities outside the home (Vyas, 2006). Others have said that PWDVA broadens the scope of maintenance. For example, Badrinath highlights the fact that maintenance as an entitlement often caters to the needs of middle-class or elite women and is not extended to all women. She stresses that maintenance is not provided by the state, it is provided by the earning male members of the family (Badrinath, 2013). In the absence of social security for women in India, economic abuse and the provision of maintenance becomes the most critical form of relief for women struggling with other kinds of violence. Often critiqued as a right that emerges from the unequal power relations that women share with men in India, this right emerges as more of a necessity for women to survive in the existing conditions, and hence it is a practical need, rather than a strategic need.

Like previous research, this research shows that maintenance orders were the orders most often granted (Badrinath, 2013, LCWRI, 2012). Not only were they the most often granted orders, they were the most desired orders. Most of the women reported that the maintenance order was the most important aspect of the relief they desired to get from PWDVA. This reiterates the above argument that, for Indian women, the need for maintenance is greater than the need to be protected. Since dependency on the abuser is high, maintenance takes priority over the protection order. The research shows that the protection orders were not only less often granted than maintenance orders, but also they were even less often granted than residence orders. This highlights the absence of any state-sponsored social security for unemployed women, often having dependent children with them. Due to this fact, women were affected more by the threat of having to maintain themselves and their children, in the absence of the respondent's support, than by the threat of violence. This is

especially obvious when claiming maintenance has proved a difficult task in itself, whether combined with issues of violence or not.

The main issue related to maintenance, as reported by the women, was the difficulties they faced in getting this order granted. They had to go through a difficult process over a long period, had to provide evidence of income and in most cases did not even have interim orders for maintenance granted. Research shows that even the presence of dependent children did not prompt early interim maintenance orders and often when granted it was a very small amount. Granting maintenance has been a task of the 'family court' under section 125 of maintenance, which provides for married women the right to seek maintenance from their husband. The judges in the 'sessions court' were the ones that dealt with the cases of 498A, and the influence of handling 498A was also seen in the management of PWDVA cases. Thus, even though maintenance orders were those most often granted, it was evident that maintenance was also the reason for the delay in the pending cases, as the procedures adopted to finalise the amount of the maintenance orders took time, especially when the respondent did not appear on the dates set.

Kothari, 2005 describes the advantages of PWDVA, compared to the 498A. It has been argued that PWDVA take care of the needs of women to be granted protection orders, without needing to file for divorce or judicial separation, which 498A was not able to do. The 498A was punitive for respondents but not rehabilitative for women (Kothari, 2005). However, the research shows that PWDVA has not been any different when it comes to the time and resources that women need to spend to get benefits which are not punitive in nature.

Conclusion

The findings highlight that within the court, the most powerful influencing agent is the judge, and the behaviours and practices that judges adhere to significantly influence the outcomes for women. The impact of such behaviours on the gender relations that women shared was also evident, in that respondents, upon realising that they could manipulate the system to their advantage, worsened the power relations that they shared. On the other hand, when judges showed gender-sensitive behaviour towards women, and were strict and prompt in granting relief and executing the orders, respondents felt compelled to change their behaviour. This resulted in better compliance and a positive shift in the gender relations that women shared with respondents. However, the incidences of positive behaviours resulting in positive outcomes were much fewer than those of negative behaviours. The impact of negative behaviours on the part of judges was very profound in some cases. The insistence of judges for women to compromise was clearly indicative of a failure to view domestic violence as a human rights issue. The judges were also seen to provide too many chances to the respondents and let the onus of collecting evidence lie with the woman applicant. The judges were seen to be very parsimonious in giving judgements. The findings show that the judges granted protection orders to only one-third of women. Given that the primary relief that PWDVA provides is protection from domestic violence, the missing protection orders for two-thirds of the research sample is very striking. The most often granted relief was maintenance and that, too, was not timely and adequate to address women's needs. In the research sample, not even a single woman received her compensation. The judges were directly responsible for the delay in granting the orders. The longer it took for the judgement, the more it put women in a vulnerable situation. It can be seen that rather

than the bottle neck created in accessing the PWDVA, it was the long duration of their cases that became a barrier to the women in getting relief. The findings related to lawyers shows that though not aimed as key stakeholders they took over the role of the protection officer and were expensive, thus increasing the financial strain on the women. Legal aid lawyers were free but were not appreciated much by the women. Overall, the findings of the research show that it is the way that law implementers behave and interpret the issue of domestic violence that produces the results for women. The same law can yield positive outcomes when judges viewed the issue as human rights and same law will have negative outcomes if judges viewed the problem as conflict arising from lack of mutual adjustment between the respondent and applicant. Hence there is a great need for judicial reforms, by which the judges who present a patriarchal picture of the state need to develop gender sensitivity in dealing with domestic violence cases.

Chapter 7: Police, protection officers, service providers

The previous chapter presented findings related to law implementers, such as judges and lawyers, who influenced outcomes for women accessing PWDVA inside the court. This chapter presents the findings related to law implementers who influence outcomes for women who accessed PWDVA, outside the court. These law implementers are the police, protection officers and service providers such as NGOs and shelter homes. These law implementers have a central role in implementing the legislation as the first point of contact for women in most of the cases. They assist the women in making an informed choice and guide them on how to access PWDVA. They help in filing the cases in court and can produce evidence on their behalf in court, which can assist judges in passing the relevant relief orders. After the

orders are received from the courts, these law implementers then have a role in assisting women by ensuring compliance with court orders and offering solutions to other rehabilitation needs of the women. These law implementers influence the ease of access to PWDVA rather than the direct outcomes. Among these three law implementers, the police, protection officers and service providers, the findings show that the most influential law implementers outside the courts were the police. Contrastingly, among these categories of law implementers, the police received the lowest ratings from the women who accessed PWDVA.

Police

The police generally have two important roles in the implementation of PWDVA. They are the first port of call for many women and therefore can help women immensely in establishing evidence; for example, filing a first information report (FIR) of the incident of violence or arranging a medico-legal report of the violence by issuing a directive for a medical officer. Additionally, they should direct women to the protection officer so that a domestic incident report can be prepared. The second role they play is in the implementation of court orders, where the intervention of the police is required. The findings of this research shows that police have not adequately performed their role, especially as the first port of call for women. Women reported that not only did the police lack commitment to assisting women, but also they were often apathetic and rude and systematically discriminated against them. Most of the women interviewed reported that the police ignored, discouraged and even turned them back when they requested assistance. Many earlier studies have already discussed this patriarchal and apathetic attitude of the police towards women (Tehelka, 2013, Gangoli, 2007, Verma, 1999). Even women police officers

have also been reported to exhibit the same behaviour (Kethineni and Srinivasan, 2009). This study reiterates these findings as the police received the lowest ratings. Analysis of the findings revealed that the police were the most influential implementers after the judges; however, they failed to fulfil that influential role with responsibility. However, the police scored better in implementing court orders in many cases. Overall, the police got the lowest ranking from the women. Of the three States, the Delhi Police received a better rating from women as compared to the other two States of MP and UP.

Primarily, women contact police after suffering an incident of violence to seek some recourse. Often the intention is to obtain some immediate action for their situation. Many women want to lodge an FIR with police. Secondly, women also contact police when they have received court orders and need assistance from the police in getting compliance from a respondent. The research revealed that the police were least responsive when women contacted them at the first stage requesting some immediate action. However, the police responded more effectively when the women contacted them in the second stage when they already had court orders and those orders required some action from police. This was true for both MP and Delhi, where the police assisted and cooperated with the women more when they had court orders.

However, in UP several cases were reported by the interviewees where, even if the women had orders from court, the police did not support them in the implementation of these orders. The police often used this situation as an opportunity to take bribes from the women for the execution of the orders, or even took money from the respondent for not executing these orders. The level of corruption among police seemed to be higher in this State. Some incidents that were shared by women in UP

were shocking and showed extreme inefficiency by the police in addressing the issue of violence faced by women (see Box 7.3. Story of Amba).

Table 7.1: Women reporting on incidents of police behaviour

	Very good	Good	Satisfied	Indifferent	Bad/very bad/NS	Not accessed	Total responses
Delhi	1	2	9	9	3	5	29
MP	0	1	4	12	3	7	27
UP	0	0	4	11	7	6	28
Total	1	3	17	32	13	18	84

Positive behaviour of police

Less than one-third of women reported satisfactory responses from police assigned to their case. Out of the 78 women interviewed, 60 women were able to access the police. Out of these 60, 17 (28%) were satisfied and only four women (6%) reported good or very good experience with the police in all three States. More women were satisfied in Delhi than in MP and UP. In UP, not even one woman ranked the police in the good or very good categories. Behaviours reported as good were few and amounted simply to the implementation of normal police duties. However, negative behaviour from police has become such a norm that in simple incidents where police did not exhibit such negative behaviour, it was taken as good behaviour by the women. I have classified these behaviours as follows.

Accessibility: Among the three States, the best performance of police was in Delhi, where all 21 women who accessed the police reported that, when they dialled 100, the police did arrive at their doorsteps. In the other States, women did not report calling 100; these women went in person to report at the police station. However, the arrival of police at their doorsteps did not always mean police support. These incidents of the negative influence of the police will be discussed later in the chapter.

Registering the FIR or receiving the complaint: Registering an FIR is so difficult that, when able to register one, the women reported it as good treatment received from police. Women also considered this step taken by the police as good behaviour, especially as later on these women gained an advantage in court where FIRs registered with the police were considered as good evidence. For example, Ashma reported that her sister's husband had complained at the police station that Ashma was being tortured for dowry. Both Ashma and the respondent's family had negotiated earlier that the respondent would try to change, but if this harassment continued then Ashma's family would file an FIR with the police. This was a simple complaint on paper with a stamp to show it had been received at a police station. This report was later used as evidence in court. However, Ashma reported that getting a receipt from the police station was possible because her family knew someone at the police station. Furthermore, Ashma agreed that, for other women, even getting a complaint registered by the police might be difficult. This demonstrates that when the police deny registering an FIR or receipt of a complaint application, they are denying the women a form of concrete evidence, which judges are looking for while processing cases under PWDVA.

Responding to women's complaints: If the police took any action on complaints, the women reported this as good behaviour. There were a few women who reported that the police did make some efforts in trying to help them, even if they had not registered an FIR. They mediated in the case and tried to counsel the respondent to mend his ways. One woman from Delhi reported that she felt the police were trying to solve the problem so that she could spend a peaceful time with her husband. Shabina reported that the police even locked up her husband when she called them after dialling 100.

Ensuring compliance of orders by respondents: The women, however, reported more positive incidents when they had court orders which needed support from the police. Kiran reported that, for the compliance of her residence orders, a whole team of police officers came along with the SHO (Station House Officer) of the police station. They forced open the locked house and facilitated her entry into the house in accordance with the court orders. They even made a video shoot to document the whole process of taking over entry to the house. Another interviewee from Delhi, Usha, also reported the effective implementation of the court orders by police. Her in-laws had evicted her from the matrimonial home, for which she received court orders instructing the police to reinstate her in her matrimonial house. A squad of officers accompanied her to ensure her safe entry into the home, as she recalled, *"It was 12.00 in the night and the street was full with police officers, neighbours came out to see what was happening"*. Police officers were very polite with her and very strict with her in-laws, and clearly told them that they could not force her out of the house. For the next few days, police officers religiously came to check twice a day just to ensure that she was doing well in her home.

Seedhi reported that the police had treated her rudely when she came with a complaint. However, there was a noteworthy change in the support provided to her when she went to the police station with court orders later. The police then pressurised the respondent to comply with the custody order. According to her, this response from police had helped in increasing her power to negotiate with the respondent.

Providing supportive guidance to women: In MP and in Delhi a few women reported accessing ‘women’s police stations’ – created specifically for women and with female officials. The interviewees stated that the women’s police station did not directly contribute to any action against respondents. However, they provided advice on how to further their case and gave the women contact details of NGOs or lawyers. One woman reported the police behaviour as good because she got help from police easily, however it should be noted that she used to work as a domestic help in the home of a police officer.

Special mention for UP State: In UP, not even a single interviewee had good words for the police. Only four women out of the 28 interviewed were satisfied with the response they got from police. Furthermore, of these four interviewees, two reported that out of two interactions with police, they had one bad and one satisfactory experience. There was not even one incident of positive behaviour from police in UP relating to a PWDVA case. This finding is very alarming, although given the already established reputation of police in Uttar Pradesh for being apathetic towards violence over women, it was not unexpected.

The negative behaviour of police as reported by women

The police were the worst scoring law implementers according to the women interviewed. A very typical apathetic behaviour from police was reported by most of the women. I was myself witness to the apathetic attitude of police⁷. Women from all States reported such negative behaviours. This section classifies that negative behaviour in detail, specifying what actions exactly influenced women's experiences with the law and the issues that they were trying to address.

As previously noted, Delhi ranked better than MP and UP on responses from the police. However, even in Delhi, the police were the worst ranked law implementers. Of the 66 women who accessed the police, 45 incidences were reported as indifferent or bad. In UP, 20 women who accessed the police recounted 22 incidences of contact with police (two women reported to have contacted the police twice). Of these 22 incidences, 18 were not good experiences for these women. UP ranked worst among the three States and the police were most inefficient in supporting the women victims of violence. The women reported outright negligence at the police station and also reported prevalent corruption, where police demanded money from them or took money from respondents in lieu of not taking any action against them. Not even a single woman out of 20 had any good words for the police. Treatment provided by the police is critical, because when the behaviour of police is not good it becomes more traumatic for the women, who are already victims of violence and gender inequality.

⁷I was in a police station in Delhi to report my lost wallet when a woman arrived to report domestic violence. I sat through and witnessed the whole account of how she was treated. The police were unaware of my research subject and I was sitting there as just another complainant. This was a great opportunity to witness first-hand how police treat domestic violence cases.

The interviewees reported the negative behaviour of the police in the following categories: a) indifferent or rude behaviour towards complainants; b) failure to take any appropriate action; c) supportive attitude towards respondents rather than complainants; d) corruption and misuse of power.

a) Indifferent behaviour or rude behaviour

No other law implementer was reported to have behaved as rudely with women as the police. Out of 21 women in Delhi who accessed the police, 11 reported that the police did not do anything for them or even behaved rudely to them. In MP, 15 out of 19 and in UP 18 out of 20 women reported indifferent or bad behaviour. This displays apathy towards violence against women and the patriarchal attitude of most police personnel. The police often dismissed these women, telling them that this was their private matter and they could not make complaints about these everyday, trivial affairs. The police also had a tendency not to believe the women and the complaints they reported, often asking them for proof or asking for details and evidences to verify the violence, often dismissing them as trivial matters if the women were unable to provide those details. For example, in a case in Delhi not only did the police show cold behaviour they also questioned the complainant, asking her why she had tolerated such behaviour for so long as she had been married for several years. They just shrugged off their responsibility, saying they could not do anything if her husband was not responding to their request for him to appear at the police station. Another woman from Bhopal, Tara, reported that she received no response to her complaint at the police station. She even went to the Superintendent of Police and nothing was done for her.

They did not even register the complaint. One woman from Seedhi reported that the police asked for evidence of violence and shrugged off their responsibility for registering the complaint by telling her that they did not believe her.

Box 7.1 Women reporting rude behaviour of Police in UP

Sushila: *“We received very bad behaviour from police. When we went to file an application at police station, first of all they looked at our faces as if wondering where we are coming from. They did not write FIR easily. They unnecessary asked too many questions and made us wait for one hour. I started crying. The NGO staff with me pressurised to write an application. The SHO treated us very rudely. He came in and we did not stand in front of him and he was upset with that.”*

Sarika: *“I had to go to police station every day for 4 to 5 days. I used to go and sit there but they did not do anything for me. I used to go in heat and sun.”*

b) Failure to take appropriate action

When they arrived at police stations, the women expected some response from police to their complaints. However, most of the women reported that police refrained from taking the appropriate actions. The police were the law implementer that received most of the “did nothing about my complaint” statements from women. In Delhi, when the women dialled 100 the police did arrive, but for most of the cases it did not result in any positive actions for the complainant.

There are two actions that are the critical responsibility of the police; however, they failed to take these actions. These actions are important as they establish strong evidence in court. These two actions are:

- i) First Information Report (FIR): Not registering the FIR was the first complaint that women made against the police. According to Indian law, any aggrieved citizen has the right to register an FIR with the police, who cannot refuse to register an FIR as this registration is mandatory under section 154(1) of the Indian Penal Code. Also, Section 154(3) of the Indian Penal Code provides that, if any person is aggrieved by the refusal to register an FIR, the person can go to the Superintendent of Police. However, the police are generally known not to file FIRs as this would require further investigations on their part and appropriate actions must be taken if the investigations find the complaint to be true. Not raising an FIR means a lighter workload for the police. The police commonly claim that, in cases of domestic violence when they do start taking action, the woman then retracts her claims, and wishes that no action be taken against the respondent, which results in a waste of police resources. Another option that the police have is to receive the complaint in writing and give the woman an acknowledgement of receipt of her complaint. Only one woman from Delhi reported receiving such an acknowledgement of receipt of her complaint. Neither did any other women receive a documented acknowledgement from the police.

- ii) Failure to direct women to a medical check-up: A key responsibility of the police lies in sending women for a medical examination if they have sustained injuries or complain of having sustained injuries. Documenting the exact description of the violence in a medical report serves as concrete evidence in court. However, this was hardly common practice. Police rarely used their power to direct a woman immediately for medical examination when she approached them. Only two women from Delhi reported that police took them for a medical examination.

Unfortunately, not many women received this support from police and had no evidence to present in court regarding the violence they had faced. In one case from Bhopal, MP, a woman reported that when she went to the police station, her whole body was black and blue from beatings. The police acknowledged the violence, however said that there was no need for medical examination. They just filed a report and did nothing for her after that. In another case from Kanpur, UP, even though the woman had a fractured hand from the beating by her husband and wanted a medico-legal report, the police refused to send her for a medical examination. Unfortunately, even the medical officers do not provide a medico-legal report to women without directives from the police. Another woman from Delhi reported that the police discouraged her from getting a medical report when she asked for it. This is very serious concern as to why police seem to avoid getting a medical examination done, even when they

are aware of the fact that a medical report will be strong evidence in court, and they therefore deny women access to this source of evidence.

Apart from these two concrete actions, which required paperwork from the police and which the police failed to deliver, the women gave ample examples of incidences when the police did not do anything for them. Even in Delhi, when the women dialled 100 and police did arrive, in most of the cases it did not result in any positive action. In UP, all the women reported that the police did nothing for them. Lack of action from the police had direct implications on the outcomes for women. For example, in one case from Bhopal (Anjum) where the respondent had absconded with their two children, the police did not take any action when the woman went to the police station with a complaint. After two days, she went to a public hearing attended by a senior police officer who heard her plight, and it was on his directives that the same police station took prompt action so that the police were able to track the respondent and get her children back. This example shows that if the police are willing, they can sort the matter out immediately, however they had not perceived this case as a situation requiring their immediate attention since the children were with their father. Since a patriarchal society accepts the father as the preferred legal guardian, they did not give any attention to the case until they received directions from a higher authority.

