

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005



HANDBOOK FOR PARLIAMENTARIANS

Centre for Legislative Research and Advocacy

Oxfam India

**The Protection of Women
from
Domestic Violence Act, 2005**

Handbook for Parliamentarians: July-August 2014

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Protection of Women from Domestic Violence Act, 2005

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In partnership with:

Oxfam India

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1. Foreword

Domestic violence is a severe violation of the most fundamental human rights laid down in the Universal Declaration of Human Rights. National Family Health Survey (NFHS) Round III report (2005-06) mentions that one-third of women in the age group of 15-49, have experienced physical violence and about one in 10 have experienced sexual violence. In total, 35 per cent women experienced physical or sexual violence, 37.2 percent of married women have experienced spousal violence.

Domestic violence was recognized as a criminal offence in 1983 in India. The Protection of Women from Domestic Violence Act became effective in 2005, in response to the urgent need for a comprehensive and specific law to tackle domestic violence. The PWDVA in many ways is a path-breaking law. The legislation for the first time provided a statutory definition of violence. Under the ambit of the Act, physical, mental and economic abuses are recognised as forms of violence against women. Moreover, it identifies violence against women in the shared household as 'domestic violence' and at the same time, provides women the right to reside in the shared household and protects women in non-matrimonial relationships.

Studies have shown that women do not come forward to report incidents of domestic violence. The social stigma attached to the victim of violence, the long and tedious process of criminal justice administration and lack of support structure for the victim of domestic violence are some of the reasons that contribute to this system of acceptance of violence as a norm. The Act understands these problems and realities and offers a simple procedure for the woman to access justice. It also provides women with social support structures like shelter homes, medical facilities, legal support and a coordinating agency in the nature of protection officers. A multi-agency response system is therefore envisaged by the PWDVA.

However, there are proverbial slips between the cup and the lip. Though the provisions of the enactment are progressive and commendable, the effective implementation of it still remains unseen. The biggest hurdle in the way is the measly budgetary allocation for the implementation of the Act. Where the financial estimate for effective implementation lies at 1,158 crores, only 946 lakh has been sanctioned. Due to the lack of funds, the infrastructure cannot be developed.

Furthermore, many States have not taken any initiative in appointing Protection Officers, an office that largely remains vacant. Sensitization has to take place across various platforms, including the medical staff who is often the first port of call for the victim.



Physical abuse is visible in most cases, however mental abuse is the invisible damage causing entity. Psychologists and psychiatrists should be involved to form the first line of protection for those facing domestic violence. A close relation should be maintained between those tending to the physical health of the victims, and those looking after the mental health. Training should also be provided to all the key stakeholders. All state agencies and stakeholders should come together for the successful implementation of the Act.

On behalf of Oxfam India and CLRA, we are pleased to present this handbook on the Protection of Women against Domestic Violence 2005 to the parliamentarians and other policy makers with detailed information on the Act with the hope that you take the lead to resolve impediments in the effective implementation of the Act for protection of women from violence and ensure their right to safety.

Nisha Agrawal
CEO, Oxfam India

Vinod Bhanu
Executive Director, CLRA



2. Introduction

The Protection of Women from Domestic Violence Act, 2005 (hereinafter the PWDVA) was brought into force on October 26, 2006. The enactment of this law marks an unprecedented move of providing civil relief in cases of violence. The PWDVA contains a comprehensive definition of the term “Domestic Violence”, provisions recognizing a woman’s right to reside in the shared household and court orders in the event of domestic violence (DV). In recognition of a woman’s inability to approach courts to initiate proceedings, due to her status of dependency, the law puts in place mechanisms that allow her access to court procedure and support services. The PWDVA mandates a multi-agency response for women facing violence in their homes. The effective functioning of the Act has been left to the discretion of the Central and State governments.

