



LAWYERS COLLECTIVE WOMEN'S RIGHTS INITIATIVE

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Violence Against Women / UNIFEM

Frequently Asked Questions on the Protection of Women from Domestic Violence Act 2005¹

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- *36.1% of the total reported crimes against women relate to domestic violence.*
-NCRB Report 2003
- *1 in 5 married women in India experience domestic violence from the age of 15.*
-NFHS (2) 1998-99

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1. Why was this law needed?

This law recognizes the right of a woman to live in violence free home and provides legal remedies if this right is violated.

Legal remedies pertain to civil reliefs such as injunctions, compensation and monetary relief. There can be no arrests made on a complaint filed under this law.

This is a civil law aimed at providing immediate support to women facing domestic violence. It is different from criminal law, which is directed at providing punishment to perpetrators of violence (those who commit violence) through imprisonment or fines.

The advantage of a civil law is that it is victim-oriented and the woman is not dependent on the police to initiate action.

1A. Can a woman continue to use Section 498A IPC?

In addition to the above reliefs, under the Act a woman can also file criminal complaints under criminal law (Section 498A of the Indian Penal Code) seeking the arrest of the perpetrator of violence, under the circumstances mentioned therein [Section 5(e)]. The decision of whether to go under the new law or S. 498A IPC is that of the woman and depends on her goals.

2. What is “domestic violence”? [Section 3]

1. Any form of abuse causing harm or injury to the physical and / or mental health of the woman or compromising her life and safety.
2. Any harassment for dowry or to meet any other unlawful demand.
3. Threats to cause injury or harm.

Forms of abuse recognized under the law

- a. **“Physical abuse”**- any act that causes bodily injury or hurt.
E.g.- beating, kicking, punching, etc.
- b. **“Sexual abuse”**- any humiliating or degrading sexual act.
E.g. – forced sexual intercourse by the husband, making a woman watch pornography against her will etc.

- c. **“Verbal and emotional abuse”** – insults, ridicule and threat causing harm or injury.

E.g. – name calling, ostracizing, blaming a woman for not having a male child etc.

- d. **“Economic abuse”**- deprivation of the basic necessities of life and entitlements that causes injury or harm.

E.g. – denial of food, disposing off household assets to the detriment of the woman, disposing off her own assets (such as Stridhan) against her will etc.

In all such cases, the judge must bear in mind the overall circumstances of the case in arriving at a conclusion that an act of domestic violence has been committed.

3. Who can claim relief under the Act?

Any woman facing violence in a domestic relationship [Section 2(a)].

3a. What is a “domestic relationship”? [Section 2(f)]

Domestic relationships are relationships between a woman and a man living in a shared household. Domestic relationships can be through:

- ❖ Marriage – such as wives, daughter-in-laws, sister-in-laws, widows etc. with other members of the family
- ❖ Blood relationships – such as mothers-sons, sisters-brothers, daughters-fathers, widows etc.
- ❖ Other relations – through adoption, relationships in the nature of marriage (including victims of legally invalid marriages, bigamous marriages etc.)

3b. What is a “shared household”? [Section 2(s)]

A shared household is a household where the woman resides with the man in a domestic relationship. It can also mean the household where she has lived in a domestic relationship and from which she has been subsequently thrown out.

It does not matter that the shared household is not owned by either the woman or the man. This law applies even in cases where the house is on lease / license or rent or is part of a joint family property. All that has to be proved is that the woman lives or has lived with the perpetrator of violence in this home in a conjugal relationship; or in a familial relationship as described above.

4. What is a woman's right in a shared household? [Section 17]

The PWDVA recognises a woman's right to reside in the shared household. This means that she cannot be thrown out of such a household except through procedure established by law. In cases where she is thrown out she can be brought back again after obtaining an order from the court. The court can also direct the perpetrator of violence to provide alternative accommodation in cases where she does not want to return to a violent home.

5. Who can a woman complain against? [Section 2(q)]

A woman can file a complaint against any adult male perpetrator of an act of violence. In cases where the woman is married, or lives in a relationship that is in the nature of marriage, she can also file a complaint against the male or female relatives of the husband/ male partner who have perpetrated the violence.

6. What can a woman get by filing a complaint under this law?

A woman can get reliefs from the court. This includes much needed support and compensation.