In some cases, the women also reported that they did not get support from the police in ensuring compliance with the orders received from court. Three women in MP and two in Delhi reported the lack of action from the police even when they had court orders. The women from MP said that, due to the lack of police support, there was non-compliance by the respondent despite the interim court orders having been passed. Had the police been supportive, even with the judge's indifferent attitude, the outcomes would have been better for those women. For example, in one case from Bhopal, the court had issued an arrest warrant but still the police showed no willingness to arrest the respondent. The police did not report to the court and made excuses that they were unable to find the respondent. This was despite the fact that the accused lived in the city and had not absconded. The woman reported that the police not only did not carry out investigations regarding her case, but also preached to her about how she should have conducted herself or how she should have dealt with her problem instead of coming to the police station.

c) Supportive to respondents rather than to complainants

Women generally complained of a tendency by the police to be supportive towards respondents rather than complainants. When it came to the choice of hearing and believing the version of the complainant or of the respondent, they seemed to be convinced in most cases by the version of the respondent rather than the woman. They demanded that women bring in witnesses in support of their complaint, however no such requests were made to the respondents. In one case from UP, a woman made a complaint against her

father at the police station, and she was told to go back to her home. When she insisted that a complaint be lodged she was then detained at the police station. Only when an NGO intervened on her behalf was she released from the police station. In this case, although he was not even present at the police station, the father rather than the complainant received supportive behaviour from the police.

In another example, when a woman of Delhi called the police during an instance of violence, the police officers who arrived ignored the complainant and instead spoke only with the respondent and his family members. The woman had been held up by her mother-in-law inside the house and could not talk to police. However, the police did not question the fact that the complainant was not there to talk with them. The police went away after being assured by the woman's in-laws that nothing had happened and that the complainant had called them on a very trivial matter. This raises the question of the responsibility of police to talk to the complainant rather than the respondent. Why should the police even have talked to the respondents in the first place, as they were the reason the woman had had to call them? Why should the police not have insisted on talking to the woman who had called them? And, when they left without talking to the complainant, did they not compromise her safety, as she could have been in some danger?

In this same case after the police had returned, the complainant made a distress call to her own mother, who then went to the police station and again reported that her daughter was in danger. It was only then that the police took any action. They called the respondent to the police station and put him in

lockup despite the fact that the complainant did not want the respondent to end up in lockup. This was the police's own decision. When the woman and her mother told the police that they did not want the respondent to be locked up, the policeman became angry and asked why they had complained. This indicates an unbalanced police response: either there was none, or it was much more than the complainant requested. It also showed that often when a woman was alone her complaints were not taken seriously. Women needed the pre-approval of others, like her guardians (mostly parents or other elders) or the support of NGO staff, for the police even to consider her application. This finding was reiterated by Jasoda who reported that, when a complainant contacted the police by herself, the police did not pay heed, saying this was an everyday matter. Only when she went through the NGO staff did they hear her complaint.

d) Corruption or misuse of power

Corruption within the police department has existed in India for a long time (Verma, 1999). Therefore it is hardly unusual that, in all three States, women openly reported that they either faced or suspected corrupt behaviour by the police. Police corruption involved taking bribes and misusing their powers against women or in support of the respondent, especially if the respondent had influential connections that elicited such actions from the police. A couple of them commented that the police asked them outright for money, while others noted that they felt the police had taken money from the respondent in return for not taking action against him. The police even asked

for money for court order compliance, even a Deputy Inspector was reported to have demanded money. Women in such situations had no recourse and were often left unsupported. Reporting against this corrupt behaviour was also very difficult for them. This feeling of helplessness that was induced by non-responsive police, clearly had an adverse impact on the outcomes achieved through PWDVA, and it also unbalanced the gender relations the complainants shared with the respondents. A few women reported that, although the police did not ask them for money, they suspected money had been taken from the respondent instead, as police officers went to meet the respondent but came back after doing nothing. In one case in Bhopal, the police even told the complainant's mother that since her daughter eventually had to live with respondent, it would be best if no action were taken against him and they closed the case. This woman from Bhopal stated she was sure that the police had taken a bribe from the respondent.

Box 7.2. Women reporting corrupt behaviour of Police in UP

Madhu: *"I complained to police. Then the police arrested him (respondent) and asked money from me. I did not have any money .So they took about 10,000 INR from him and reversed the FIR which I had filed with them earlier. They said that I filed a false case and that my complaint was found baseless and they filed FIR against me saying that I provided wrong information to police."*

Gudiya says: *"I was not heard of in the police station. I had called 100 on phone many times but they did not do anything for me. They did come home but took money*

from him and left. I gave many applications to the police station, begged them to do something for me but nothing was done for me.”

Box 7.3: Story of Amba

Amba is a well-educated, young woman who married at the age 22 years. Within six months of marriage, after regularly facing violence from her husband, she had gone to the police station to complain and the matter was resolved by the police, with counselling of both parties, and they had asked them to compromise. However, within 15 days the cycle of violence resumed for Amba. Amba was pregnant at that time. She tolerated the violence for another six months but on 6th May 2011 she had to leave the house with a fracture in her hand which had resulted from when her husband beat her with a stick. When she went to hospital, doctors informed her that if she wished to have a medico-legal report, she would have to come through the police first. Without any police directives, they could only treat the injuries but would not write a report. They needed to have an FIR first to issue a medico-legal report. This advice was given, despite the fact that due to the fracture she was in immense pain and was crying. When Amba and her parents went to the police station, the police did not write any directives for a medical assessment and did not even lodge a complaint. Then Amba's family contacted an NGO staff member, who took them to the Deputy Inspector General, the highest police authority in the district. There with much effort and pressure from the NGO staff, finally, directives for getting a medical check-up were given and an FIR was finally lodged. This process took four days, during which Amba had to go without any treatment for her fractured hand.

(Amba was interviewed, but her experience is not part of the 26 women analysed for the research in UP. However, her experience with the police amply demonstrated their extreme inefficiency, so it is worth discussing when analysing the behaviour of the police as law implementers of PWDVA).

The attitude shown by the police is reflective of the deep patriarchal notions of domestic violence as a private matter within the family within which the police have no role to play (Gangoli 2007). It also reflects that the police feel violence is justified if the male guardians of the family conduct it within the four walls of the home. Hence most of the situations of violence towards women were not deemed to be urgent and needing prompt action. The outcome of this attitude was that the police did not initiate any action on most of the incidences that were reported by the women in the research sample. In some cases, police even counselled women on the consequences of a broken family for women, hence advising them not to initiate any action. The police also did not consider a woman's complaint unless she was accompanied by more powerful people, such as family elders, NGO staff etc, or had references from other influential people. Even when actions were initiated, the police clearly had a bias towards the respondents, irrespective of the seriousness of the incidents reported by women. The effect of such behaviours was very traumatic for women. Not all women contacted police in the research. The women who contacted police did so because they had exhausted all options and were in urgent need of some response on the issue of violence they were facing. The negative behaviour and non-resolution of their issue by the police resulted in a feeling of frustration and helplessness. It also deteriorated the gender relations they shared with the respondent as they felt nothing could be done about their issue.

The finding of the research corroborates few things that have been earlier documented. For example LCWRI (2012) has highlighted that police were more supportive for compliance of the orders (LCWRI 2012). This research also shows that police were somewhat supportive when there were court orders. LCWRI has also warned about police taking the role of counselling and trying to solve the matter without reaching court (LCWRI 2012). This research also showed that either police ignored the women's complaints or tried to solve the matter themselves.

Protection officers

This law mandates the appointment of protection officers as its main implementers. The purpose of recruiting protection officers under the law is to provide assistance to women at all stages when they seek to address their issues of domestic violence through PWDVA. The protection officers can be the first port of call for women or can be contacted later by the court to help in the court proceedings and in gathering evidence by conducting home visits to the aggrieved women. The protection officers were the only law implementers that had been appointed by the three States in different capacities (full-time or part-time/ as additional duty) and at different levels (sub-district level or district level). Because of this, protection officers performed their responsibilities with different levels of involvement, as will be discussed in the following section.

Accessibility of protection officers

Before proceeding to the influence of protection officers on the outcomes for women affected by violence it is important to discuss the circumstances of appointment of protection officers because it determines how accessible they are for women. However, this research shows that protection officers were the least accessible law

implementers among police, lawyers and service providers given that 40 women did not access a protection officer. This is very startling finding simply because as protection officers are key stakeholders in the protection of women, their accessibility is a top priority as well as the very purpose of their appointment. Despite giving the police their worst ranking, women were able to access the police more easily than they could the protection officers. Realising that the police might not be the preferred choice for women to contact in issues related to violence, this Act visualises the appointment of protection officers to provide a supportive environment for women. However, the research shows that in practice this was not the case, as almost half of the women did not even contact them.

Depending on whether protection officers were appointed full time or part time and the level they were appointed, at district or sub district level, following three classifications are being made which influenced their accessibility:

Full time, district-level, protection officers: Delhi

As described in Chapter 5, Delhi is the only State that appoints two full-time protection officers in every district. Since Delhi is divided into nine zones (districts), it appoints 18 protection officers. Delhi is a special case not only in that it appoints the full-time protection officers, but also because it widely advertises the contact details of these protection officers through the media, posters and banners. Of the 26 women interviewed in Delhi, 21 women accessed the protection officers, hence Delhi is the State where most of the women interviewed had met a protection officer. Only five women did not remember having met a protection officer and proceeded with the help of a lawyer or an NGO. The women who had accessed a protection

officer, however, did so because the NGO or the lawyer helping them took them to the protection officer, or because the court directed the protection officer to submit a report on the case. This showed that the law implementers coordinated well and referred the women to the protection officer.

Part-time sub-district level protection officers: MP

In MP, the protection officers were appointed at sub-district level (at block level) and therefore each district had about 10-15 protection officers. However, when it came to accessing protection officers, 15 women out of the 26 interviewed did not contact a protection officer. Of those women who did contact protection officers, their contact was very brief and the time and resources spent by the protection officers on the women were not satisfactory. Therefore, the access to protection officers in MP, though somewhat better, was not significantly different from that in UP State, where the protection officers had responsibility for larger populations.

Part-time district level protection officers: UP

In UP, just one protection officer was appointed at the district level, thus making the accessibility for women very difficult. Even though Delhi also had district-level appointed protection officers, there were still two in a district and they were working full-time. In UP, this one protection officer at the district level was the social welfare officer who took this role as an additional charge. The effect of this was clearly visible in the lack of accessibility for women. UP came out as the State where, compared to other two States, the maximum number of women, that is 20 out of 26, reported not to have accessed the protection officer. Even contacting women who

had accessed the protection officers was a difficult task. In two districts of UP, Barabanki and Sonbhadra the researcher tried to contact women through the protection officer. After much effort, five women were interviewed with the help of the protection officer in these two districts. In Barabanki district, where the protection officer helped in interviewing two women, both women reported that they did not meet the protection officer. On the other hand, the protection officer of Barabanki showed in his records that he had submitted a report for both of these women in the court. For the other woman in Barabanki, the protection officer had even served the breach of court order notice to the respondent, but the woman applicant in this case was unaware that such action had been taken by the court and that the protection officer had served the notice. Similarly, in Lucknow, another district of UP, two women did not remember that they had met a protection officer, while an NGO later confirmed that they had indeed met a protection officer once who had taken statements for the case. This shows that even among the six women who reported having accessed the protection officers, four of them did not remember having met a protection officer. This also means that another 20 women who reported not having met a protection officer, might have met one during the process but may not have remembered the meeting. The researcher could not verify whether in fact a protection officer had met these women.

An analysis of the examples from the three States reveals that there is a clear correlation between the level of the protection officers and their accessibility for women. However, the stronger correlation arose from the fact of whether the protection officers were full-time or not. For example, in MP, even though the protection officers were appointed at sub-district level and over an area of the lowest

population density among the three States, their accessibility was very poor when compared to Delhi, where the protection officers were appointed full-time. It was noted that in MP and UP, where protection officers are not appointed in full-time positions, the worst accessibility rates were recorded.

Table 7.2 Women reporting on the behaviour of protection officers

	Very good	Good	Satisfied	Indifferent	Bad/very bad/NS	Not accessed	Total
Delhi	3	2	12	2	2	5	26
MP	0	3	2	3	3	15	26
UP	1	1	0	4	0	20	26

However, the research focusses on the women's perspective of the protection officers and how had protection officers helped them during the process of accessing the PWDVA, rather than how accessible the protection officers were. This section presents the experiences of women who did meet the protection officer and how it influenced their outcomes. As the maximum number of women (about 21) who contacted protection officers were in Delhi, most of the influence on the outcomes is based on what women in Delhi reported. In UP, only two women could share their experiences (four women do not remember having met the protection officer) and, in MP, 11 women shared their experiences.

Positive influence of protection officers

Although most of the women who accessed the protection officers said that they found their behaviour satisfactory, this did not have any noticeable positive influence on the outcomes for the women. Only the women who reported good behaviour were the ones who experienced any positive influence on their case. All of these women were satisfied or highly satisfied with the outcomes of PWDVA.

Although the women acknowledged that the protection officers completed the DIR for them, and that there were hardly any incidences of rude behaviour from them, it did not necessarily mean that they noticed any positive influence on their outcomes. Most of them viewed the filing of the DIR as paperwork that did not necessarily have any positive effect on their case. Only a few women could pinpoint receiving assistance from the protection officer as an added advantage in their case.

Protection Officer's report as evidence in court

When the protection officer simply filed a DIR, the women did not see it as influencing their outcomes. However, when a protection officer made a home visit and submitted the report in court the women reported it as a valuable process that helped them in their outcomes.

Thus, the protection officer had a clear influence on the outcomes for the women, especially if the judges involved them in collecting evidence for the women. Directed by the court or on their own initiative, protection officers who made home visits had a positive impact on the women's experience of accessing PWDVA. Judges who used protection officers processed the cases faster, and the women reported quality in their outcomes. In a way, this is a judge's behaviour of utilising

the protection officer's report, but this is the only one, clear-cut, direct contribution of the protection officer in directly influencing the outcomes for women. In UP, the only good words for protection officers came from three women in Sonbhadra and two women in Lucknow, wherein these women stated that the protection officer supported them and treated them well and submitted a favourable report in court for them.

According to LCWRI (2012), the courts might not give importance to the protection officer who has been employed on a contract basis and is not a recognised government officer (LCWRI 2012). However, it was seen that the courts were consulting the DIR and home visit records of protection officers in many cases in Delhi while making decisions for the women in their cases. One woman in Delhi noted the positive influence of the protection officer in her case. The judge passed residential orders in her favour, based on a report that the protection officer had submitted.

Support in compliance of orders

Apart from the police, protection officers were the only law implementers that could help in the compliance with orders released by the courts. All three women in Delhi who reported the protection officer's behaviour as very good did so because they received help from the protection officer after the court orders were released. They said that the protection officers came to their home to ensure that the orders were being complied with and also helped in serving the order on the respondent. This support was highly appreciated by the women.

Providing emotional support

A few women also reported that in addition to their normal duties the behaviour of the protection officers provided them with emotional support. The only other law implementers reported to have provided such support are the service providers/NGOs, which will be discussed later in this chapter. Though the cases of getting such support and guidance from protection officers were few when compared to that received from the NGOs, the support of such a nature was appreciated by the women.

Box 7.4: Positive experiences of women with protection officers

Kiran: *“I was scared for my life and I asked court to assign protection officer. I met protection officer at court. Then she said that you reach Thana. I went to Thana and then we took police and they got us entry in the house. She supported me in every way. I used to get call from Protection officer”.*

Mukta: - *“Protection Officer filled the DIR and she came to my home also two times to see how I am living. She very nicely asked from me what has happened with me. She took all the details and filled the DIR. She came to give stay order to my husband”.*

Madhu: *“I met protection officer, she met me personally and supported me and she pressurised him for me. Her report was submitted in court.”*

Parvati: *“I met protection officer in her office with the court order to get custody of my child back. I found her in first visit. However she said that she cannot accompany me as it is out of her area in Faridabad. She said go to SHO and she*

called SHO over phone to inform that I will be coming”.

Negative influence of protection officers

For most of the women, the protection officers were unable to provide the positive influence on the outcomes of their cases they should have according to the roles and responsibilities described for them in the Act, although not through a direct lack of responsibility but rather because of the poor quality of services due to limitations related to handling a large population with low resources. .Most of the time, even when women said that they were satisfied they actually meant that they did not see that the protection officer made any difference to their outcomes. A few of the difficulties that women encountered while contacting protection officers in relation to their PWDA cases are as follows:

Low accessibility and poor quality of services

Many women reported that protection officers were inaccessible: they were not in office and the women had to make several trips to meet them. This became even more cumbersome when in court, when the judge insisted on the protection officer's report as evidence. A few women reported that due to this issue their cases got delayed. For example, a woman from Delhi reported that, when about to pass the order, the judge realised that the report from the protection officer was not there. Then Nitika was asked to get the protection officer's report filed before an order could be passed. Nitika had to then run around to get this report submitted, causing her frustration because of this unnecessary delay and due to the effort she had to put in getting the report submitted. Another woman complained that when the judge had asked for a home visit report, she had to go to the protection officer's office. She had

to provide all the information at the protection office, and the report was made at the office of the protection officer without any home visit. In a couple of the cases, the protection officers were responsible for increasing the duration of the cases for the women as they lost the DIR or did not act on the DIR for quite significant amounts of time.

No advantage to contacting the protection officers

Some women reported that being in touch with the protection officer during the process of accessing PWDVA did not add any value for them in the whole process. Though many interviewees stated that the protection officers did not have any adverse effect on the outcomes of PWDVA unlike judges and police, but still, the women could not see any real advantage of the DIR that the protection officers completed for them in this process. It was often reported as a negative influence simply because it was just a waste of women's time and resources, as for women it was just another bureaucratic step with no advantage to them. For example, the woman (Nitika) from Delhi reported that having the protection officer file an DIR delayed the process, as she was about to get an order when the judge suddenly realised that the protection officer had not filed a DIR in her case and delayed releasing the order until that came. In particular, given that the protection officers are responsible for the implementation of PWDVA and the sole purpose of appointing them is to provide assistance to the women accessing PWDVA, then if the women could see no advantage in contacting a protection officer it raises the question of whether they are playing the role that had been envisaged in the Act.

Insensitive reporting and counselling

Insensitivity while reporting was stated only in a couple of cases in Delhi, however in UP and MP insensitive reports were made by protection officers. In some cases in UP, protection officers did not even meet the women and yet they made those reports. For example, in one case in the Kanpur district of UP, one woman's case (mentioned in Chapter 6 earlier) had been received a setback as the protection officer filed a report against her. The protection officer in this case made this report based entirely on the statements of the respondent one-and-a-half years after the case had been filed. In this report, he wrote that no domestic violence had happened. This insensitive behaviour of the protection officer was a big setback for the woman, whose lawyers now had to challenge the report, contesting that it is not the purview of the protection officers to make such judgements.

Similar observations were made in Banda district of UP, where an NGO staff member shared the fact that protection officers make reports even without meeting the women. In one case, they reported that the protection officer submitted wrong details of the woman and when the staff pointed out the mistake, the protection officer admitted making the report based on the feedback of some community member. Such behaviour from the protection officer indicates that their involvement is just on paper. Such reports can only be weak and ineffective, and this may have an adverse impact for the women as the court sees a report from an officer who has not even met the woman concerned.