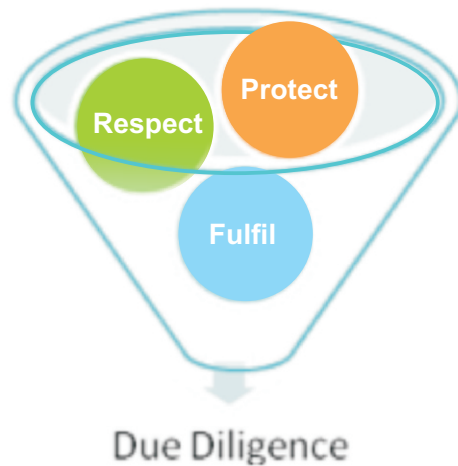
Why a Separate Law on Domestic Violence? The Rationale

- Till 2005, remedies in the form of civil law (divorce) & criminal law (s. 498A IPC)
- No definition of domestic violence, no civil law dealing with DV.
- Need for immediate & emergency relief
- No express recognition of domestic violence
- Other non-matrimonial relationships not covered by existing laws (e.g. between parents & children, brothers & sisters, etc.



3. CEDAW and PWDVA

The United Nations General Assembly in 1993 adopted the Convention on the Elimination of All Forms of Discrimination Against Women, which while defining violence against women (VAW) also mandated that States should exercise due diligence to prevent, investigate, and in accordance with the national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. This is the standard of due diligence which all States, including India, have an obligation to fulfil. The extent to which the State fulfils this due diligence can be assessed through the existence of laws, polices, programmes that address domestic violence and their effective implementation



“The message of international instruments:- Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) and the Beijing Declaration, which directs all State parties to take appropriate measures to prevent discrimination of all forms against women is quite clear. India is a signatory to CEDAW having accepted and ratified it in June, 1993. The interpretation that we have placed gives effect to the principles contained in these instruments. The domestic Courts are under an obligation to give due regard to International Conventions and Norms for construing domestic laws when there is no inconsistency between them.”

-Gita Hariharan and another vs. Reserve Bank of India & another 1999 (1) CTC 481



4. Key Features of the PWDVA

- Inclusion of a definition of Domestic Violence based on UN Framework for Model Legislation on Domestic Violence & UN Declaration on Elimination of Violence Against Women (GA Res. 48/104 of 1993)
- Unambiguous recognition of the woman's right to live free from violence. Provision for immediate relief to victims in cases of emergency
- The right to reside in shared household – recognizes inequality within the home
- Ensures effective access to justice – introduces new authorities & mechanisms (Protection Officer (PO) to act as the interface between the woman and the court)
- Intended specifically to protect women (though it does include children -- both male & female). Covers mothers, daughters, sisters, widows, relations through adoption, etc.
- Recognition of “relationships in the nature of marriage” – victims of bigamous/fraudulent marriages, cohabitation.
- Mix of both civil & criminal laws – Two stage process –
 1. Civil orders passed by Magistrate on Application under S. 12
 2. On breach of civil orders by the perpetrator, arrest (imprisonment &/or fine)

Coverage Who can Complain: Aggrieved Person [Section 2(a)]

- Any woman who is or has been in a domestic relationship with the respondent (sisters, widows, mothers, daughters, women in relationships of cohabitation, victims of bigamous marriages, single women, etc.) and
- Who has been subjected to acts of domestic violence.
- Children are also covered. Any person can file a complaint on their behalf.

Against Whom Can A Complaint be Filed: “Respondent” [Section 2 (q)]

- Any adult male member who has been in a domestic relationship with the woman who files a complaint of domestic violence.
- Relatives of the husband or the male partner.



5. Key Concepts of the PWDVA

Key Concept I: Domestic Relationship [Section 2(g)]

Domestic Relationship has been defined as a relationship between two persons who live, or have at any point of time lived together in the shared household. It includes relations of consanguinity, marriage, or relationships in the nature of marriage, adoption, or joint family.

Note:

- Domestic relationships are not restricted to the marital context
- Domestic relationships are meant to cover sisters, widows, mothers, daughters, women in relationships of cohabitation, single women, etc.
- Domestic relationships are also applicable to women in fraudulent or bigamous marriages or in marriages considered invalid/void before the law



Key Concept II: Shared Household [Section 2(s)]

A household where the aggrieved person lives/has lived in a domestic relationship, either singly or along with the respondent is a 'shared household' under Section 2(s) of the Act.

Includes a household:

- Whether owned or tenanted either jointly by the person aggrieved and the respondent, or by either of them.
- Where either the person aggrieved or the respondent or both jointly or singly have any right, title, interest or equity.