The orders the court can direct are as follows:

1. Protection Order [Section 18]-

This can also be termed as a "stop violence" order. Through this order the court can direct the other party to immediately stop the acts of violence.

The following incidents can also be prevented through the "Protection Orders":

- a. Preventing the perpetrator from entering the woman's place of employment and causing harassment.
- b. Preventing any communication with the woman from the perpetrator.
- c. Preventing any violence being caused to a person related to the woman.
- d. Preventing any financial action from being taken by the perpetrator to the woman's detriment.

2. Residence Order [Section 19]-

A residence order may be passed by the court in cases where the woman apprehends being thrown out of the house (shared household) or in cases where she has been thrown out and wants to return to her house. The aim of this order is to ensure that women have a shelter that is safe.

In cases where a woman does not feel safe living with the male perpetrator of violence, she can apply for an order seeking his removal from the shared household. Or else the court can direct the perpetrator to provide alternate accommodation for the woman.

No orders for removal from a shared household can be obtained against female relatives under the PWDVA.

3. Monetary relief [Section 20] -

This order can be sought to meet any expenses the woman may have incurred as a result of the violence faced. This may include payment of medical bills, any loss of belongings, etc. Married women or women living in the nature of marriages can also claim maintenance from the husband/ male partner. The amount claimed under this provision is to take care of actual expenditure incurred by the woman.

4. Compensation order [Section 22] -

A compensation order can be asked for by the woman for injuries (mental and physical) sustained. This is over and above the actual expenditure that can be obtained by a monetary order explained above.

5. Custody order [Section 21] -

A woman can also ask for temporary custody orders for her children. This is to prevent the woman from being separated from her children, which itself is a form of emotional abuse and blackmail.

This order is temporary in nature and does not affect rights under existing laws on custody and guardianship.

6. Interim / Ex parte order [Section 23] -

An interim order can be given by the court at the time the proceedings are initiated under the PWDVA and before a final order is passed. This is to ensure that women are not detrimentally affected during the course of the legal proceedings. In order to get interim orders, a woman has to show that she has or she is facing violence, or fears violence.

An ex parte order means an order that is passed in the absence of the other party to the dispute. Such orders are interim in nature and passed only if there is an immediate danger to the person making the application or when the other party refuses to appear in court despite prior intimation given by the court.

E.g. Sylvie has filed an application in court for a “stop violence” order against her brother, Edward who has been beating her. The threat to her life and safety is so severe that she needs an immediate order. The court can then pass an ex parte “stop violence” order against him even without hearing him. The order will be served on him along with the application. He will of course have the right to be then heard and ask for the order to be vacated (i.e. direction by the court to bring the order to an end).

7. How long will these orders be in effect?

These orders will be force till such time the woman requires it. She can ask for a discharge of the order by applying in court [Section 25(1)].

E.g. a woman (Radha) has got an order for monetary relief from the court stating that she will get Rs 5000/- a month from her husband. However, subsequently, both Radha and her husband agree on a mutual

consent divorce with a settlement giving her a lump sum amount. She can then go to court and ask for an order stopping the payment of Rs 5000/- per month as monetary relief under the new law.

Any of the parties, i.e. the woman or the man can, at any time, apply to the court for altering or modifying the order [Section 25(2)]. In order to get this alteration, a change in circumstances has to be shown. E.g. - an application can be made to alter the amount received as monetary relief.

8. What if the perpetrator continues to commit violence or violates the orders passed by the court?

Violation or not complying with the order of the court is a criminal offence under this Act. In such cases, the woman can complain to the magistrate or the police or the Protection Officer. The perpetrator can be arrested following such complaint.

Violation of an order of the court attracts imprisonment for a maximum of 1 year and / or a fine of Rs 20,000/- [Section 31(1)].

The court can also initiate proceedings under criminal law, i.e. Section 498A of the IPC in addition to the above [Section 31(3)].

9. What if the woman or the other party is not satisfied with the order that is received?

In such cases either party may appeal against the order in the higher court. If the application has been filed in the Magistrate's court then the appeal shall lie before the Session's Court. All appeals have to be filed within a period of 30 days from the date on which either of the parties gets to officially know of the order [Section 29].

10. Who can help the woman in getting the reliefs under the Act?

The woman can get assistance from the Protection Officer (PO) & the Service provider (SP) for getting the reliefs under the PWDVA.