In Sonbhadra district of UP, it was found that the protection officers were acting as screening agents, trying to resolve some cases themselves through counselling of both the applicant and the respondent, and they were only sending to the court the cases that they could not resolve. In a case from MP, it was reported that the

protection officer had tried to convince the woman that she should not go ahead with the case. Reportedly, this highly compromised the women's outcomes as it did not solve her issue of domestic violence, and such advice reinforced the fact that preserving the family is considered more important than the safety of women. It also reinforced the view that society expects women to tolerate some level of domestic violence to save the family from breaking up.

Box 7.5 Negative experience with protection officers

Gudiya (Delhi): *"After I filed the case I did meet protection officer when judge called for it. She did not come but called me to her office. She did not come for home visit. DIR was filled in her office. Whatever information she should have gathered herself from home visit was asked in the office and submitted in the court."*

Awdesh, an NGO staff member in Banda: *"Protection officer do not play any role here. Court sends intimation to them for report. They just signs and send it back. They do nothing. In one case an infant was taken away from the women. The protection officer reported that the child is 7yrs old. Then we went to protection officer and asked how come he write the age of child as 7yrs. Then he said I just wrote what my staff was told by villagers. In reality they do not go there to write a report. They also not go to serve the notice. They just say that respondent was not there."*

The protection officers, on the other hand, expressed that they were overloaded with the huge amount of cases that they have to handle. Additionally, they were highly

under-staffed and inadequately supported by infrastructure and resources like transport etc. A few protection officers even stated that they had not received a salary for the past few months.

Observations related to the role of protection officer

Apart from interviewing women, different perspectives on how protection officers were playing their role in different States were also documented, these included information from NGO representatives and the protection officers themselves. In UP and MP, the involvement of protection officers remained low but consistent over the previous few years. However, in Delhi, it was observed that the role of protection officers in the implementation of PWDVA had changed significantly.

In Delhi, during the first two years of PWDVA enactment, the protection officers were more closely involved in the implementation of the Act. A woman (Usha) from Delhi, who had filed her case in 2007, reported that she went directly to the protection officer in court and the protection officer organised the process for her. Her case was presented on the same day as she contacted the protection officer and within three days she had received an order. Her case was settled within one month, for which she gives credit to the support of the protection officer and the judge. Her case and three other similar cases show that the protection officers can indeed play a very significant role in supporting women. However, with time and an increase in workload, protection officers changed the way they processed cases. It has been reported that now all protection officers direct the women to legal aid services while earlier they themselves would put a woman's case to court. Staff from an NGO stated that, in 2007-2009, the protection officers themselves used to create a case file and present it to the magistrate. The case was then dealt with quickly without the

need for lawyers. Staff from another NGO also commented on the same issue, noting that the protection officers now send all the cases to the Delhi Legal Services Authority and do not file a DIR themselves. This is a deviation from the earlier trend where they filed the DIR themselves. The process of getting a lawyer allotted from Delhi Legal Services Authority⁸ takes up a lot of time and the women often lose interest in pursuing their cases as they are seeing no results.

Moreover, the current protection officers complain about the work overload in fulfilling the court directives, filing DIRs and making home visits. This means that for all of these cases, , protection officers have become officers whose role begins when women already have their cases in court rather than being the first port-of-call for them.

Overall, the research presents the very striking finding that protection officers, a key implementer of the PWDVA who should play a critical role in enabling women to access the Act, were found to be the least accessed law implementer. This can be partly attributed to the fact that, especially in UP and MP, existing government officers are given extra responsibilities as protection officers and, significantly, they lack time and resources to carry out this role effectively. Even in Delhi, where the protection officers were accessed more frequently, it was found that the role they had originally played in the implementation of the Act has changed significantly in recent times. The responsibilities undertaken were significantly less and were largely comprised of basic paperwork, which was not yielding substantial results for the women. The findings revealed that, in the past, this role was much more significant

⁸ Role of DLSA in outcomes for women has been discussed in Chapter six.

and had a very positive outcome for women. Most of the cases then were resolved in a shorter duration and the protection officers had a very critical role to play in this, along with the judges. The implication of this finding is discussed in Chapter 9.

Service providers

As described in Chapter 5, registered service providers (NGOs working on women's issues) are one of the three key law implementers who can file a DIR and assist women at every stage in accessing PWDVA. Whether registered under PWDVA or not, they have been instrumental in supporting women and it was very evident as service providers were the stakeholders who got the best rating by the women based on their interactions (Refer Table 6.9). In all the three States, none of the women rated the service providers experience as bad or very bad. Only one woman in Delhi reported the service provider as being indifferent, while the other 16 were satisfied or happy with their service providers. However, it should be noted that there is a possibility of sample bias here, because it was mainly service providers who helped the researcher contact women in all three States. This limitation has already been discussed in Chapter 4: Research Design and Methodology. All the women interviewed had accessed service providers as the first port of call. These service providers had a presence in the community and the women already either knew of the service provider, or were referred by someone they knew. In general, these service providers first tried to resolve the issues themselves and only then directed the women to file the case under PWDVA. It should be noted that of the 12 NGOs that assisted in the research, not all were equally involved with women when compared with some of the sample. However, all the service providers were more involved than the rest of the law implementers.

Table 6.8 Women reporting on the behaviour of service providers

	Very good	Good	Satisfied	Indifferent	Bad/very bad/NS	Not accessed	Total
Delhi	8	2	5	1	0	10	26
MP	2	9	4	0	0	11	26
UP	7	5	5	0	0	9	26

In MP, 15 women of the 26 interviewed had accessed service providers to assist them in applying their case through PWDVA (Table:6.8). All of them reported the behaviour of the service provider to be satisfactory, good or very good. Of these 15 women, eight of them were highly satisfied or satisfied with the PWDVA. In UP, of the 17 women who had accessed service providers, all women rated the behaviour of the service provider as satisfactory, good or very good. In UP, it was evident that, due to the lack of another supportive environment, women relied a lot on NGOs. A clear correlation between the service provider's support and satisfaction with PWDVA could not be conclusively established, however it was seen that the service providers were able to provide moral support during the bad and frustrating stages of the case and were able to push things when the women received indifferent attitudes from judge, police and/or protection officers. They did not have a direct impact on the outcomes for women but were a critical catalyst in achieving these positive outcomes for the women.

In Delhi, 16 NGOs are running *Mahila Panchayat* (women's governance body: a group of elderly local women developed by NGO for the purpose of mediating on any cases of violence against women of the group's community which is reported to them). These *Mahila Panchayat* receive support from Delhi Commission of women. The model of *Mahila panchayat* had been very popular in many areas of Delhi and reported as best practice in addressing the issue of domestic violence, and its details were discussed in Chapter 5. These models are community based and have been reported to process their cases much faster for the women (Magar, 2003, ICRW, 2002). These groups with help of NGOs also help women in registering their cases in court if the matter is not resolved amicably through their own efforts.

However, not all the cases that came to the *Mahila panchayats* could be resolved and so those were sent off to the court under PWDVA, or section 498, or section 125. This often happened if the counselling failed and the situation remained the same for the women. In many cases, the respondent refused to appear at the meeting called by the NGO. Sometimes, if women lived in distant places the NGOs advised them to go to the court, as it is difficult for the NGO to approach respondents who are not willing to be counselled.

In UP, because of the minimal role of protection officers there, more women (17 out of 26) were accessed through service providers. All of these women reported the satisfactory or good behaviour of the service providers. The service providers were the only law implementers that were appreciated more by women in UP than in either MP or Delhi. The NGOs involved in supporting women in UP also influenced

the expense of accessing PWDVA. Even though the State had allocated no resources for the implementation of PWDVA, the NGOs assisted women in reducing the cost of accessing PWDVA by using other resources from government and non-governmental sources.

Positive influence of service providers

Service providers had a definite positive influence on the outcomes for all the women interviewed except one. As stated earlier, this positive influence was not to an even degree and depended on the commitment, resources and work patterns of the NGOs, but there was mostly some positive influence when service providers were involved. Those women who took the assistance of NGOs seemed to be better placed than were the women who did not have NGO support. The NGOs helped women in many ways. They were able to provide moral support during bad and frustrating stages of their cases, and they were able to push things along when women received an indifferent attitude from judges, police and protection officers. They did not have a direct impact on the outcomes for women but were a critical catalyst in achieving the positive outcomes for women.

Service providers helped women in the following ways:

Providing guidance during the whole process

The women received guidance and support in filing their cases. NGOs provided continued support to women while accessing the PWDVA, linked them to lawyers or provided legal aid from their own organisation. They advised the women of all the options they had and even interacted with the respondents on the women's behalf. It helped in creating pressure on the respondents, as they realised that the matter no

longer remained private. Often NGOs provided pieces of evidence to the judge as they filed all the records of women and also completed the DIR. They continuously kept in touch with the women and kept them up-to-date with the proceedings in their cases. Many women with low literacy levels found this support exceptionally critical as they could not even read the relevant documents like the application to the court and the order received. The NGO staff explained all these documents to the women and discussed what action could be taken next.

Providing emotional support

Besides providing assistance in accessing PWDVA, NGOs also provided emotional support to the women. This emotional and moral support provided by the NGOs was appreciated by most of the women. It helped them to heal from the trauma that they had faced. Many women were not ready to go to court to get relief, but with the counselling and motivation from the NGO they gained confidence and decided to go to the court and access PWDVA. Many women reported change in themselves due to the continuous support that they received from the NGOs. A few young women from all three States reported that, through exposure to the NGO, the whole course of their lives was changed (refer Chapter 7 for details). They in fact joined the NGO's activities themselves and grew more independent and confident. No other law implementer was reported to elicit such a positive change in the women's lives.

Box 7.6 Positive influence of service provider

Shushma: <i>"When I contacted the NGO I was asked that why I did not act for myself. I should have taken a stand for my rights and done something for myself."</i>

Sunita:. *“Previously I used to cry a lot. I was so much mentally tortured that I had become abnormal. I was counselled by the NGO for 8 months. Now I go to the court myself.”*

Accompanying women to court and police station

It was reported that usually the NGO workers accompanied women to the court and police station. This was a great support as usually many women are hesitant about going to places like the court and/or the police station alone for first time. When an NGO worker accompanies the women to court, these women learn quickly about the procedures and later on become confident about going to court on their own.

Influencing other stakeholders

When investigative activities are stalled and some key stakeholders, such as the police, lawyers and judges, do not respond in time, then the NGOs use their network and influence to pressurise them to respond. A few women reported that the NGO pressure worked well in getting some response from the police. Since NGOs have established a relationship with the police station in the area they work, they are usually able to elicit quicker responses from the police.

In MP, one woman reported (Seedhi’s case) that no action was taken by the judge for a long time. Then the NGO made a complaint about it at district level camp, an initiative where a public hearing takes place and main district bureaucrats come to that forum to hear complaints. The NGO complained that if nothing was done about the case then Seedhi might harm herself. This alerted the district officials who used

their network of judges to pressure the judge presiding over her case to pass custody orders.

Help with expenses

Most women who contacted the NGOs needed financial help for accessing PWDVA. The expenses related to the transportation and petty expenses associated with the case in the court were borne by the NGO. In Delhi, the NGOs who had received funds from the Delhi Commission for Women and other sources were able to assist women with their expenses. Thanks to this facility, the women reported low or no expenses while accessing PWDVA. None of the women who had NGO assistance reported high expenses while accessing PWDVA, while other women who had not taken NGO assistance often reported high expenses refer Chapter 8 for details.

Help with compliance

The NGOs supported women through all the stages, i.e before filing the case, during the case and after they had received orders. Being close to the community, the NGOs were able to monitor compliance with court orders. Additionally, the follow-up they did had an impact on the respondents, and the women reported greater compliance when NGOs were involved in their cases. This support was appreciated enormously and, especially in UP and MP where the role of the protection officer was found to be negligible, women in these States seemed to have gained immensely from the NGO support, particularly in relation to compliance with orders.

Box 7.7: Positive influence of service provider

Jasoda, when she accessed PWDVA was pregnant and was much appreciative of the support she got through an NGO. They were the ones who processed her case; from

filing her case in court to taking her there on every date. The judge was informed by the NGO staff that if she did not get a court order then her child would be born homeless. The NGO's pressure worked, she happily reported that her husband's lawyer told her husband "If you feel like beating her then go and beat or scratch a wall but do not beat her or you will face consequences. She has the support of NGO so beware of your actions". She could clearly see that even after the court orders, it was the continuous support that she got from the NGO that helped in pressurising her husband to mend his ways.

Shabina: *"I have got immense support from the NGO. Due to the support I have, he is very scared and does not interfere with my affairs".*

Negative influence of service providers

No women reported any negative influence or behaviour from the NGOs they contacted. Hence, they were the only law implementers that did not receive any negative ranking. Only one woman in Delhi reported indifferent behaviour from an NGO. She said that, although the support of the NGO staff was regular initially, it slackened a bit after some time. Since no one from an NGO accompanied her nothing got done at the court. Sumati said, *"when someone from NGO goes then some work get done if they do not go then no one even asks where I am."* In her case, she did not stay in touch frequently with the NGO staff and they also did not follow up with her for a long time. Sumati was the only woman interviewed in Delhi who had been fighting her case for more than four years without any court orders.

Overall, the service providers were found by the women interviewed to be the most appreciated key stakeholders for PWDVA. They were the only law implementers

who did not receive any negative scores. The women reported that the support they received from NGOs touched their personal lives and impacted more positively than a court order did. The implications of this finding are discussed in detail in Chapter 8.

Medical facility

A medical facility, as notified under the Act, was the least-used facility. This had implications for the outcomes: firstly, in the management of physical and mental injuries; and secondly, in the orders that could be passed under the Act. Judges needed to refer to medical evidence when denying or granting relief. This meant that a lack of medical evidence resulted in delayed and poor outcomes for women in the court.

There was a lack of coordination between the medical facility and other stakeholders of the Act in all three States. During the period of the research, links between police and protection officers and between police and medical officers (in charge of the medical facility) were visible in some cases. However, a link between the medical officers and the protection officers was missing. Section 2(j) of the Act mandates the State government to notify medical facility of their role in assisting victims of domestic violence and section 7 defines the duties of such a medical facility. PWDVA Rules 2006, Section 17, expands the duties of the medical facility. If the aggrieved woman approaches the medical officer, even without a domestic incident report, then the medical officer needs to fill out the report and notify the protection officer. The medical officer also needs to provide a report to the aggrieved person free of cost. However, not even one woman in the research reported such an initiative having been taken by the medical officer, if they were the first point of

contact. According to the women, using a medical facility was something that was not part of the process of accessing PWDVA. For most, it was a personal step taken for relief from their injury on the day. Women also reported that when they accessed health services, they had not made up their mind to access PWDVA or did not think that in the future they might resort to using PWDVA. Therefore, many women did not store medical records and lost them. Some women even had to hide the fact from their respondents that they had used a health facility and so they deliberately did not bring any evidence home. Another finding in the research is that the police could play a significant role in coordinating with the medical facility; however, the police failed to play this role, as described in the earlier section on the police. Police offered no support or advice to access the medical services when the women reported an incident of violence.

In Delhi, only five women reported going to the doctor or hospital for treatment of their injuries. Only three of these five used the medical report as evidence in court. The other two had gone to a doctor for treatment but failed to produce the evidence to the court. In MP, only one participant reported using a medical facility as part of accessing PWDVA. She said that the protection officer had sent her to the hospital, because she was bleeding when she arrived. Another two women had used private facilities on their own initiative for relief of their physical condition caused by the violence. They did not use this information to support their case in the court. Another woman in MP said that she just brought painkillers for herself and did not even see a doctor. In UP, six women reported using medical facilities. Of these six, only three women used it as evidence in the court. The other three, even though they

had gone to the doctor, had considered this as a personal initiative to seek treatment and not as a part of the process of accessing PWDVA.

No women who went to the medical facilities on their own initiative received any links to access PWDVA from their doctor. Doctors also did not screen them as victims of domestic violence and offered no advice. In addition, the police and service providers had also not used the medical facilities. It is also not clear whether any channels existed which provided direction for service providers or protection officers to arrange a medico-legal report for the women.

Overall, the health facility has not been woven well into the implementation of the Act. Medical officers have not been directing women to protection officers or even providing relief to the women. Only in a few cases did other stakeholders direct women to medical facilities. This had negative implications for outcomes.

Chapter 8: Overall Satisfaction and Impact of PWDVA

Chapters 6 and 7 described the behaviour of law implementers towards the women interviewed. This chapter looks at the other dimension that affects the outcomes for the women. This dimension is the resources, time and money that the women spent while accessing PWDVA. Time was a very important factor, especially the time spent in getting outcomes from the Act. I present findings here on how the duration of the case and the related expenses affected its outcomes. Then I present evidence of the women's overall satisfaction with the process and outcomes. This chapter will also present evidence concerning the impact that the women observed in their lives after this process, as most of the women received relief orders more than six months before the time of interview. The chapter will conclude with some direct testimonies from the women involved.

Case Duration requirements

Women facing violence are in need of an immediate response towards their situation; keeping this in view, PWDVA is designed to provide women with quick relief. As per section 12 (sub-sections 4 and 5) of the PWDA, each case should have its first hearing within three days of the application being received and the Magistrate 'shall endeavour to dispose of the application' within 60 days of its first hearing (PWDVA, 2005). Given the normal procedures of the court, the case should be resolved in three hearings, which means about 60 days from the day the case was lodged for first hearing before the magistrate.

During the research period, adherence to the timeline was poor and there was little quick disposal of cases. Though ideally a case should be resolved in 60 days, very

few women were found to have experienced this case duration. Hardly any case was resolved within the stipulated timeframe and most dragged on for more than a year.

Cases with duration of less than 90 days

A few had a case duration of within 90 days and these are grouped together with the former for the presentation of findings. Of 78 women interviewed, only 11 cases were closed within the 90-day period (refer Table 8.1). Of these 12 cases, Delhi had the best examples of how the judicial process should be carried out to provide maximum relief to the survivors of violence. In Delhi, six women interviewees had their case disposed of (final orders) or interim order granted within two to three months. All of them reported high levels of satisfaction. Among these six, five cases were resolved in less than 60 days. However, these were also cases filed before 2009. In Delhi, no case filed by interviewees after 2009 was resolved so swiftly. Possible reasons for this will be discussed later in this chapter. Apart from Delhi, in MP State four cases were resolved in 90 days. Among these four, there were two cases which were resolved in less than 60 days. In another case, an interim order was received within one month and one case was resolved in three months. All four women reported a high level of satisfaction with the outcomes. UP State had the fewest cases resolved within 90 days. Only two women reported a timely resolution of their issue. Both reported their high satisfaction with the outcomes achieved through PWDVA.

Hence, the most striking finding was that none of the women reported negative outcomes when the issue was resolved within the designated period. Of these 11

women, nine reported high or extreme satisfaction, while the remaining two reported satisfaction from the PWDVA.

Table 8.1: Duration of Cases in three States

	Two to three months	Four to Twelve months	One year+	Two to three years	Four years and above
MP (26)	4	9	10	3	0
Delhi (26)	6	4	8	7	1
UP (26)	2	2	11	4	7
Total (78)	12	15	29	14	8

Cases with duration of more than 90 days but less than a year

When cases take longer than 90 days, they are outside the recommended time limit, however if they are disposed of within 12 months there is still some positive influence. A total 15 women from the sample of 78 reported that they spent more than three months but less than a year in getting relief from PWDVA. Most of the women in this group reported themselves only satisfied or partially satisfied, and no one from this category reported extreme or high satisfaction. A couple, for example one in UP and one in Delhi, were not satisfied with the results of PWDVA, even though some order (interim or final) had been issued for them within a year. This signifies that if more than the stipulated time is taken, it does influence how women will view the outcomes from PWDVA.

Cases ranging from more than a year but to less than two years

This category had the most cases, 29, or more than a third of the total. This timeframe was much longer than each interviewee expected when she filed the case. The women under this category had either partial satisfaction or no satisfaction. Delhi had eight, MP had ten and UP had 11 of such cases (see Table 8.1). At the time of interview, nine women in this category (5 in UP, 3 in MP, and 1 in Delhi) had only an interim order, which meant the case had not been resolved and was still in process in court. The time taken for the granting of final orders may have meant later that the partial satisfaction that these women reported due to the interim orders would decrease.

Cases ranging more than two years

When the cases dragged on for more than two years, there was a high possibility of women reporting low satisfaction and the negative impact of the whole process for them. Most of the women in this category reported no satisfaction and only a few reported partial satisfaction. Some women in this category had received no orders and their frustration with the process was extreme. As explained in Chapter 4, these women were included so that their experience with the PWDVA could be documented. In UP, seven cases had dragged on for more than four years, and women in UP spent longer in getting relief when compared to the two other States. Overall satisfaction with PWDVA correlates closely with the duration of cases; in UP most interviewees said they were not satisfied with the outcomes of the PWDVA (see Table 8.3), about twice as many as in MP or Delhi. There was a clear negative correlation between case duration and quality of outcomes. The more time spent

without resolution, the more frustration and negative impact there was on the lives of the women.

Thus, one good indicator of the effectiveness for outcomes for women is the duration of the case. If the case is disposed of within the stipulated time period, the outcomes for the women are more concrete and positive. Fighting a case for a longer period also has implications for the expenditure incurred in obtaining justice, which will be discussed later in the chapter.

Reasons for the long duration of cases

When it came to the speedy disposal of the PWDVA cases, there was no adherence to the ‘justice delayed is justice denied’ principle. The Indian judiciary is known to process cases extremely slowly. According to one estimate, 30 million cases have taken an average 15 years of hearing time in court (Kumar, 2012). The same pattern was reflected in the implementation of PWDVA, where cases dragged on for three to five years despite provisions for quick resolution. The main reasons suggested for these delays are the poor judge and population ratio (giving a huge caseload to each judge, which is hard to clear), poor handling of cases by lawyers and judges, and poor infrastructure and resources within the judiciary system and court premises (Kumar, 2012). It can be argued here that if the average hearing time of cases is 15 years then the PWDVA hearing time is much less if women are able to get an order in two to three years on average. However, given the nature of PWDVA, the purpose of the Act is not to provide justice for the crime that has been done. The purpose is to prevent and stop the violence that women are facing. Due to the preventive nature of the relief granted, if the orders are not granted immediately then even two to three

years of facing violence and not being able to get even an interim order is way too much. Hence the time frame for PWDVA implementation must be acknowledged as much longer than necessary.

As reported in Chapter 6, judges were the major cause of delays. There seemed to be a lack of sensitivity and commitment on their part in relation to the issue of domestic violence. The judges seemed hesitant to provide *ex parte* orders (also observed in *Staying Alive* 2010/2012); in a couple of cases the respondent took about six months even to make a first appearance. Ideally, by the time of the third hearing final or at least interim orders should have been released, based on the DIR filed by the protection officer or by home visit of the protection officer and the affidavit submitted by the applicant that she is facing domestic violence (Uma, 2010). Moreover, being a civil law PWDVA does not require adherence to the criminal code procedures, which NGOs and protection officers reported were being followed. NGOs complained that judges were even asking for evidence of marriage, which according to the NGOs should not be required as this law extends to even marriage-like (De facto, a term hardly used in India) relationships and other domestic relationships.

There were also cases where even after the final orders, there were execution appeals filed in court. Execution appeals are filed when a respondent has not complied with an order and a breach of court order has been filed by the complainant. There were 12 execution appeals in UP, eight appeals in Delhi and four execution appeals in MP,

thus the cases were still continuing. This increased the duration of the case significantly even if the order was issued in moderate time.

Expenses

Assessing expenses was tricky as, depending on their economic background, the women had differences in the profile of their expenditure. Hence, expenses were measured by the women's own paying capacity rather than the exact amount spent on the PWDVA. An amount which might be very expensive for some women could be rated as affordable for others. The purpose here was to make an assessment of how accessible PWDVA is for women from all kinds of economic background, especially from more disadvantaged backgrounds.

Of the 78 women, 33 rated accessing PWDVA as expensive or very expensive. This amounts to almost half the women and is a cause for concern, as the PWDVA should be accessible to all women. Women are entitled to free legal services, and case implementation is simple enough that it should not cost much. During the research, three different kinds of expenses were reported: transportation costs while travelling from residence to court, lawyers' fees and costs related to paperwork in court, often including bribing the staff of the court (see Chapter 6). Often an increased cost was due to hiring a private lawyer but it was also due to cases dragging on, thus increasing transportation and administrative costs. Women who hired private lawyers, because either their natal families were there to provide financial help or they themselves earned, reported that they found it expensive. When women got legal aid, for example in Delhi and in MP, then some of them also reported that lawyers from legal aid demanded money from them (see Chapter 6). Hence the cost of accessing PWDVA became beyond their reach. Also in MP, many women were

from a rural background and they had to travel far to reach the court. Sixteen of such women reported that accessing PWDVA was beyond their means in terms of money. All of them were from very modest and poor backgrounds. Most of them reported that investing time and resources in the travel was draining and difficult for them. When the women had to come to court multiple times for extended periods, the transportation cost to court was beyond what they could afford. This was the main reason that MP became the State where most women, about double the number than in Delhi and UP, reported that accessing PWDVA was expensive (see Table 8.2). It should be remembered that MP is the State where most resources were allocated for the implementation; however, the access to this Act was rated as expensive by the women here, signifying that women did not receive any benefits from the resources.

Women who rated the expenses as moderate were those who used the free legal aid service and also where timely disposal of their cases took place, meaning lower transportation costs. In Delhi where legal aid was available and the time spent on cases was less, women reported that they found the expenses reasonable. Therefore, Delhi was the State where more women reported reasonable expenses.

Women who said that they spent less, a negligible amount or nothing in accessing PWDVA were those who received assistance from NGOs. In all States, NGOs were active in supporting women and reducing the financial costs of accessing PWDVA. NGOs had some government funding for this purpose and also some funding from international organisations like Oxfam, ActionAid and UNFPA. Some NGOs met only the cost of the lawyer and transportation costs had to be taken care of by the women. Some women took care of expenses related to both lawyers and transportation. NGOs also supported women depending on the situation and

background of each individual case. If women really did not have any means to support themselves, then NGOs provided support to cover all expenses; however if the women had some means of their own, then NGOs only partially supported them financially.

In UP, since 11 women in the sample came through NGOs, it became the State where a higher number of women reported reasonable, low or no expenses. It was difficult for the researcher to access women except through NGOs in UP, hence biasing the findings.

Table 8.2: Expenses rated by women in three States

State	Expensive	Reasonable	Low	None
Delhi	8	12	3	3
MP	16	3	1	6
UP	9	6	5	6
Total	33	21	9	15

Overall satisfaction with outcomes from PWDVA

The main purpose of this research was to garner end-user response on the effects of the Act. The women who had accessed PWDVA to address their issue of domestic violence and to seek relief from the court, were asked about the overall satisfaction they experienced. They reported having extreme satisfaction or satisfaction when all or most of their expectations had been met through PWDVA and they had observed a significant positive impact on certain aspects of their lives. The women reported having partial satisfaction when one or more expectation was met but another important expectation was not met. They reported being dissatisfied when none of

their expectations were met. The rating of ‘worse than before’ was given by only two women in MP as their present circumstances were worse than before accessing the Act.

Various indicators contributed to the expectation being met or not. One of the main expectations was a quick and timely resolution of their issue. Many of these women had also sought help through other legislative provisions, for example section 125 of CrPC (*The Code for Criminal Procedure*, 1973) which provides maintenance to women; however their issues were not resolved due to the lengthy process. The PWDVA promised to be an act which would provide speedy relief. The other expectation the women had were orders ranging between protection, maintenance and residence. Often women were looking for all three, and no other law provided them such forms of relief through a single window. Through this process the impact that was desired by women was a life free of violence and also a life of dignity. That meant when women rated overall satisfaction they did so based on their overall experience and on their impressions considering all the expectations they had.

Satisfied or extremely satisfied

Of the three States, Delhi had the most satisfied and extremely satisfied women, with 14 (more than half) of the women interviewed reporting they had gained significantly or adequately from the PWDVA in their lives and were extremely satisfied or satisfied (refer Table 8.3). Next was MP, where 11 women (42 percent) reported high satisfaction or satisfaction. However, in the UP sample, only four women out of 26 reported satisfaction or extreme satisfaction from PWDVA, so the

number of satisfied women in UP is very low (15 percent) compared to Delhi and MP.

Partially satisfied

About 18 of 78 women reported being partially satisfied. These women were somewhat disappointed and consoled themselves by saying ‘something is better than nothing’ or ‘at least something was done to address my issues’. By State, six women from MP, five from Delhi and seven from UP were partially satisfied; they did get some of the relief that they were expecting but not enough to have a significant impact on their lives. Some had bitter feelings because of the time and effort it took to get the small gains from accessing the Act.

Not satisfied or worse than before

During the research, 29 women reported that they were not satisfied and two women reported that they were worse off than before. This means about 39 percent of the sample reported that they were not satisfied with the outcomes of PWDVA or were even worse off than before. Even when court orders were issued, they did not translate into any benefit for them. In Delhi, seven women were not satisfied because either the process was too lengthy and the final order was not passed, or the respondent had not complied with the court order. Two women out of these seven were those who reported they had not received any orders, interim or final, despite filing their cases more than one-and-a-half years before. Compared to the other States, UP and MP, this is the lowest number of women who were not satisfied.

In MP, nine women out of 26, which comprises about one-third of the sample, did not gain anything from the whole process of accessing PWDVA and were not

satisfied, and two reported being worse off than before (see Chapter 6 for more details on these two women). MP was the only State to report such an adverse situation, where the fact that the women accessed PWDVA led to life situations that were more difficult than before.

UP State reported the maximum number of ‘not satisfied’ women among the three States. In UP, more than half the women, 15 out of 26, did not gain anything from the whole process of accessing PWDVA and were not satisfied. They either did not receive any relief from court or did not have any respondent compliance even after having received some relief from court.

Table 8.3: Overall satisfaction with outcomes from PWDVA in three States

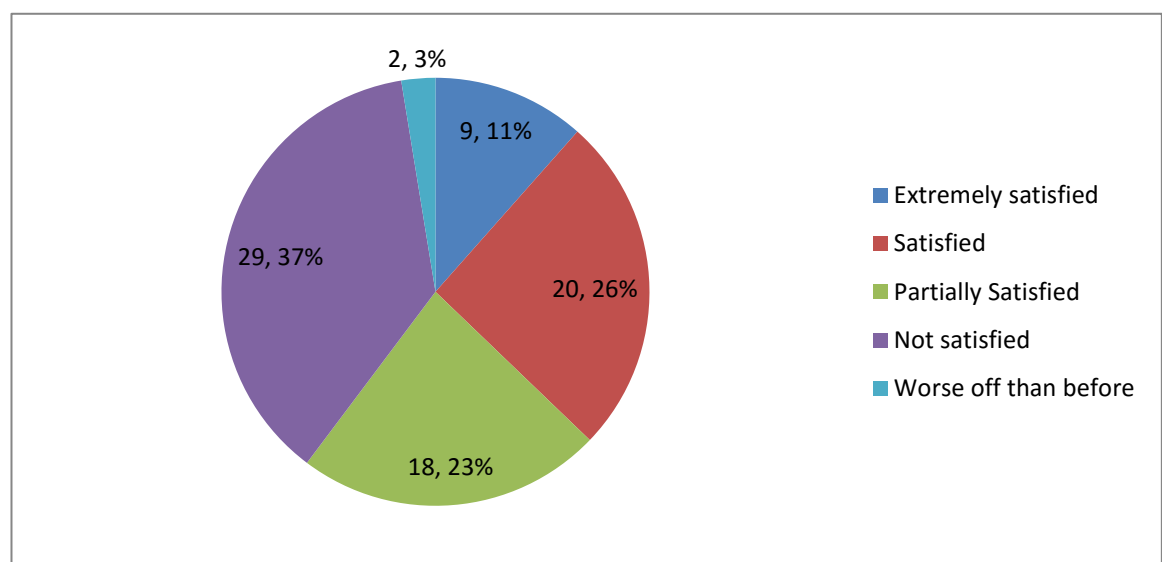
	Extremely satisfied	Satisfied	Partially Satisfied	Not satisfied	Worse off than before
MP (26)	4	7	6	7	2
UP (26)	1	3	7	15	0
Delhi (26)	4	10	5	7	0
Total (78)	9	20	18	29	2

If we analyse the combined overall satisfaction from all three States, we can see that extremely satisfied and satisfied women add up to make 37 percent (refer Figure 8.1). This is equal to the 37 percent of women who are not satisfied with outcomes from the Act. Moreover, three percent of women were worse off than before. If we

use the partially satisfied group of women of 23 percent and combine it with the satisfied group, a claim can be made that PWDVA made some positive impact on 60 percent of the lives of the women interviewed. However, if the partially satisfied group of women is combined with the not satisfied group, it can be said that 63 percent of women were left wanting for more and PWDVA did not meet their expectations.

Hence, in a way, the experience of the partially satisfied group of women, who said some of their expectations were met, is very critical. The qualitative data seemed to suggest that their experience was more inclined towards the negative, where they were frustrated with the process of accessing PWDVA. Therefore, this research finding shows that 63 percent of women were not satisfied or partially satisfied, as compared to the 37 percent of women who were satisfied or extremely satisfied.

Figure 8.1: Overall Satisfaction with outcomes from PWDVA: All States



These data also highlight the importance of the timely granting of relief. If most of the women had received interim or final orders within the stipulated time, they would have reported a positive impact. It is only when the case became lengthy and orders were passed very late, that women reported dissatisfaction. Hence, the timely disposal of cases played a very significant role in the satisfaction level that women reported. The research was focussing on documenting the impact on women who had received orders. But the very fact that a woman received an order enhanced her satisfaction with the process. Therefore, it was the time taken to resolve their cases that determined the effectiveness of the outcomes for the women.

Impact of orders on the lives of women

Chapter 6 showed how judges affected the relief that was granted to women (see Table 6.3). This chapter now presents findings on how the judge's orders for various forms of relief impacted on women's lives. Women reported both the positive and negative impacts of the Act. Reduced incidence of violence, a peaceful life, a better economic situation were some effects attributed to the Act. Some effects were not directly related to the relief orders but were still impacted by them, for example enhanced self-confidence, better negotiation power with the respondent, enhanced conversation skills with officials, reduced feeling of victimisation, ability to take decisions about their lives, and feeling that it was not their fault that they faced violence. The different areas in which this change can be classified are:

Reducing violence

Protection orders under PWDVA aim to stop the violence women are facing and provide a violence-free life. Of the 78 women who received orders, only 25 received protection orders. Of these 25 women, 22 did report a reduced incidence of violence. A few women reported a significant reduction in violence, while many reported a moderate or slight reduction in violence. For many women, physical violence reduced, but mental violence continued. For example Dipti, from Chatarpur, reported that previously her husband used to start beating her in the night and she had to run outside to seek shelter. This was no longer happening and she felt that accessing PWDVA had inhibited her husband. However, she reported that emotional violence continued sometimes. Another woman reported that the severity of the violence had reduced and the respondent was more inhibited. All the women from Delhi who had received protection orders also reported a reduced incidence of violence. One woman reported that soon after the order was passed, the respondent stopped the violence completely as he was afraid; however with the passage of time, the mental violence had returned and occasionally also some physical violence. In another example from Delhi, Chetana, said: *'I have reduced incidence of violence and improved economic situation. PWDVA helped me to escape suicide'*.

Another woman from Delhi, Mukta, said: "I have been able to get residence. There has been a reduction in aggressive violence but mental torture continues".

In another example from UP, a young girl, Sudha, who was a second-year Commerce undergraduate student, had found freedom from her oppressive father who was mentally harassing her, not allowing her to study, and wanting her to return

to their village to live with her grandparents. Sudha wanted to live in the city, study and make a life for herself. Constantly experiencing mental and sometimes physical violence and a threat of being sent to the village, Sudha had nowhere to turn. In 2010 when she finished year 12 (10+2) studies, she came in contact with an NGO. Initially, she was not ready to file a PWDVA case. On the advice of the NGO, Sudha eventually contacted the police but they counselled her to go back to her father and not to bring shame on him. In fact, they held her up at the police station for a few hours trying to locate her father so that he could take her home. She was able to get away only due to NGO intervention. On 25th of July, she filed the case under PWDVA with the help of the NGO and appeared in front of Magistrate. In the second hearing on 3rd of August, she got a protection order directed against her father. Due to this protection order, her father immediately distanced himself from Sudha and did not bother her again. During the interview, her self-confidence was evident while she narrated the incident. She said: *“Earlier I used to feel dependent on others, now I am confident of myself and I am not afraid. I have been advised by HS to file for maintenance allowance but I can earn for myself. My father used to threaten me that either I leave home or return to the village (father’s paternal home), well I left the home”*. She now had control over her own life and PWDVA helped her to achieve it.

Of the 25 women who were granted a protection order, three women reported no reduction in violence. Two women from MP and one from UP claimed that, despite the protection order, they were still afraid of the respondents. The woman from UP said that she was so afraid for her life at the respondent’s home that she did not want to go and live with him. Another woman from MP, who said that she was worse off

after accessing PWDVA, reported that her in-laws had retaliated and she was facing even more violence after getting a protection order. The other woman from MP, Vidya from Bhopal, said:

“I have tolerated violence for three to four years and still I am tolerating. I have put my case in DV and in maintenance, but nothing happens, in fact women have to suffer; they have to separate while men (respondent) get more freedom. I have got nothing till now and I am frustrated”.

Overall, the research shows that protection orders were sparingly passed, however when passed they did help women by reducing violence. Even though the orders did not solve the issue for many, women did report some change in behaviour of respondents as a result of the orders. However, in a couple of examples, it was also evident that the change in behaviour of the respondents wore off with the passage of time.