Protection Officer (PO) is an outreach officer of the court (not yet appointed in most states), who can help a woman in making complaints, filing an application before the Magistrate for orders, helping her in

getting support like medical aid, counseling etc., and making sure that the orders passed by the court are enforced [Section 9 & Rule 8, 10].

E.g. if a woman has been beaten up by her husband and needs to go to a hospital, she can approach the PO to arrange for transportation to the hospital and make sure that she gets proper treatment.

Service Provider is a NGO or other voluntary association registered with state governments. They provide assistance and support to the woman facing domestic violence. A woman can go to a registered SP for making a complaint under the Act. An SP will assist her by providing legal aid, medical care, counseling or any other support [Section 10].

Though there will be other unregistered NGOs providing support services to women, but the major difference between the unregistered SPs and registered SPs under the law is that complaints can be lodged only with the registered SPs.

E.g. if a woman has been thrown out of her house and needs shelter, then along with lodging a complaint, the SP will also take her to a shelter home where she can stay temporarily.

11. How can a woman get help if she faces violence at night or if she cannot immediately go to the police or PO?

In such cases of emergency, either the woman herself or any other person on her behalf can give information of the incident of domestic violence to the PO or SP even through email or telephone. This can be done anytime during the day or even at night.

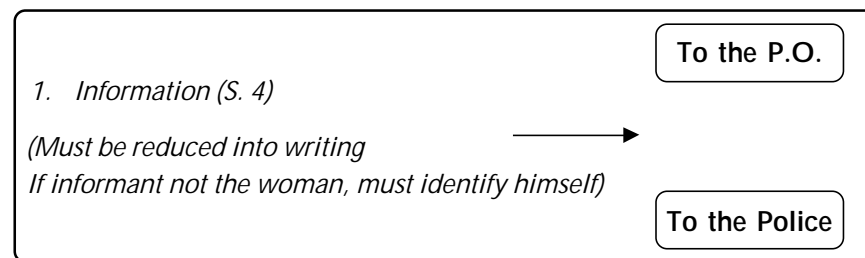
The PO or SP will then herself go to the place where the incident has taken place with the police and record the DIR. They will then immediately present this DIR to the Magistrate for an immediate order to make sure that the woman is safe and violence is stopped [Rule 9].

The PO, SP and police are under a duty to assist and protect the woman in such emergency situations, and she does not have to go to them to lodge a DIR.

12. How can a woman get the orders from the court?

Step 1- Information [Section 4].

A woman or any person on her behalf can give information of domestic violence to the PO or to the Police. If the informant is not the woman who is facing domestic violence, he/she must sign the information provided.



A complaint can be filed based on the information provided only if the woman herself wants to initiate legal proceedings.

Step 2- Complaint [Section 5, Rule 5 & Form I].

A woman can lodge a complaint of domestic violence with the PO, the SP, the Police or directly with the Magistrate.

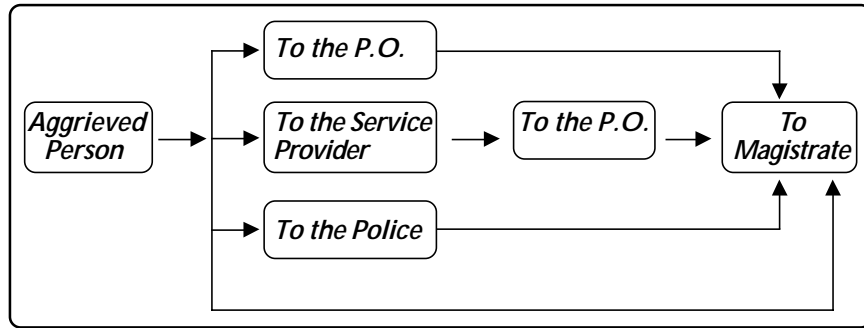
This complaint is made in the form of a Domestic Incident Report. (If a woman wants to file a complaint under criminal law, she has to lodge an FIR. But since this Act is a civil law, she must file her complaint as a Domestic Incident Report).

A Domestic Incident Report (DIR) is the official format in which the complaint will be registered. This is an extremely simple format, which is available in Form I in the Rules of the Act. A woman can get this Form I from police stations, POs or SPs and fill it herself.

If the woman cannot fill the Form herself, the PO, SP or Police will convert her complaint into this Form I as a DIR and explain the contents to her.