Maintenance relief targets two aspects: the recognition of economic abuse as violence and also to provide a woman with all her crucial needs as a violence victim under a single window. The need for maintenance seemed critical as most of the women interviewed, whether they had left the respondent or not, were struggling to manage their livelihood. In this situation, most of them were worried about the delay in the maintenance order being granted at least as an interim order. Rarely, women complained of the protection order not being granted as an interim order. Also, there were even instances where the protection orders had been granted as interim orders and the breaches of the orders were not followed up by the women in court. The execution of court orders and the strict follow-up of breaches of court orders were

found to be weak. Women reported that after the passage of the orders there was initially a reduction in violence, but as the time passed the effect of the orders ceased. This suggests that initially women do get some leverage out of the protection orders, but with time the value of protection orders was lost. Also, it was seen that more so than the police, the presence of NGOs was more effective in getting the orders executed. The case of the penalisation of the respondent for breach of orders was only found in two cases among the sample. Only two women reported the notice of breach of court orders. From all three States, 23 women reported their cases to be pending in the courts for the hearings relating to the execution of court orders. This shows the lack of stringent measures to deal with respondents who pose a violent threat to the safety of women.

Economic support

Maintenance orders under PWDVA provide monetary relief to the women in both the situations, whether she is living with the respondent or living away from the respondent. As noted in Chapter 6, this is the most sought after relief and all the women except three had an expectation of being awarded maintenance by the court. In fact, 16 from Delhi, 19 from MP and 20 from UP did receive maintenance orders. However, a maintenance order was seen as the most poorly complied with court order, because most women did not receive maintenance regularly from the respondent. For example in MP, six women had already reported breach of court orders and about the same number were about to apply for breach of court orders. The maintenance order also coincides with the other legal provision under Section 125, which provides maintenance for married women. Many women had also applied under this provision. A few women reported getting maintenance under both

the provisions. The other issue that women reported about maintenance was that the amount granted was very much below their expectations or requirements. Most of them were awarded 500 INR per person (depending on the number of children), which was insufficient to last even for a week. If this amount is converted to Australian dollars, the actual conversion is \$10, but in India 500INR can buy roughly what \$30 will buy in Australia, so in a way, what these women received was comparable to receiving \$30 per month per person. Thus, according to most interviewees, this was a poorly implemented order that was not sufficient to cover their needs, even if it was the form of relief most often granted.

Primarily, this Act provides temporary relief, however when final maintenance orders are granted, women tend to treat this as permanent relief because the other avenues open to them, for example Section 125, are entirely dismal, time-consuming and the amount granted under this provision is equally low. Further, apart from the protection officer who has no role in the execution of the maintenance order, there are no external agencies such as child support which can deal with the respondent on behalf of the women to ensure that payments are indeed received. There are no systems to determine how much maintenance will be given. It depends completely on the judge.

Homelessness

The residence order provides relief to a woman from homelessness. It provides her the right to stay in the matrimonial home if she wishes to. The research shows that more women were granted residence orders than protection orders. From Delhi, 12 women, from MP nine, and from UP eight reported having received residence orders.

However, being granted a residence order does not signify that the women's expectations are taken care of. There was an unexpected finding, as some women in MP and UP received residence orders even when they did not wish to live with the respondent. They wanted a separate residential arrangement but judges insisted that they go and live with the respondent, issuing residence orders to that effect. In MP, where nine women were granted residence orders, three reported that they did not want to go back to the residence anymore; however, on the judge's insistence they were forced to go back and live with the respondent. One of these women reported her situation as worse than before. Another three women who were granted residence orders were reported to be still struggling to gain entry into the residence, with no success. Only three women were in the residence for which they received the orders, and of these three women, one is reported to be in a worse situation as she is almost held captive by her in-laws.

In Delhi, however, most of the women reported that they were happy with the residence orders. One woman, Shabina, said: "Now I live separately in a house, something made possible through PWDVA, and I am happy and satisfied. I get monthly maintenance. I have peace. I received decisions in my favour".

In another example from Delhi, a woman named Soni said: "I did get some stability in my life. My children have a home now and I can look forward to more in life".

Overall, residence orders, meant to provide relief from homelessness, did not have a significant impact for many women. Mostly, the aim of this order is to protect a woman from the need to return to her natal family where she might not be welcomed. However, while some women needed a separate residential arrangement

from the respondent but did not get it, others, despite getting residence orders, could not enter the residence and remained homeless.

Custody of children

Custody of children was not a huge issue with the women as most had their children with them. The fact they had children with them increased their financial needs and they were more concerned with maintenance orders. One woman reported that she was seeking custody of one of her children but had filed the case under other provisions and was not relying much on PWDVA. Only three women, one from each State, received custody orders from the sample of 78 interviewed. Only one woman in MP and one woman in UP reported that they needed custody of children. The UP case was of a mother of five children who did make a request to court about the threats to their lives that her children faced with the respondent, but the judge did not pay heed to her request. The judge eventually issued a custody order, but it was too late and the woman lost one of her children (see Chapter 6). In the other case, from MP, a child was brought to the woman through the efforts of an NGO using the PWDVA. Among the rest of the women interviewed, custody did not seem to be an issue of concern.

Impact of PWDVA in other areas of women's lives

As recorded above, PWDVA had an impact on the women's lives apart from a reduction in violence, improved economic wellbeing, and an escape from homelessness. Women have reported the impact of PWDVA on self-agency in their lives, in the following ways:

Changed gender relations with respondent

Many women reported that, due to the process of accessing PWDVA, they were exposed to a process that enhanced their self-confidence. When coming to address their issue in a public space, they realised that they were not alone. Exposure to NGOs, protection officers and courts enhanced their conversation skills with officials and they got a sense that the respondent was accountable for what he had done. They reported better negotiation power with the respondent, a reduced feeling of victimisation, the ability to take decisions for their lives, and feeling that it was not their fault that they had faced violence.

One woman in Chatarpur, Bhopal, reported that she used PWDVA to negotiate divorce. Since she lodged a case under PWDVA first, she established evidence of having faced violence in her marriage. The respondent was also pressured due to PWDVA to agree for a mutual divorce. This woman also credited PWDVA with providing her a secure place to live, as she became eligible for a shelter home due to the fact that she had lodged a case under PWDVA. Due to this she was able to leave the respondent and get away from the violence (see Box 8.1, Story 1).

Box 8.1 Story of two women from Chatarpur, MP

Story 1: Suman, from Chatarpur, a well- educated woman who faced extreme physical, mental and sexual violence in her marriage, narrated: *Before, I was living a life which was full of harassment and tension each day, had to hear false accusations about my character every day. Now I am on my own living separately, I have my own voice, my own opinion, my own view of things. I am earning and living comfortably. Now my only motive in life is to get my daughter educated and that is happening, so*

I am happy. And yes, I found the PWDVA useful, because of PWDVA, they (respondent and his family) had to go to court so many times that they (respondent) want to provide me whatever I want. They are ready for divorce now. Yesterday only they said that. So you see PWDVA has prepared them mentally to accept the divorce case that will come eventually. The lawyer also said, do not file for divorce directly or you will be held as not right (family breaker); first you file domestic violence. Later file for divorce when you have already established that you faced violence.'

Story 2: Kriti, from Chatarpur, a young woman who is continuing her Bachelor of Arts, said: *"Previously I used to cry a lot, I used to feel like committing suicide. It was not my fault, but I was tolerating it. Now, I do not feel like crying. Previously I did not talk with people, I had forgotten how to write and used to write in very bad handwriting, but it has become normal now. I used to lock myself in my room and not go out, once I did not go out for one month due to embarrassment (of being evicted from her in-laws place). I have changed a lot now. If someone asks me about what happened, I am able to narrate everything with comfort. My studies have continued now. If it were not for the PWDVA, under those conditions, I could have committed suicide."*

An impact of great influence was narrated by women watching respondents getting worried and being dealt with strictly by judges. Two women from Delhi narrated that it was a strange experience watching their husbands getting a scolding from the judge and a stern dismissal of the respondents' request when respondents were trying to get exemptions from court's directives (Box 8.2). This challenged the notions of gender relations that women shared with men in the society around them. Many women did report that accessing PWDVA increased their negotiation power with the

respondent, where the respondent changed his earlier stance and was keen to get the matter resolved.

Box 8.2 Stories of positive impact from Delhi

Chetana: *“Now I live peacefully with my husband. If he says anything, I say I will go to court.”*

Ananda: *“I started believing in the law. He was penalised adequately in the process. I got emotional support and I felt satisfied.”*

Usha: *“my life became heaven from hell.”*

Sunita: *“When my mother saw him being humiliated by the judge, she said this is the biggest disgrace that he can get. This is the greatest consolation that we have.* (See also Box 6.2)”*

Negative impact of accessing PWDVA

Almost one-third of the women also reported that accessing PWDVA had negatively impacted on their lives. The feeling that nothing could be done about their situation was confirmed by the process they faced in the court. This had adverse effects on the relationship that a woman shared with the respondent. When respondents realised that a woman would not be able to change anything by accessing the court, he continued in his ways. Because of this, the woman felt increased hopelessness and frustration. Financially strained and emotionally drained, women in this situation saw hardly any hope of achieving relief through PWDVA.

Box 8.3 Negative impacts of accessing PWDVA

Divya, Delhi: *“I have observed no change, my situation is the same. I am frustrated and stressed. I am so frustrated that the matter in court is not progressing. It is just stuck. Sometimes I feel like withdrawing the case, as I see no hope.”*

Neetu, Delhi: *“I had read the domestic violence book, my hope was really high, I thought I will be able to go back to my home and I will be able to settle down, but now I have no hopes, I am disappointed.”*

Prerena, Delhi: *“I am regretting that I brought my case under the PWDVA. I waste my time here. I was studying and I had to miss my classes due to this case.”*

Conclusion

This chapter discussed the findings related to a key critical indicator, which is the duration of the case. The findings relating to case duration, when matched with the overall satisfaction with outcomes from PWDVA, showed that the earlier the orders were granted and the case was concluded, the greater was the satisfaction with the PWDVA. The stipulated timeframe of PWDVA, that is 60 days, provided extremely satisfactory outcomes for women. Even if the timeframe extended to one year, most women reported satisfactory outcomes. However, for timeframes longer than one year, more women were only partially satisfied, and if the duration stretched to two to three years then the chances of unsatisfactory outcomes were very high. The research found that about 63 percent of women were left not satisfied or partially satisfied with the outcomes through PWDVA.

The chapter also analysed the expenses related to accessing PWDVA and it was seen that lawyers and transportation to the court caused the major bulk of the expenses. Here also, as the duration of case became longer, so did the number of trips to court and hence transportation costs and fees to lawyers increased. However, it was seen that when NGOs supported the women, they helped them with their expenses. This was the reason that UP, even though it did not provide more satisfactory outcomes from the PWDVA when compared to the other States, was the State where fewer women reported accessing PWDVA to be expensive.

The PWDVA was seen to be effective in reducing violence when protection orders were passed. However, it should also be remembered that about two-thirds of the women did not receive protection orders. Regarding economic support, the maintenance order was that most often granted, however the orders were not of an adequate amount and much below what women needed. Residence orders were provided more often than protection orders, but for many women homelessness was not an issue and there were negative influences on outcomes due to residence orders.

The impact of the relief granted through PWDVA and the process of accessing it were both positive and negative. For the women who were granted timely orders, there was an impact on the gender relations that they shared with the respondents. Many women reported that they are able to interact better with officials after they had been exposed to public life due to this process. However, there was also a negative impact due to PWDVA when they were not satisfied with the outcomes. There was huge frustration and feelings that nothing could be done about their issue when they were not satisfied.

Hence, the findings show that, although PWDVA has left more than half the women wanting for more, when PWDVA is implemented well it has a significant impact on women's lives and does meet its objective of reducing violence. These findings will be analysed in detail in the next and last chapter, to discuss what the implications of these findings are, the recommendations that emerge from this research, and to reach a conclusion.

Chapter 9: Implications and policy recommendations

The previous three chapters presented the findings from the research; these findings will now be analysed using the gender impact assessment framework described in Chapter 4 and presented below in Table 9.1. The goal is to assess how well PWDVA was able to meet women's expectations, especially in taking care of their practical and strategic gender needs. This assessment will then have implications for: i) further implementation of the Act; ii) policy recommendations; iii) policy advocacy in other countries; iv) capacity building programs; v) replication of successful models; and vi) future resource allocations by government for further implementation of the Act.

Table 9.1: Impact Assessment Framework for PWDVA

Indicators addressing strategic gender needs of beneficiaries	Indicators addressing practical gender needs of beneficiaries
• Whether there was recognition of domestic violence as a women's human rights issue. • Impact on the applicant of the relief granted by PWDVA: reduction in violence, better negotiation power with respondent.	• Extent of needs met. • Adequacy of enabling environment and support services while seeking legal redress. • Accessibility of remedies. Impact of the relief granted by PWDVA: economic sustenance and residence orders.

Gender impact analysis

Chapter 8 focussed on documenting whether PWDVA was able to meet the expectations of women and to what extent the process impacted women's lives. When analysing whether the PWDVA was able to impact more on the practical

gender needs of women (maintenance and shelter), or on the strategic needs of women (reduction in violence, better power relations with the respondent), the findings are clear: PWDVA has been better at meeting practical gender needs rather than strategic gender needs. However, there were also some women whose strategic gender needs were met.

The behaviour of law implementers indicates how the policy is perceived by them and influences the outcomes achieved. This bias has been identified by Kabeer and Bacchi (Bacchi, 2006, Kabeer and Subrahmanian, 1996). Although occasionally vocal about gender bias experienced, women are largely unaware of the gender bias exhibited by law implementers. This was evident when I discussed with women what behaviour should be treated as either indifferent or satisfactory, described earlier in Chapter 6. As has been pointed out by gender experts, detection of gender biases is important in gauging the impact of gender-awareness policies.

Although the focus of the research was not to assess how law implementers view the issue, the WPR approach suggested by Bacchi is being partially used to understand the findings (Bacchi, 2006). The women's descriptions of the behaviour of law implementers points to the way these implementers view the issue of domestic violence. For example, judges clearly had their own notion of what is best for women and what should be done about addressing their issues. And that is how they responded to the issue. For them it was a problem of lack of adjustment which gave rise to conflict, hence the resolution was centred around this notion. The only law implementers that viewed the issue of domestic violence as representation of unequal power relations between men and women, hence dealt it with the sensitivity expected by international norms were NGOs. Government employees viewed the resolution of

domestic violence, not as a human rights issue, but as a way of ensuring the family unit was maintained. This representation of problem by the law implementers then provide resolutions which at the most take care of women's practical needs.

Strategic gender needs

Impact of PWDVA in reducing the violence:

Worldwide, domestic violence policies mainly focus on getting state-sanctioned protection through the involvement of the judiciary, police and agencies working on violence against women. The policies are meant to provide women with a protection order, the main goal of which is to reduce or stop the violence. The main finding of this research is that there was a reduction in violence for less than one-third of the women surveyed. The major issue was the significant gap between the number of protection orders applied for by the women, and the number granted. There were also instances of poor execution, with women reporting that over time the effect of the order in reducing violence wore off.

This supports the argument of Carol Bacchi's WPR that it is biases built into the behaviour of law implementers that affect the policy outcomes, rather than the policy contents. Especially under the PWDVA, the policy contains all the required progressive elements; however, the law implementers are not progressive enough to adopt all those progressive elements. The PWDVA provides the power, and indeed the obligation, for judges to make rapid decisions in a PWDVA matter, but judges were reticent to use that power. This shows that they were not ready to implement the PWDVA in accordance with its progressive objectives. On the rare occasions when the law implementers did make rapid decisions, the protection order issued was more effective. These rapidly issued protection orders recognised emotional

abuse and clearly instructed the respondents to stop their behaviour, and they had a significant positive effect on the overall outcomes for the women who received them.

This shows that, in the instances where a judge's personal or professional beliefs match the objectives of the PWDVA, their behaviour results in positive action and the clear communication to both the applicant and the respondent of the gravity of situation, as well as the seriousness with which domestic violence is considered. Only by setting such a clear and positive example can a judge ensure that the PWDVA helps in meeting the longer-term strategic needs of women. In my research, the number of women whose strategic needs met was negligible.

In most cases, judges resisted giving a protection order, although they were prepared to make maintenance orders, suggesting that judicial law implementers were more comfortable in meeting the practical needs of women than their strategic needs. The fact that more than two-thirds of women interviewed had not received protection orders has serious implications from a policy effectiveness perspective. It points to the failure of the PWDVA actively to protect women from domestic violence, one of the key policy goals. Earlier literature on PWDVA implementation claimed that protection orders were 'liberally' granted, however, there is a gap in that literature as it does not identify how many orders were granted when compared to how many were applied for. If 66 per cent of women were not granted protection orders, it is important to understand why that was so, whether or not they were requested, and if not, why not? I feel that more research must be undertaken which studies large samples of PWDVA cases and investigates whether these produce similar results.

It is also important to analyse why protection orders were granted rarely. The two reasons identified in this research, that most women had returned to their natal families and did not need it, or that the women themselves had not asked for it, might not represent the true picture. Based on this research it can be concluded that protection orders work in reducing violence experienced by women when granted, however, since they are sparingly granted, the violence reduction impact gained through this provision of the PWDVA is less than satisfactory. Neither reason on its own seems sufficient to justify not issuing a protection order if there were claims of serious violence occurring, particularly since judges made residence orders that were not requested.

Impact on negotiation power

A few women reported a significant positive impact on the negotiating power that they had with the respondent or with other people. There were two main reasons for this positive change, the behaviour of the judges, and the support of NGOs. A supportive experience resulted in women challenging their own notions of the subservient nature of their gender and made them feel powerful enough to make noticeable changes in their lives.

The story of Sunita, from Delhi, in Chapters 6 and 8, is one example. The change in negotiating power that results from positive behaviour by judges and police is particularly notable, as women would not have gained that power through any other source, including family members or other community members. However, these cases were so rare that it is too early to conclude that the PWDVA has contributed, even modestly, towards a change in overall gender power relations for women. If the positive impact experienced by these few could be extended to more of the women

who accessed the PWDVA, then this could serve as a powerful policy tool to bring about more gender equality and empowerment of women. However, this would require changes in the attitudes of law implementers, rather than any change in the PWDVA itself. To create the impetus needed to stimulate the empowerment of women under the PWDVA, the state-managed systems that have been created for the protection of women need reform. It is important to ensure people with the necessary attitude and commitment are appointed to implement PWDVA, and that they have received proper training regarding what impact their behaviour has on the lives and rights of women.

Recognition of domestic violence as a human rights issue

The overall findings of the research indicates that recognition of domestic violence as a human rights issue was low among law implementers, especially police, judges and lawyers. Even protection officers, who were the main officials appointed under the PWDVA to provide support, were lacking this understanding. It was found, however, that NGOs, with a few exceptions, exhibited the ‘domestic violence as a human rights abuse approach’. Most of the stakeholders were more focussed on managing domestic violence with the goal of protecting the family unit and on ensuring that the needs of women were met whilst maintaining the sanctity of the family institution.

Evidence of this was found in many events experienced by women whilst accessing the PWDVA, and was also visible in the outcomes women received from the PWDVA. Examples of these actions included judges promoting compromise and making residence orders when not requested, police explaining the consequences of a broken family to women, the making of maintenance orders rather than residence

and protection orders. These actions all imply a focus on saving a family from breaking up, rather than removing women from an environment of violence. An underlying attitude that was displayed by lawyers was that the PWDVA was a tool that women misused.

Even protection officers demonstrated that they were more focused on settling the women in the matrimonial home than on supporting them to escape from violence, although this attitude was more prevalent in UP and MP. These protection officers attempted to resolve the matter at their level and hence avoid filing a case in court. This research concludes that law implementers were more focussed on maintaining an intact family than treating a woman as an individual whose right to live a violence- and threat-free life had been violated.

The other disturbing finding from this research is the absence of the awarding of compensation. This has implications on how the law implementers view domestic abuse. Findings in Hapter 6 showed that not one woman received compensation, even though most lawyers reported that they had applied for compensation, which women were entitled to under the Act. Even though the agony caused by mental violence is hard to prove, there were a few cases of severe and proven physical harm in this research which ‘should have’ received compensation.

This has implications for the need to institutionalise within the court system the concept of domestic abuse as a human rights abuse worthy of compensation. There are no prescribed penalties in the PWDVA for the respondent. Even if the respondent had perpetrated violence, which is defined as a criminal offence under the Indian Penal Code, there are no actions that can be taken against him through the PWDVA;

the only consequence that can occur is an order to pay compensation, and an order to 'not perform violence in the future'. Even if punishment of the respondent is not considered appropriate, the woman has a right to be compensated in monetary terms for her suffering. Unfortunately, there was no understanding of this among the law implementers. A women's only entitlement in the eyes of the judges was maintenance, which does not send any signal to the respondent that domestic violation is an abuse of the women's rights, or even that it results in suffering.

As a result, this clause in the PWDVA, which could have demonstrated that violence against women will not be tolerated and is deserving of compensation, was not used at all. It is important to note that while compensation was not ordered in any of the cases in this research, LCWRI in their monitoring reports have identified cases where compensation was granted. However, the absence of even one case of compensation in a sample of 78 shows how rare it is. Even if small monetary compensation were granted to women, and not the large amount documented in the few examples from LCWRI, this would be significant in sending a signal that there will be no tolerance of violence against women.

In conclusion, the research shows that, overall, the PWDVA has not succeeded in meeting the strategic needs of women, as it has not created a noticeable increase in the empowerment of women who accessed PWDVA, or created a culture that demonstrates that domestic violence will not be tolerated.

Practical gender needs

This research does not prove that the practical gender needs of women were met by the PWDVA, it only points out that law implementers had a greater inclination to pass relief catering to a women's practical gender needs than to address their

strategic gender needs. Granting this relief to women did not ensure that those practical needs were actually met. Many women experienced significant delays within the court system before relief was granted and, even when relief such as maintenance was granted; it was often insufficient to address practical needs.

Economic abuse

Chapter 8 established that, even though maintenance was the relief most sought after and most granted, it was also the most poorly executed. It was also the relief which, despite being ordered and executed, was the most inadequate. The amount of monetary relief granted in situations where the respondent's income was not proven (which was commonly the case) was insufficient to address the woman's practical needs. In these situations, the amount granted was comparable to an Australian being granted \$30 per person per month (note that this is not an exact conversion but an approximation of what the relief granted would mean in an Australian context).

Even though judges recognised this practical gender need, there was no recognition of either the urgency surrounding it, or what constituted an appropriate level of relief. Additionally, there was a lack of suitable mechanisms for the processing of maintenance orders and the subsequent execution of those orders. As Indian States have a very small role in supporting these women, the maintenance order and subsequent execution process allow the respondents again to maintain a position of power over the women. Women are again forced to depend on the respondent as their provider. Maintenance orders for women can be accessed through other areas of the Indian legislative framework, so the PWDVA has not provided additional relief to women in this area, although on some occasions the relief may have been received faster under the PWDVA than otherwise.

The excessive focus on maintenance orders under PWDVA dilutes the image of the Act, which is primarily intended to provide protection from violence. Both protection orders and residence orders are unique to the PWDVA, and both have a direct impact on the strategic needs of women; however, stakeholders need to note the limited usage and effectiveness of these forms of relief. Women also have also come to see the PWDVA primarily as a tool to obtain maintenance, rather than a way of protecting themselves from violence.

This raises the question of whether providing all necessary forms of relief under one Act has been beneficial to women, or whether better outcomes would have been achieved by focussing on protection needs in the PWDVA and enhancing the effectiveness of existing mechanisms in other Acts that provide for practical (maintenance) needs. It appears that the PWDVA has primarily been used as an alternative legal tool to access maintenance when this need has not been met through other legal avenues. Many of the women revealed that they had filed their case under PWDVA when it took too long under the alternative Section 125 legal mechanism. Furthermore, some women said that, when it took longer than expected to get a maintenance order under PWDVA, they filed a case under Section 125.

Reducing homelessness

Even though other literature on the implementation of the PWDVA determined that residence orders were granted cautiously, this research found residence orders were granted more often than protection orders, and in some cases even though women did not request or want them, judges ordered them to go back to their matrimonial homes. This indicates that judges are confusing the rights the PWDVA provides women to reside in the matrimonial home, when they want it, with a perceived

judicial right to make residence orders when they deem fit, possibly either to maintain the family unit, or at the request of the respondent. Also, when a residence order is made, there is no concept of restraining or preventing the respondent from entering the portion of the home that the woman resides in.

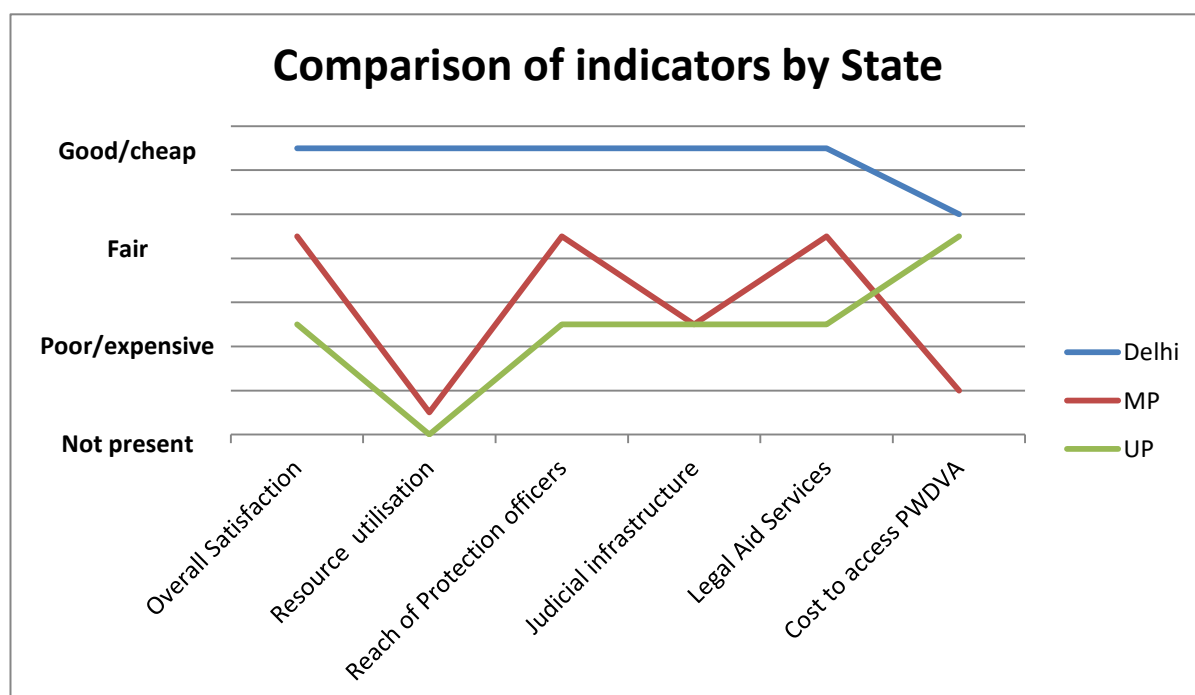
Under PWDVA, the women's right to residence can also include ordering the respondent to arrange for suitable accommodation for the woman somewhere other than his own home, however there was no awareness of this and no instances where such an arrangement was ordered.

The findings in this research reveal that the PWDVA has not had a significant impact on women when it comes to addressing homelessness. The right to share the matrimonial home was considered a significant and progressive relief granted under PWDVA. Despite the positive effect expected from this relief, and the willingness of judges to order it, this research finds that, apart from a handful of cases, the passing of a residence order did not impact the affected woman's life positively. Instead, it impacted negatively for many women. The order forced the woman to return to the environment where the violence occurred, and did not provide them with protection from the violence. This means that there is a need to research whether a residence order is sufficient on its own, or whether it must be accompanied by other measures to ensure that it actually translates into a positive outcome for the woman. The effectiveness of this provision has already received scrutiny because of the controversial Batra judgement of the Indian Supreme Court (Dube, 2009), where a woman was denied rights to the matrimonial home as it was owned by her in-laws, rather than her husband.

Comparison of findings across States

The research assessed models implemented in three different States. The assumption was that the resources and commitment invested by the State would have an effect on the outcomes for the women. Madhya Pradesh (MP), as discussed in the Chapter 5, was the State that provided the greatest resource allocation and greatest number of protection officers in a variety of locations. Delhi provided medium-level resources and provided full-time protection officers. Uttar Pradesh (UP) was the State which committed no resources at all (see Figure 9.1).

Figure: 9.1 Comparison of Indicators by State



The various indicators show that, even though MP had committed more resources and had a deeper penetration of protection officers, it did not perform as the best model among the three States. The findings show that it had a very poor expenditure rate of those resources, and the protection officers were given their protection role as

an additional responsibility to existing duties, so they did not devote much time to the PWDVA. Moreover, women found accessing the PWDVA was most expensive here. The budget that had been allocated for the implementation of PWDVA had not been passed down to the field to be used in reducing the cost of access. The research concludes that if resources remain with the government, they are more prone to be underspent than when transferred to civil society. Since commitment and sensitivity to the issue of domestic violence is low among government law implementers, they avoid using the resources for this cause. On the other hand, NGOs that were working through different funding arrangements were found to have used more resources to help the women, reducing the cost of access. Given this background, MP did not perform as well as the researcher assumed it would, considering it allocated the most resources and had a deeper penetration of protection officers.

Delhi was selected as a State with a medium level of resource allocation and having a level of access to protection officers which, while lower than in MP, was more than in Uttar Pradesh (UP). However, the protection officers in Delhi worked full-time on the PWDVA, giving them the ability to assist and follow up on more women. Delhi ranked as a better State according to feedback from women. Additionally, the law implementers achieved a higher ranking in Delhi. The Delhi police, while still ranking poorly, were ranked better than the UP and MP police. Delhi was also the State with the most women satisfied or extremely satisfied with their outcomes, supporting the conclusion that the Delhi model of implementation was the most effective. The efficiency of this model, which was being tested in a few States, has already been identified by the Central Government of India, and is being replicated in all the States of India. However, as seen in Chapter 6 Delhi differs in some areas

apart from the difference in implementation model and provides better infrastructure and transparency in relation to court orders. The function of law and order, and hence the police, is under the central government that passed the PWDVA, and the status of the infrastructure and facilities, such as the courts and the Delhi Legal Aid Service, is better than in other States. Even information dissemination is more advanced, and all orders related to the PWDVA can be found on the court's website. This indicates the role an institutionally supportive environment has in influencing outcomes for women.

The State of Uttar Pradesh was included in the research as being a State which provided no resource commitment to the PWDVA. The model of implementation was also different from the other States. The findings support the logical presumption that this State would have a poor performance in the implementation of the Act, as women reported the lowest level of satisfaction in this State. Research in this State confirms that resources, both financial and human, do matter in the successful implementation of the PWDVA. UP was ranked worst on all indicators, including overall satisfaction with the Act, duration of the case and behaviour of law implementers, such as the judges, police, lawyers and protection officers. The only law implementers that were appreciated by women in UP were the service providers or NGOs.

UP's government institutions already have a negative reputation in areas outside women's protection, and this is reflected in matters of women's protection as well, including anecdotal indicators of the attitude of the UP population and government to addressing violence against women. The Indian media describes the presence of an apathetic attitude towards issues of violence towards women in UP. In Delhi,

violence against women has become a big issue, resulting in public demonstrations and media coverage, and a positive state response, however, UP has not to date demonstrated any commitment or response, despite significant media coverage. UP's political leaders have been recorded making comments trivialising, justifying or dismissing rape. UP is evidence that the most progressive policy can fail if there is an overall lack of commitment from the state, a lack of women's policy support and insufficient resources.

Hence UP is a good case for testing the assumption that lack of commitment from the state is reflected in the attitudes of the law implementers and that a culture of ignoring women's issues is hence created and cultivated.

Who causes adverse outcomes for women?

The research finds that, although an enabling environment in terms of infrastructure support is important, it is the approach and the attitude of the law implementers that has the greatest effect on the outcomes for women. The research findings show that negative attitudes of judges result in the worst outcomes, and police rank second in influencing outcomes for women. Hence if judges and police view the issue of domestic violence as a problem of families disintegrating due to women's empowerment or the higher autonomy of women, their response will be unlikely to bring positive outcomes for women. This has serious implications as neither of these law implementers comes under the central agency responsible for the PWDVA implementation, the Ministry of Women and Child Development (WCD). Traditionally, WCD has been a key stakeholder only in policy formulation and placing pressure for passage of reform legislation through Parliament. The judiciary comes under the Ministry of Justice and Law, and the police come under the Home

Ministry of the relevant State. It is these two agencies that take over the practical implementation of legislation developed by the WCD. Women's issues are not the top priority of either of the implementation agencies, and neither are the agencies accountable to the WCD Ministry for failure to ensure the effective implementation of legislation.

The other source of adverse outcomes, which is related to the approach and attitudes of implementers, is the duration of the case. The longer it took to finalise a case, the more detrimental was the impact on the woman involved.

It was reported that judges do not get the credit (points) for disposing of PWDVA cases that they get for cases under criminal law. As a result, PWDVA cases do not get priority, and it takes longer than it should for the disposal of a case. Hence this point again demonstrates that, for the Ministry of Law and Justice, PWDVA is not a priority and is not even recorded in its own monitoring systems. This lack of priority ultimately results in adverse outcomes for women.

What are the main issues?

- *Behaviour of law implementers:* The most significant power to influence the outcomes for women lay in the hands of judges. As we saw in Chapter 6, it was the judges who either challenged the gender relations that women shared with the respondent, or reinforced the gender roles that made women vulnerable to violence. When judges displayed the positive behaviours listed in Chapter 6, they had a positive impact on the gender relations experienced by these women. These positive examples, while not frequent, must be shared widely during training programs for law implementers. Similarly,

when police adopted the negative behaviours listed in Chapter 8, it was traumatic for women and led to continued violence occurring in the home, thus encouraging or condoning violence through apathy.

- *Mismatch of civil vs criminal law:* The PWDVA law is civil in nature. There exists some confusion whether domestic violence law is civil or criminal law in the minds of the people who are interacting with it. It appears that this confusion stems from the stringent criminal laws (498A and 304B) which were introduced in India prior to the passage of the civil law on domestic violence (PWDVA 2005). The notion that men can be ‘convicted’ or ‘framed’ suggests that they are being penalised under criminal law and undermines the goal of the PWDVA, which is to protect the applicant, not to convict or punish the respondent. A central argument for introducing the PWDVA was that existing criminal laws were insufficient to address all domestic violence issues effectively, and a civil law was required to address that gap. Civil laws are however criticised as being too weak to provide effective relief. It is suggested that the confusion that arises from assuming a civil law to be a criminal law might be more injurious to the objectives of the civil law than the fact that it is not a criminal law.
- *Weak execution of orders/ follow up of breach of orders:* The study identifies that execution of orders is weak. Especially when it came to the execution of maintenance orders, women faced substantial trouble and often had to re-attend court for breach of court orders.
- *Police role:* The role of the police in implementing the PWDVA has not been integrated effectively in any of the States. Police are not aware of the steps

they need to take when a woman wants to complain about domestic violence.

A clear procedure needs to be in place, requiring police to ensure that woman access protection officers.

- *Medical facilities:* Medical facilities were the least accessed in this research. Women complained about this when there was a need for medical reports to help them prove violence in court. There was no linkage found of this facility in PWDVA cases when it came to the provision of relief from violence.
- *Service providers:* Service providers received the best ranking from women. They need to be more formally engaged in the implementation of PWDVA to increase its effectiveness. The registration of NGOs under this Act has been neglected and should be a priority. It was seen in the research that, when resources remained with government officials, they often remained unspent, for example in MP. When NGOs received resources for PWDVA implementation, they were more fully utilised. Some NGOs were able to assist in building the capacity of other law implementers, however not all NGOs had the resources or skills to do this. All the registered NGOs under this Act would therefore benefit from further capacity building from other NGOs that are expert in working on VAW, and also from international agencies, enhancing their ability to build capacity in the government institutions.

Access of women to remedies

Only one-third of the women interviewed reported receiving all the remedies that they were looking for, and no compensation was granted to any woman even when the lawyers had sought it. For the other two-thirds, the required remedies were not

accessible and were not available in a timely manner. It was identified that maintenance orders were the most granted relief, followed by residence orders and finally protection orders. Custody orders were sought only by two women and they were successful, although they were unusual cases, as described in Chapter 6. There was no compensation ordered, although in a few cases, litigation charges were sanctioned. As discussed in Chapter 6, these remedies depended entirely on the judges, and since the gender impact analysis shows that the gender sensitivity of judges towards domestic violence is below expected standards, access to these remedies was unjustifiably hindered.

Extent of needs met

As we saw in Chapter 8, when rating their satisfaction with the Act one-third of women were satisfied or extremely satisfied. About the same number also reported a reduction in violence. Although there are some overlaps, extreme satisfaction and satisfaction was achieved when the women's strategic gender needs were also met. Generally, the women were focussed more towards getting their practical gender needs addressed (maintenance and shelter), and dissatisfaction was also reported from a failure to get those needs met. This finding implies that PWDVA has helped in meeting mostly practical gender needs. There are two issues: even though practical needs appear to be a high priority for women (maintenance orders rather than protection orders), when strategic needs were met along with practical needs, then the impact on the various areas of the woman's life was more significant. For example, with reduced violence, many women reported enhanced self-confidence, better negotiation power with the respondent, enhanced conversation skills with officials, reduced feelings of victimisation, the ability to take decisions about their

lives, and a feeling that it was not their fault that they faced violence. All of them were extremely satisfied with the outcomes of PWDVA. However, when only maintenance and shelter needs were met, which was what the women were more concerned about, their satisfaction from the outcomes achieved was lower.

Adequacy of enabling environment and support services

Support services covered by this research have mainly been those delivered by lawyers inside the court, and the police, NGOs, protection officers and medical facilities outside the court. The research found that police were ineffective in meeting the needs of women and that negative and rude behaviour from police was experienced as traumatic. Similarly, protection officers were also found to be poor at providing the support that women actually needed. Lawyers were helpful, but there were financial costs involved in acquiring such help. Legal aid services were officially free but, as described in Chapter 6, they provided better support if they gained small monetary tips from women.

Medical facilities were poorly integrated into the Act: the only reference to doctors was when women went to see private doctors for injuries or pain. This service was not seen as linked to PWDVA. Only in a couple of cases was a medical facility used by police in preparing a medico-legal report.