The PO, SP or Police will then send the complaint (DIR) to the Magistrate/ court.

2. *Complaint (to be converted into DIR as provided in Form I of Rules)*



Step 3- Application [Section 12]

An application for reliefs under PWDVA to the Magistrate can be made by:

- a. The woman herself, directly to the court.
- b. The PO on behalf of the woman, if she consents.
- c. Any person on behalf of the woman, if she consents.

An application asking for reliefs (orders passed by court) can also be filed in existing legal proceedings i.e. divorce cases, maintenance cases etc.

E.g. If there is a pending divorce case between a woman and her husband and she has been facing violence from him, she can ask for a Protection Order in the divorce proceeding itself. She doesn't have to separately approach a Magistrate under PWDVA.

Step 4 – Proceedings in court.

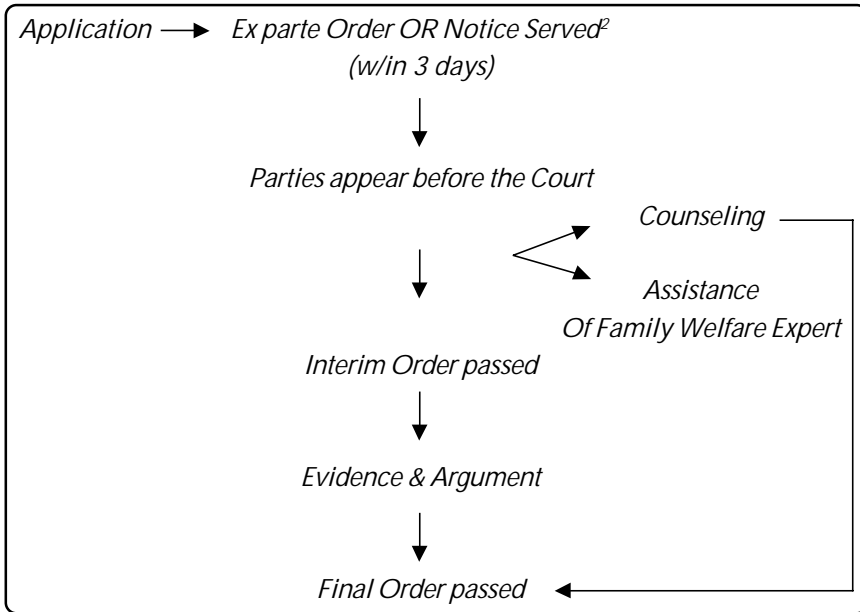
After the filing of application for reliefs before the court, the following can take place:

- a. The Court shall then fix the next date of hearing in the case for three days after the application has been filed [S. 12(4)].
- b. In case the woman is facing grave danger, the court can pass an ex parte interim order in her favor and then fix the next date of hearing.

- c. The other party shall get notice of the proceedings within 3 days and asked to attend court [S. 13].
- d. In case, the other party does not appear before the court on the date mentioned, the court can pass an ex parte order in favor of the woman [S. 23(2)].
- e. The court can also pass an interim order in favor of the woman [S. 23(1)].
- f. The other party shall be directed to respond to the woman's application in writing, i.e. by filing a "written statement". After the filing of the written statement, the parties shall be directed to present evidence and argue their case in court.
- g. At any stage of proceedings before the court, the court can direct counseling of either/both parties [S. 14]. The court can at any stage take the assistance of family welfare experts [S. 15]. The objective of the counseling is to prevent any further acts of violence from being committed[R. 14(4)]. A settlement can also be attempted at by the counselor, only if the woman requests for the same [R.14 (7)].
- h. If a case of domestic violence is proved, the court can pass an order providing the woman with the relief she had asked for in the application.

The entire court proceedings should be completed within 60 days of filing the application [S.12 (5)].

Proceedings in the Court (To be disposed off in 60 days)



Step 5- Passing of order.

Within 60 days of the filing of the application, the court can pass the orders asked for by the woman. In case the court thinks that there is the need for any other kind of direction to make sure that the violence is stopped, it can also give such kind of direction in addition to the orders that she had asked for in the application.

Step 6- Discharge/ Alteration/ Modification of order.

The order passed by the court will continue to be in force till the woman herself files another application asking the court to discharge the order, as explained above.