Only NGOs provided the supportive environment that women needed at all the stages of the legal process. It should be also noted that not all service providers were registered under PWDVA but lack of registration did not affect their involvement. They were the most effective of the agencies that provided support and they monitored other law implementers like police and protection officers. Even judges, relied on NGOs while making decisions. Though not all NGOS were involved to the

same extent, they were the most involved of the agencies with implementation responsibilities. There was stronger presence and involvement of NGOs in Delhi and UP than in MP. Not only were these NGOs helping women at every stage of the PWDVA and even providing legal help, they were also undertaking coordination among the various stakeholders. While police officers failed to send women to a protection officer, NGOs frequently sent women to both protection officers and the police. Networks of women's organisations also actively supported the monitoring of PWDVA by holding State and national consultations and review meetings. Hence women's organisations, labelled as service providers under the Act, were the most enabling of the Act's implementers and their key role should be recognised.

Facilities such as the women's cell in police stations did not provide the additional support that would be expected from this service, although the 'Parivar Paramarsh Kendra' of MP presents as a one-stop crisis centre for women. If it were supported adequately with resources and capacity building, it could create a more enabling environment than what is presently available in MP.

Comparison of findings with existing literature

The existing literature indicates that the systems and structures involved in the implementation of PWDVA are skewed, inadequate and untrained (LCWRI, 2010, LCWRI, 2012, LCWRI, 2013c). The findings of the present research reinforce previous findings concerning the inadequacy of the systems and structures. The issues lie at various levels, including the limited understanding of the PWDVA, a lack of commitment to implementation, and the workload placed on the implementers. All these gaps in the systems and structures significantly influence outcomes.

Previous researchers have argued that civil laws are too weak to provide effective relief. After this research, I am in a position to comment on this: I believe it is premature to claim that the PWDVA is too weak to provide effective relief. I think the PWDVA has not been used effectively in the first place. Only when the PWDVA is being used effectively will it be possible to determine if the relief the PWDVA provides is adequate. If protection orders are not passed, judgement cannot be made on the effectiveness of those orders in reducing violence. I found that protection orders, despite being poorly executed, did impact positively on women's lives; however, two-thirds of women did not get protection orders.

Previous literature has found a mismatch between how judges treat the PWDVA, and what PWDVA actually is, with the civil law being processed as criminal law. This research also supports that finding. The judges did treat this law as if it penalised the respondent, and, according to advice from NGOs, did follow the Indian Penal Code procedures when handling PWDVA cases. This impacted on the outcomes for women, because judges acting as though they were implementing a criminal law increased the difficulties women faced in getting orders.

Recommendations

This research has revealed many critical points which need to be addressed by the appropriate stakeholders. Based on the feedback of women and other service providers, lawyers and protection officers, the particular findings of my research suggest a number of ways in which implementation of the legislation could be improved. Hence these recommendations have been generated from the experience of those who have sought to invoke the PWDVA and those who have sought to assist

them, and they are applicable to the operation of the Act in the current circumstances. The recommendations are:

Capacity-building of judges: Put more time and resources into increasing the gender awareness and sensitivity of judges. In addition to the need for more judges, they need capacity-building in relation to domestic violence and gender issues. They should be aware of the international protocols on domestic violence, and how the Indian Act encompasses those values. Feminists have already pointed out that a lack of gender sensitivity is a big hindrance in getting an effective impact from the policy.

PWDVA should be time bound: The judges implementing the law are dealing with criminal cases, but they need to understand the nature of civil laws, like the PWDVA, and the need to adhere to the time limits assigned. The research clearly points out that the shorter the duration of their cases, the more satisfactory are the outcomes for the women. Fast access to relief orders shifts the gender relationship that a woman shares with the respondent and acts in her favour, mostly in reducing violence. A lack of follow-up on the execution of orders puts women in a weak position.

PWDVA has relevance: The one-third of women who found this act extremely beneficial or satisfactory demonstrates the relevance of the Act in India when implemented in supportive conditions by supportive law implementers. It shows the positive impact these policies can have on the lives of women. Not only does it help in meeting the practical gender needs of women, but it also stimulates a change in the gender relations that women share with men. It should not be viewed as an Act that needs revisiting in terms of being misused. It should be viewed as underused,

where the reliefs available under this Act did not reach the women, even though barriers to access were low and the women had requested that relief.

PWDVA needs reform in the way it is executed or implemented: The women who were partially satisfied or not satisfied at all (two-thirds) indicated that the PWDVA needed extensive reform in the way it was being implemented. Not only do the processes and procedures need to change, but also the perceptions about what the Act is and what it is trying to do. Major judicial and police reforms are already being demanded in India. The way these systems work is reported to be inefficient, particularly when it comes to meeting the needs of women. The biggest issue is that it is the Ministry of Women and Child Development that will be most concerned with these findings, while it is the Ministry of Law and Justice and the Ministry of Home Affairs that need to show commitment to reform. Although violence such as rape against women in public spaces has had significant attention in India recently, domestic violence is still an area which has low visibility; yet it is the form of abuse which affects the most women in India. Hence there is a need for visibility of domestic violence, and recognition of it as the most widespread abuse that Indian women face.

List of key behaviours of law implementers that need to be included in advocacy efforts, judicial and police reforms and capacity-building programs: When the behaviour of law implementers is analysed with a gender lens it demonstrates a clear bias against women, with the benefit of the doubt being given to the respondent. For example, the research shows that the respondent's failure to appear in court rarely worked to his disadvantage; in fact it generally worked to his advantage, as the lowest amount of maintenance orders were made when the respondent was not

present. On the other hand, research shows that a certain kind of law implementer, through their working style and the responses they gave inside the court significantly improved the women's outcomes. For example, swiftly disposing of cases and simply asking the woman what she wanted to say in her case. On the other hand, judges who delayed the proceedings for small reasons and did not allow a woman to speak inside the court, or asked her to maintain silent when she attempted to make a point, had an adverse impact on the woman and confirmed the apparent acceptability of gender differences. The list of these behaviours required of law implementers should be highlighted in various forums being used to demand reforms to the systems, and also during the capacity building of officials.

Full-time protection officers: The most striking finding about the protection officers has been that they were the least accessible law implementers when compared to the police, NGOs and lawyers. This has implications for the implementation of the Act. If the law implementer exclusively introduced for the implementation of the Act is the least accessible implementer, then it is evident that the role that this officer was envisaged to play has not been adequately outlined or executed. This pattern was generally present throughout UP and MP, where protection officers had limited accountability in the implementation of the Act. Many women could not even advise whether or not they had met a protection officer; even if they had briefly met a protection officer or the papers indicated there was involvement of a protection officer in court, there was a complete lack of impact. Instead, lawyers seem to have had a greater role, a stakeholder that was not included in the early design of this research because they were not technically stakeholders in

the process. Lawyers were introduced into the later stages of research, after the situation in the field showed their importance.

The fact that protection officers were the least accessed implementer, and women had found their role to be minimal (except in Delhi), is an indication that protection officers have moved to the periphery of the system that exists to manage domestic violence. Instead, women accessed NGOs and had many positive things to say about them. This presents a situation where NGOs have taken a central role in the execution of the Act when their role should have been, at the most, supportive. In conducting my research, I found it easier to access women through NGOs than through protection officers. It may be argued that accessing women via NGOs may have skewed the results in their favour. However, even a majority of the women who were contacted directly reported that NGOs played a crucial role in their case, thus negating this argument and highlighting the central role that NGOs played. Only in Delhi did women report that they had met protection officers. This is the only State which employed full-time protection officers, hence their recognition and accessibility among women was better. Not only were protection officers the resource least accessed by the women, but also they were the resource least accessed by other stakeholders, despite their legislated role to support other stakeholders. The introduction of protection officers was intended to provide an alternative point of contact for women who did not want to go to the police, so that they could report violence in a non-threatening environment. However, if they are as under-utilised as this research suggests, then the intention for which protection officers were introduced has been defeated, making them a nearly useless appendage in the

proceedings when they should have been playing a crucial role in resolving domestic violence matters faced by women.

Only protection officers in Delhi have been considered in assessing the role protection officers played in the implementation of PWDVA, because in UP and MP their involvement was negligible. As reported in Chapter 7, the role of protection officers is evolving and has changed in Delhi, however that evolution has not been positive and their involvement has reduced as the number of cases has increased with time. This reduced role is a cause of concern and should be flagged with policy makers. It is not that there is no clarity about what they should do; the Act envisages certain roles, and describes an ideal situation, however no evidence of this occurring was found in the field. Further, there have been strong efforts from domestic violence activists to define the role of protection officers and also create resource materials for capacity-building programs, but these efforts have not filtered through to where they matter. There is a gap between the ideal situation and the real situation. There needs to be a mapping of roles that have been played by the officers, and whether what the Act envisages is too ambitious, given the number of protection officers appointed.

It should also be remembered that, although protection officers can provide extensive support to women, they are a double-edged sword and can be a negative influence if they are not experienced or qualified enough to play this critical role. This role demands high standards in dealing with cases of violence, and generally those skills were lacking in the protection officers that the women in the research had interacted with or reported on. While this thesis was being finalised, the appointment of full-time protection officers was recommended for all States by the Ministry of Women

and Child Development. Rolling out this process is going to be time-consuming, however. MP State, which had itself had allocated resources and decided to engage full-time protection officers two years before the Central Government decided to make it uniform throughout India, had not been able to recruit protection officers by the time this thesis was being submitted. Neither is there clarity on how they will be appointed and whether they will be under the supervision of the DWCD or the NGOs. It also still needs to be seen whether one or two protection officers per district are sufficient, given the number of reported domestic violence cases. In conclusion, the Ministry of Women and Child Development has to gear up to make protection officers a more viable law implementer than they are at present. Protection officers are the only law implementers that are under the control of the WCD. There needs to be advocacy on how to make them more useful to other implementers, such as judges, the police and medical officers.

Cases should be time-bound: The findings have shown that the less time spent on a case, the greater the level of satisfaction reported by women. Earlier literature on PWDVA has not identified this clear correlation. Key stakeholders should take cognisance of this fact. There are no good reasons for delay in such a simple civil act; all the Act does is provide legitimate rights to women who are escaping violence and being pushed into homelessness. All the reasons for delay presented in Chapter 8 were frivolous when dealing with cases involving violence. There is no reasonable explanation for spending four to five years (as reported in eight cases in this research) on PWDVA orders. Cases of rape are currently being requested to be processed in the fast-track court, so that speedy justice can be done for survivors. PWDVA, by design, does not require fast-track courts as the procedure is so simple.

There should be some mechanism built in at the judiciary level which monitors cases by a special team/committee if the case takes one year or more.

Time-bound early disposal of the case sends signals to both the applicant and respondent, as was evident in the research. The applicant gets the relief she is looking for, enhancing her negotiation powers with the respondent, and the respondent senses the gravity of the order, enhancing his compliance. Delays in orders enhance the confidence of the respondent, resulting in poor compliance even if the orders are eventually granted.

Legal counsel: Some cases in this research identified that, when protection officers themselves presented the matter to the judges, the outcomes were very positive. Although examples were few, this finding was common to all three States. Protection officers received different attention from judges when they themselves put up the cases, as opposed to a lawyer (either public or private). However, instances of this were rare. This should be considered as a viable option, as this is what the PWDVA envisaged as one of the roles of the protection officer. This should be adopted as the state-supported model to access PWDVA, rather than accessing it through legal aid as is practised currently.

Allocated resources to be distributed: The research findings show that when resources remain with government, their expenditure rate is low. However, when resources are received by NGOs, the chance of these resources being used in supporting women becomes very high. This was evident in both UP and MP. Also, more research needs to be done on how efficient it is for Department of Women Child Development to create its own cadre of protection officers, or is it more

efficient to delegate the responsibility of recruiting and managing protection officers to NGOs? Will outsourcing of the services work better than public servants taking this responsibility themselves? These are questions that must be debated.

Registered service providers to be utilised more: The research shows clearly that gender attitudes of law implementers are biased, and institutions such as the judiciary and the police operate in a way that discriminates against and disadvantages women. The only supportive institution was civil society, and specifically NGOs, which have been granted an important role in the implementation of the PWDVA. Whether registered or not, they were actively involved in supporting women. They were first port of call for more than half the women in this research and they were also the most trusted institutions accessed by women struggling with violence. Their role in the implementation of PWDVA is so critical that the lack of recognition of this role by law implementers like police, protection officers and judges is actually hindering the progress of PWDVA. There is an urgent need for the use of these institutions by the police and the judiciary to be enhanced, as whenever these service providers interacted with the judiciary and the police on behalf of the women, the outcomes were better for the women. Help from NGOs was also beneficial for the judiciary and the police, as it provided them with a reliable account of the case and reduced their workload. Hence it is strongly recommended that there be greater integration of women's organisations working for PWDVA at every stage of PWDVA implementation – i.e., pre-litigation, litigation and post-litigation.

PWDVA not to be used for compromises outside court: This research recommends that judges should not use PWDVA to reach compromises. In Delhi, women were sent to mediation centres for family counselling. This family

counselling was done before the judge released any form of order. This research is not recommending against such mediation and counselling, but rather that they should not be undertaken before the interim protection order is released. The rules of PWDVA prescribe a procedure for negotiation and counselling, however this was not followed and many judges forced the applicant to reach a compromise before issuing orders. Further, under PWDVA, compromises should not be reached outside court. An order from the court has more legal weight than a compromise reached outside court, which can be easily breached. The purpose of this law is clear, to provide protection, maintenance, residence, compensation and custody orders and other facilities which judges deem necessary. By forcing premature compromises, the legal rights of the women were negated and the women had less legal support in the implementation of these compromises.

Immediate passage of interim orders: Although I do not have a legal background, and cannot say how this should be taken forward, the PWDVA needs the mandatory issuing of interim protection orders on the day the case is filed by a woman on the basis of her affidavit or DIR. This is provided for in the law and should not be left to the discretion of the judge. If the interim order is requested, it should be granted. The quick passage of interim orders was desperately needed and yet was lacking in most cases. Some women were continuing with their cases without interim orders for more than a year! This should be taken as a serious failure of implementation and should be raised by the Ministry of Women and Child Development.

Conclusion

The findings of this research point to systemic bias in the attitudes of law implementers like judges and the police. This bias was reflective of a view of domestic violence as a family problem rather than a problem of violation of the human rights of women. It indicates that the working culture of the judiciary and the police has become the most limiting factor for women. Recent incidents of violence against women in the public sphere in one of the three States, Delhi, underline the low priority that officials place on VAW. Only the uproar created by women's organisations, which commanded huge public attention, elicited a response from the State. The priority given to cases of domestic violence is even lower. At present, India is in a very active phase, where the issue of violence against women is slowly being brought into the consciousness of law implementers. However, matters of domestic violence are still not a priority and may be neglected, since all attention is focussed on the safety of women in the public sphere. The Delhi police have, for instance, started registering FIRs for all complaints they receive on violence against women, especially rape cases. However, whether this is extended to cases of domestic violence is still not clear.

The overall research shows that only about one-third of the surveyed women were satisfied or extremely satisfied. Two-thirds were only partially satisfied or not satisfied with the results and proceedings of their cases. This in itself is an appalling statistic, and should be the focus of law implementers. Why were they not satisfied? Why has this Act not impacted the lives of these women significantly? And what can be done to improve effectiveness?

The positive impacts found indicate that the PWDVA can be used as an effective tool to achieve the objective of providing women a life free of violence, even in the private sphere. It was seen that in certain conditions, and with certain law implementers, PWDVA can have a very positive impact in meeting the strategic needs of women – that is, a reduction in violence and greater power to negotiate with the respondent.

However, in the present context, the execution of the law needs major reforms in terms of resource allocation and capacity building for law implementers. Judges and police are the most powerful law implementers for PWDVA and have the most influence on outcomes, yet they had the most biased gender attitudes and kept their approach focussed on saving the family via compromises rather than saving the woman from violence. Civil society organisations were more supportive of the strategic needs of women but were underutilised by the other institutions involved in the implementation of the Act. There is an urgent need for other law implementers like police, judges and protection officers to recognise their role in the implementation of PWDVA. When it came to protection officers, it was evident that they were the most underutilised law implementers when they should have been the most effective accessory in case resolution. Interviewees could not pinpoint the influence of protection officers in most of their cases. This is disquieting, as protection officers have been introduced exclusively for the purpose of appropriate implementation and usage of PWDVA. The need for full-time protection officers has already been pointed out in earlier literature (LCWRI, 2013a). This research reveals a lack of use of protection officers and also a lack of positive influence on their part.

The good news is that by the time this thesis was in its final stages, and after a series of advocacy campaigns, the Central Government's Ministry of Women and Child Development adopted a universal model of implementation. It committed to providing 75 percent of the budget allocation for implementation. Previously, the States were responsible for 100 percent of the budget allocation, hence the huge variation in allocation of budget. This research already shows that when the budget remains in the hands of government officials, it has less chance of being spent. The Central Government is allocating budgets to the State Women and Child Development Departments, but how it will be transferred to strengthen PWDVA implementation needs to be explored. Most of the budget that is allocated will be used in creating infrastructure and the appointment of human resources, as in Delhi. How can this resource be channelled to registered service providers is yet to be seen.

The apathy of government officials concerning gender issues is well known, and has been reported extensively. However, this research records how women using the PWDA perceived the behaviour of law implementers and how it influenced their outcomes, both negatively and positively.

This research also finds that policies designed to meet the strategic needs of women end up just focussing on meeting practical gender needs, due to the culture of the institutions that execute the policy and due to the personal gender biases of the implementers. To bring about changes in gender power relations, changes in the gender attitudes of the law implementers is essential. Civil society organisations/NGOs were found to have the least gender bias of all the stakeholders and were the only supportive institution for women while accessing PWDVA. This institution needs to be strengthened by increasing the role of NGOs in interactions

with the judiciary, police and medical institutions on behalf of women. Their involvement in such interactions provided the most successful resolution for the women applicants.

Overall, this research shows that the PWDVA has made some progress in meeting the practical gender needs of women, primarily maintenance and shelter. The strategic gender needs that were the main purpose of the Act are still struggling to be met. Protection from violence is an underutilised relief, when it should be the primary relief provided by the Act. These research findings suggest ways through which the Ministry of Women and Child Development could improve the existing processes, as well as indicating the major reforms needed to address the more substantial shortcomings.

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Appendix 01: Semi -structured interview questionnaire for women

1) How did you come to know about the Act? What other support were sought before accessing this Act?

2) How long had you endured violence before accessing the Act?(Years/months)
When did you first registered your case? Date/ month/ year

3) Whom did you go to register your case?

4) How easy or difficult it was for you to register your case?

How much you had to travel?

Was the officer registering your case available to meet you the first time you went?

How many visits it took you to get your case registered?

5) Were the provisions and your rights under this Act explained to you? By whom?

6) In how many days was your case presented to magistrate after you registered?

7) How will you rate your experience with the following implementers? :

a) Protection Officer: Very bad, bad, indifferent, satisfactory, good, very good, did not contacted this person

b) Service Provider: Very bad, bad, indifferent, satisfactory, good, very good, did not contact this person

c) Magistrate: Very bad, bad, indifferent, satisfactory, good, very good, did not contact this person

d) Police: Very bad, bad, indifferent, satisfactory, good, very good, did not contact this person

e) Health Facility: Very bad, bad, indifferent, satisfactory, good, very good, did not access this facility.

8) How would you rate the expenses you had while accessing this case?

a) Reasonable expenses, within my affordability.

b) Expenses not within my affordability, I had to stretch my budget.

c) Very expensive, I had to arrange from my natal family/others.

9) Have these expenses been met through the compensation order of the court? How many days it took since the case was presented?

10) What kind of order did you receive from the court?

a) Protection

b) Shelter

c) Compensation

d) Custody

11) Were these orders as per your expectations?

12) Have these orders been carried out by respondent?

13) Can you describe any change in your life which you have experienced after accessing this Act?

- Residence:
- relation with perpetrator:
- incidences of violence:
- mobility:
- economic independence:
- safety and access of children:
- others:

14) Can you describe any difficulty that you faced while accessing this Act or any provision of this Act which did not go in your favour?

15) If this Act was not there, what would you have done to address your issue?

Appendix 02: Information Sheet

(This document was translated into Hindi)

Impact Assessment of Protection of Women from Domestic Violence Act (PWDVA)2005, India.

Please read this sheet carefully and keep it throughout the period of research.

Period of research: June 2011- January 2012

Researcher: My name is Tulika Saxena; I am doing a PhD at Australian National University, Canberra, Australia. I am an independent research student at ANU and have no affiliations with any organization governmental or nongovernmental in India or the organization which has put me in touch with you. They are just helping me in the data collection process. All information that you provide today will not be shared with this service provider or any government official. All the information that you provide would be kept confidential as far as the law allows it.

Research Aims: I am doing research on the impact assessment of PWDVA 2005. It has been 5 years now since this Act has been in place. Thousands of women have accessed this Act all over India. It is very important to study the experiences of women and hear how effective this Act has been in helping them and bring change in their lives. This research will thus document the experiences of women who have accessed this Act. This will not only help in improving the implementation of this Act in India, but would also benefit other countries having a similar legislation.

Research Activities:

In this research, 75 women will be contacted in three states UP, MP and Delhi who have accessed PWDVA 2004. They should have accessed this Act at least six months to two years ago. Through an interview, these women will provide in detail about their experience while accessing the Act and also what changes have this brought into their lives. Since you have accessed this Act within past two years I would like to discuss with you on your experience while accessing this Act. Our discussion may last between one and two hours. If we need any more time than that, and it is not convenient for you to talk for longer than that, then I will ask if we can make another time to meet later.

Participation: Participation is completely voluntary, and you may choose to withdraw your participation from the research at any time. If you do withdraw, I will immediately destroy any notes or records I have made of information you have given me. Participation or refusal to participate will not impair any existing relationship between you and the service provider who has put me in touch with you.

Use of information: Information from this research may be published in reports, journal articles or in book form, in English or Hindi. As far as laws allow it, I will protect your privacy and the confidentiality of the information you give me. I will not use your real name in notes or publications. Although, you should be aware that you can be sometimes recognized due to the nature of things that you say. The notes and recordings would be kept in password protected computer. I will audio-record interviews and discussions, and take photographs, only with your consent.

Questions and concerns: If you have any questions or concerns about any part of this research after I leave, you can get in touch with me on:

Tulika Saxena

Email: tulika.saxena@anu.edu.au

+ (91)9999979273(India contact number)

+ (612)61254040 (Australia contact number)

Alternatively you can contact the address provided below:

(Local Contact to be advised and would be incorporated here)

You can also contact supervisor of this research:

Dr. Marian Sawyer

Room 1201, Haydon Allen bldg

Australian National University

Canberra,

ACT

Phone: (61-2)

6125

0130

Fax: (61-2)

6125

2222

Email: marian.sawyer@anu.edu.au

Further if you have serious concerns regarding the way the research was conducted
please contact the ANU:

Human Research Ethics Committee at the address below:

Secretary, Human Research Ethics Committee

Research Office

The Australian National University

ACT, 0200, Australia.

Phone: (61-2) 6125 3427

Email: Human.Ethics.Officer@anu.edu.au.

Appendix 03: Oral Consent Script

(This was translated into Hindi and read out to participants)

1. I have read out the information sheet about the research project, “Impact Assessment of PWDVA 2005”. Have I explained the project clearly to you? Is there anything else that you would like to know about the project?

2. Whatever information you will provide to me during the interview will be kept confidential by me as far as the law allows it. Any notes taken by me or recordings done of the interview will be kept on a password-protected computer. Your personal details or personal views will not be shared by me with anyone else. Is that alright with you?

3. Some of the information you give me may be published in English or Hindi. However, your real name will not be used in relation to any of the information you have provided me, unless you tell me clearly that you want me to use your real name. Is that alright with you? Do you want me to use your real name, or should I use a pseudonym?

4. You should know that even though I will avoid including identifying information in any

Publication, sometimes it is possible that people will recognize you by the things you say, so you should avoid disclosing sensitive information or saying anything defamatory. Is that clear? Before I publish any of your statements or views, I will give you the chance to review what I have written. Is this alright with you?

5. You are free to stop this interview any time if you feel so. You do not need to provide me any reason for that. Further if you happen to share something and then wish that you do not desire that information to be published, you can let me know. I would mark off that portion and would not put that on record. Is that alright with you?

6. Since I would not be able to write everything you say, I would like to record this interview using a digital audio recorder. That way, I would be able to listen to the recording afterwards and catch things you say that I might not fully understand during the interview, or might otherwise forget. This recording is strictly for my personal use and will not be heard by anyone else. I will keep these recordings in a locked cabinet until I finish my research. I will destroy them later once the research is documented and submitted. Do you give me permission to record?

7. Do you have any further questions? Can we start the interview now?

Appendix 04: Recruitment of women in three States

Delhi: To recruit the women for interview in Delhi, the following sources were contacted: NGOs working on domestic violence, the Department of Women and Child Development, which is the nodal agency for the implementation of PWDVA and employs full-time protection officers, the Delhi Commission for Women, the Family Counselling Centre and private lawyers. Trips to court were made to observe PWDVA case proceedings and to meet protection officers who usually sit in the courts in Delhi. Finally, the women were recruited from three sources: through protection officers, NGOs, lawyers, and especially legal aid services. In Delhi, where there are full-time protection officers, they were asked to provide contacts of women who have accessed PWDVA without the help of NGOs. In other States, access has mostly been gained through the NGOs, which are either registered service providers or are closely working with women facing violence and assisting them to access PWDVA. Extensive use of NGOs was mostly due to the lack of full-time protection officers who could provide contacts. Government implementing officers, in other States, mostly had records that lacked complete contact details, such as phone numbers, which made contacting those women impractical as it was exceptionally time and resource consuming.

In Delhi, it was assumed that protection officers, being full-time employees, would be able to provide better access to the women. However, most of the protection officers said that they were unable to keep track of the women once their cases progressed through the court. They would not know whether the women received orders or not, except in the few cases where the court calls on them for the implementation of court orders. They mostly filled out the DIR for the women, and

the women's cases then progressed either through the lawyers provided by Delhi Legal Aid Services or through their own lawyers. At the insistence of the researcher, some contacts were provided – however only about six cases were successfully interviewed with the help of the protection officer. Some cases were also interviewed through lawyers, both private and government lawyers of Delhi Legal Aid Services. About 18 cases were then interviewed through the assistance of NGOs and family counselling centres. Assistance of the service providers/NGOs was essential for the selection of the research sample, as they were in touch with most of the women who had accessed the PWDVA through them. NGOs had better contact details, which included phone numbers, and were able to devote time to the research and support in terms of following up and organising meetings with women willing to be interviewed. However, since these women had access to NGOs they had a higher chance of being satisfied with the process; they had received extra support both in terms of resources and guidance as compared to the women who were on their own while accessing PWDVA.

Most of the women were interviewed face-to-face. Women who travelled to the interviews were offered reimbursement of their travel costs, however a few women voluntarily refused to take any travel reimbursements. No women were interviewed in the presence of protection officers; however, women who were interviewed with the help of NGOs often had an NGO staff member sitting in through the interview. A few women who were unable to travel or meet the researcher at some public place agreed to be interviewed over the phone. Five women were interviewed over the phone in Delhi, and for two of these five women the interview happened in two to three sessions because the phone was disconnected or the interview could not be

completed in one call. A total of 27 women were interviewed, however one woman's record was removed after the interview as she had dropped her case from PWDVA very early in the proceedings, as she then processed her case through IPC section 498A (a section dealing with cruelty in the matrimonial home related to dowry demands). So information gathered from the 26 women has been included in the research for the Delhi State. Discussions with protection officers and legal aid lawyers were held and feedback from the NGOs was also taken, all of which inform this research. In Delhi, one incident came to my notice as the researcher, when I went to the police station for personal reasons to file a report of a lost wallet and opportunely witnessed how cases of domestic violence were being handled by the police, because a woman arrived at the police station just then to lodge a domestic violence complaint. The whole process that happened during this incident was duly noted and also informs this research.

MP: In MP, the women were contacted by representatives of a women's resource centre set up by local NGOs with UNFPA funding. The lead to one woman in Chatarpur was provided by the protection officer. Those women who agreed to participate in this research were interviewed at their homes or by being invited to a neutral meeting point (primary school in a centrally located village). In Bhopal, five women were contacted through lawyers and the interviews were conducted at the court premises, while three women were contacted through the leads provided by the protection officer and these interviews were conducted in their homes. The women who travelled to the interview were reimbursed for travel expenses.

Before beginning the interview, the information sheet and consent form were read out and only upon taking oral consent was the interview started. A few interviews lasted for one-and-a-half hours, while some interviews lasted for just twenty minutes. Nineteen interviews were voice recorded and seven interviews were transcribed into the notebook. Generally, one or two interviews were conducted in a day, when the researcher had to travel to a rural area, and three or four while in Bhopal, as the interviews took place within the city. In Seedhi, where the women travelled to a primary school, three interviews were conducted in one day. For most of the interviews, an NGO staff member escorting the researcher was present. When the interviews were done at home, care was taken to prevent other family members from being present, except in a couple of cases where the brother or the father of the woman sat in for some parts of the interview. Mostly, family members were called by the woman being interviewed as she could not remember a few details like the date of the order or the content of the order. NGO personnel also had to provide lots of details about the cases during the interview, because most of the women did not have copies of the orders with them and were answering questions based on memory and were often likely to forget the exact details: for example, to answer how many days it took for her case to be presented before the Magistrate after the DIR (domestic incidence report) was filed. Due to the low level of literacy of most of the women, or possibly due to length of the time that elapsed between these activities, some women could not remember what exactly the DIR was and they would even confuse it with other documents that were made by the NGO regarding their case. Here, the NGO personnel would provide details to the researcher and then, after taking the consent of the woman if she thought the approximate time or date was right, the information was noted. Only on one question, where the opinion of the

women on the services provided by the NGO was asked, in front of those personnel, did the answer seem to be compromised. All the women were very happy with the support provided by that NGO. The researcher had to be satisfied with that answer because it was not feasible for the NGO personnel to be removed from the interview for two main reasons: they were of great help in providing the additional details during the interview and they helped in phrasing the questions to the women in the local rural dialect, which made comprehension easier for the women. Even though I could mostly understand the dialect, I could not frame the questions I needed to ask in the dialect, therefore this help was very necessary so that women understood what I was specifically asking of them. Since these women represented the successful cases of the NGOs and these service providers had put efforts into helping the women to access PWDVA, it was not strange that all the women had good words to say about them. Apart from meetings with the women, in order to supplement the findings of the research I conducted meetings with two protection officers, NGO personnel, the Deputy Director of the Secretariat of the Department of Women and Child Development, as well as with legal aid lawyers.

UP: UP was the only State where a directive was issued by the WCD Secretariat to the protection officers for the five districts, informing them about the research and asking them to cooperate by providing leads for the research. However, despite this directive, the recruitment of women through the protection officers was low. Only in one district, Barabanki, was the Protection Officer able to take time out to provide details of the women and to accompany the researcher to facilitate the interviews. In one district, Sonbhadra, when the researcher visited the Protection Officer he was not in the city and the other protection officers were also not approachable. In UP, two

NGOs assisted in Lucknow district, one NGO assisted in Banda, and one NGO assisted in Kanpur. Private lawyers assisted in the recruitment of the women in two districts, Sonbhadra and Lucknow. In Banda and Lucknow, where women travelled to the NGO office for the interview, they were reimbursed the cost of travel. In Sonbhadra, women travelled to the court premises when called by lawyers and they were also reimbursed for the travel costs. A total of 27 women were interviewed but the record of one woman was removed because she had filed her case within two months under PWDVA and had not received any orders. However, this particular woman had a very heartening story about the treatment received from the police officers and so her story was included as an anecdote in describing the behaviour of police officers in UP. In UP, in Lucknow district, the magistrate agreed to an interview and hence is the single case where the opinion of a judge was documented by the researcher. Discussions with private lawyers, NGOs and the Protection Officer of Barabanki supplement the information provided by the women.

Appendix 05: List of NGOs that participated in this Research

- 1) Action India, Jangpura, New Delhi
- 2) Child Survival India, Khera Khurd, New Delhi
- 3) Guild of Service, Qutub Institutional Area, New Delhi
- 4) Nav Shristi, Neb Sarai Village, New Delhi
- 5) Pryatn, Kalkaji, New Delhi
- 6) Centre for Social Research, Aruna Asif Ali Marg, New Delhi
- 7) Lawyers Collective Women's Right Initiative, Bhogal, New Delhi
- 8) Action Aid, Bhopal (MP State office)
 - a) Aashna-Women's Right Resource Centre (Action Aid) Bhopal, MP
 - b) Women's Right Resource Centre (Action Aid) Chatarpur, MP
 - c) Women's Right Resource Centre (Action Aid) Seedhi, MP
- 9) Humsafar, Beri Road, Lucknow, UP
- 10) Sakhi Kendra, Shyam Nagar, Kanpur, UP
- 11) AALI (Association for Advocacy and Legal Initiatives), New Hyderabad Colony, Lucknow, UP
- 12) Vanangana, Karvi and Chitrakoot, Banda, UP

Appendix 6 PWDVA 2005

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

NO. 43 OF 2005
[13th September, 2005.]

An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

1. Short title, extent and commencement.-(1) This Act may be called the Protection of Women from Domestic Violence Act, 2005.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.-In this Act, unless the context otherwise requires,-

(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(b) "child" means any person below the age of eighteen years and includes any adopted, step or foster child;

(c) "compensation order" means an order granted in terms of section 22;

(d) "custody order" means an order granted in terms of section 21;

(e) "domestic incident report" means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;

(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

(g) "domestic violence" has the same meaning as assigned to it in section 3;

(h) "dowry" shall have the same meaning as assigned to it in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961);

(i) "Magistrate" means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place;

(j) "medical facility" means such facility as may be notified by the State Government to be a medical facility for the purposes of this Act;

(k) "monetary relief" means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence;

(l) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;

(m) "prescribed" means prescribed by rules made under this Act;

- (n) "Protection Officer" means an officer appointed by the State Government under sub-section (1) of section 8;
- (o) "protection order" means an order made in terms of section 18;
- (p) "residence order" means an order granted in terms of sub-section (1) of section 19;
- (q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act;
- Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;
- (r) "service provider" means an entity registered under sub-section (1) of section 10;
- (s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;
- (t) "shelter home" means any shelter home as may be notified by the State Government to be a shelter home for the purposes of this Act.

3. Definition of domestic violence.-For the purposes of this Act, 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.

Explanation I.-For the purposes of this section,-

- (i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
- (ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- (iii) "verbal and emotional abuse" includes-
- (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
- (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- (iv) "economic abuse" includes-
- (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved

person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

4. Information to Protection Officer and exclusion of liability of Informant.-(1)

Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

5. Duties of police officers, service providers and Magistrate.-A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person-

(a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;

(b) of the availability of services of service providers;

(c) of the availability of services of the Protection Officers;

(d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);

(e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant;

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

6. Duties of shelter homes.-If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

7. Duties of medical facilities.-If an aggrieved person or, on her behalf a Protection Officer or a service provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person in the medical facility.

8. Appointment of Protection Officers.-(1) The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.

(2) The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.

(3) The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

9. Duties and functions of Protection Officers.-(1) It shall be the duty of the Protection Officer-

(a) to assist the Magistrate in the discharge of his functions under this Act;

(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

(c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

(e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

(f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;

(g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

(h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(i) to perform such other duties as may be prescribed.

(2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

10. Service providers.-(1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.

(2) A service provider registered under sub-section (1) shall have the power to-

- (a) record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;
- (b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;
- (c) ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.

(3) No suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence.

11. Duties of Government.—The Central Government and every State Government, shall take all measures to ensure that—

- (a) the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;
- (b) the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;
- (c) effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;
- (d) 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.

12. Application to Magistrate.—(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

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

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

13. Service of notice.-(1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

14. Counselling.-(1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.

(2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

15. Assistance of welfare expert.-In any proceeding under this Act, the Magistrate may secure the services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

16. Proceedings to be held in camera.-If the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under this Act in camera.

17. Right to reside in a shared household.-(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

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

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by

the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

19. Residence orders.-(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order -

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

(b) directing the respondent to remove himself from the shared household;

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

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

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

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. Power to grant interim and ex parte orders.-(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

24. Court to give copies of order free of cost.-The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given

free of cost, to the parties to the application, the police officer in-charge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider located within the local limits of the jurisdiction of the court and if any service provider has registered a domestic incident report, to that service provider.

25. Duration and alteration of orders.-(1) A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.

(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

26. Relief in other suits and legal proceedings.-(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

27. Jurisdiction.-(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

- (a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or
- (b) the respondent resides or carries on business or is employed; or
- (c) the cause of action has arisen,

shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

28. Procedure.-(1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

29. Appeal.-There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

30. Protection Officers and members of service providers to be public servants.-The Protection Officers and members of service providers, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

31. Penalty for breach of protection order by respondent.-(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

32. Cognizance and proof.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.

33. Penalty for not discharging duty by Protection Officer.-If any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

34. Cognizance of offence committed by Protection Officer.-No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.

35. Protection of action taken in good faith.-No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

36. Act not in derogation of any other law.-The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

37. Power of Central Government to make rules.-(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the qualifications and experience which a Protection Officer shall possess under sub-section (2) of section 8;
- (b) the terms and conditions of service of the Protection Officers and the other officers subordinate to him, under sub-section (3) of section 8;
- (c) the form and manner in which a domestic incident report may be made under clause (b) of sub-section (1) of section 9;
- (d) the form and the manner in which an application for protection order may be made to the Magistrate under clause (c) of sub-section (1) of section 9;

- (e) the form in which a complaint is to be filed under clause (d) of sub-section (1) of section 9;
- (f) the other duties to be performed by the Protection Officer under clause (i) of sub-section (1) of section 9;
- (g) the rules regulating registration of service providers under sub-section (1) of section 10;
- (h) the form in which an application under sub-section (1) of section 12 seeking reliefs under this Act may be made and the particulars which such application shall contain under sub-section (3) of that section;
- (i) the means of serving notices under sub-section (1) of section 13;
- (j) the form of declaration of service of notice to be made by the Protection Officer under sub-section (2) of section 13;
- (k) the qualifications and experience in counselling which a member of the service provider shall possess under sub-section (1) of section 14;
- (l) the form in which an affidavit may be filed by the aggrieved person under sub-section (2) of section 23;
- (m) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

BRAHM AVTAR AGRAWAL,
Addl. Secretary to the Govt. of India.

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Download date: June 5, 2007