E.g. Asma has successfully got a Custody Order from the court for temporary custody of her son. But in the meantime, there was also pending litigation for permanent custody under guardianship law. The court in that case has given her permanent custody of her son. She can now go to court and ask for discharge of the temporary custody order under PWDVA.

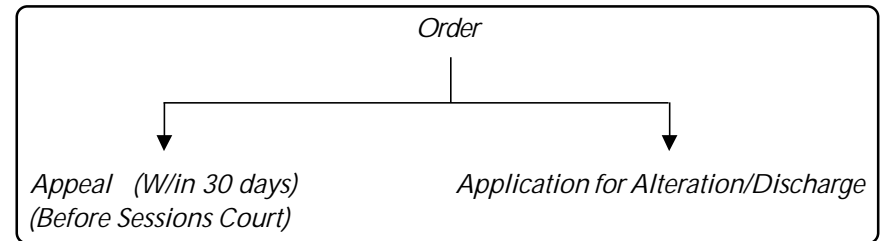
² Notice can be served: a. where the other party resides b. workplace of the other party c. any conspicuous place.

Either party can also ask for alteration or modification of the orders passed by the court.

Step 7- Appeal [S. 29]

Either party can appeal against the order passed by the court to a higher court within 30 days from the date on which they received official information of the order.

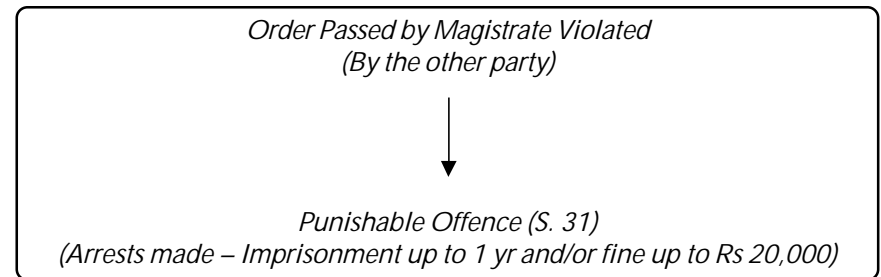
Post-Order Proceedings



Step 8 Violation of Order of Court [S. 31]

If the order passed by court is violated by the other party, a woman can report to the PO and then file a complaint before the court. The violator can be immediately arrested, as it is a criminal offence.

The only provision for arrest under this law is where the other party has violated the court order, and the violator is then and only then arrested.



13. What is the scope of counseling under the PWDVA?

Under the PWDVA, either of the parties can be directed to undergo counseling by the court. There can be no counseling, after the application has been filed, without an order from the court.

A counselor shall be appointed from the "List of counselors" prepared by the Protection Officer. This list will comprise of representatives from

registered service providers or other organizations who have experience in providing counseling [R. 8(viii), (ix), (x)].

The objective of counseling is to get an undertaking from the perpetrator to stop the violence and harassment. The perpetrator of violence will not be allowed to justify his acts of violence at the stage of counseling [R. 14(4), (5)].

If the woman wants, then she can request the counselor to settle the matter [R.14(7)].

If the settlement is arrived at, then the counselor will go back to the court with the terms of settlement. The court then shall satisfy itself that the settlement has not been forced on the woman. Once the court has satisfied itself, the court can uphold the settlement and pass appropriate orders [R. 14(13), (14)].

14. What can a woman do to get relief from court if there is no Protection Officer or registered SP in her area?

A woman can go to the police to file a criminal complaint under Section 498A of the IPC.

She can also request the police to record a DIR under PWDVA at the same time and forward the same to the Magistrate.

If the police refuse to file a FIR or a DIR then the woman can directly approach the Magistrate's court with the following:

- ❖ A "private complaint" requesting the court to direct the police to register the FIR.

And / Or

- ❖ She can file an application under the PWDVA. For this she can fill a DIR herself and attach it to her application.

If the woman already has a pending case, then she can fill in an application under the PWDVA and file it as an "Interim Application" in the pending proceedings.

E.g.- Savitri has filed a civil case for injunction against her husband, preventing him from throwing her out of the shared household. This case is pending in court. If she faces domestic violence from him while the case is going on, she can fill out an application form under the PWDVA for a residence order and file it in court as an "interim application".

15. List of Protection Officers and their contact details

Contact the State Women and Child Development Department for details.

16. List of Service Providers and their contact details.

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