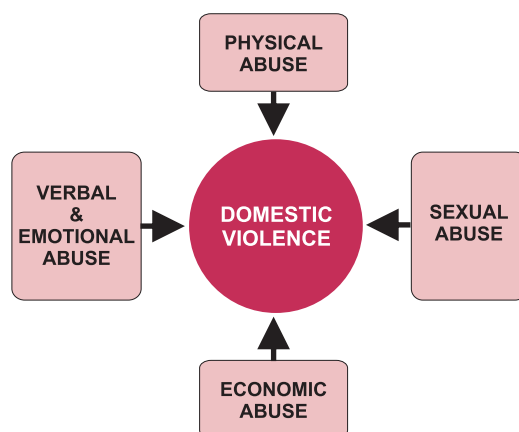


- Includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or person aggrieved has any right, title or interest in the shared household

Key Concept III: Domestic Violence [Section 3]

Section 3 of the PWDVA defines domestic violence:

- Any form of abuse causing harm or injury to the physical and / or mental health of the woman or compromising her life and safety.
- Any harassment for dowry or any other unlawful demands for any property.
- Threat to cause injury or harm to those related to the woman.



Key Concept V: Mechanisms under PWDVA

The PWDVA envisages the creation of a Single Window Remedy System, to address the multiple needs of a victim, coordinated by Magistrates, Protection Officers, Service Providers, Medical Facility In-charges and the Police. The Protection Officer (hereinafter PO) is the key authority appointed under PWDVA by the State governments and acts as the nodal agency between the various stakeholders. Their duties include receiving the complaint, informing the victim of her rights and facilitating her access to support services and the Court. The PO also enforces the orders of the Court. Service providers, consisting of various governmental and non-governmental organizations registered under the PWDVA, are supposed to play a supportive role in offering these services to domestic violence victims. The Police assist in the implementation of the law.



Protection Officers as the Key Implementing Agency
(Sections 8 & 9, Rules 8, 9 & 10)

Service Providers who are organizations registered under the Act (Sections 10, Rule 11)

Shelter Homes and Medical Facilities notified under the Act (Sections 6 & 7)

Counselors to conduct counseling on the direction of the court (Section 14 & Rule 14)

Welfare Experts to assist the court (Section 15)

Key Concept VI: Provisions of Relief (Sections 18-23)

How does the law protect the woman?
किस तरह से यह कानून पीड़ित महिला को सुरक्षा प्रदान करती है?

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम २००५



यह कानून पीड़िता के लिये तात्कालिक राहत एवं पूर्ण रूपेण सहयोग प्रदान करती है।

सुरक्षा अधिकारी तत्काल मदद की व्यवस्था कर सकते हैं एवं पुनः हिंसा न हो, इसके लिये सुरक्षा योजना तैयार करते हैं।

Protection Officer to facilitate immediate help to the victim.



This law provides immediate relief & support to the victim.

- | | | |
|---------------------------------------|----------------------------|-----------------------|
| 1. Health Facility | 2. Right to Residence | 3. Family Counselling |
| 4. Financial Support | 5. Protection from Accused | 6. Legal Aid |
| 7. Provisional Shelter and Child Care | | |



Protection Orders (can be claimed preventing the Respondent from)

- Committing, aiding or abetting any act of DV or any other act specified in the order;
- Entering the place of employment or any other place frequented by the person aggrieved;
- Attempting to communicate with the person aggrieved, including personal, oral or written, electronic or telephonic contact;
- Alienating assets, operating bank lockers or bank accounts used/held/enjoyed by both parties, including her stridhan; (except with the leave of the court)
- Causing violence to dependants, other relatives & persons who give the person aggrieved assistance from domestic violence.

Residence Orders (can be passed by Court directing the Respondent to)

- **Restrain from disturbing possession** of the aggrieved person from the shared household, or from entering any portion of the shared household in which the aggrieved person resides;
- Direct the **Respondent to remove himself** from the shared households; (*This order cannot be passed against a woman*)
- Restrain the respondent **from alienating/disposing off/encumbering** the shared household (except with the leave of the court);
- Direct the respondent to **secure alternate accommodation** for the person aggrieved. (Where she so desires)
- **Examples:** Under this law now a mother can ask for an order against her son who is trying to/has dispossessed her, sister against brother who is being denied access to ancestral home which is her shared household; wife against husband for restraining him from dispossessing her, etc.

Other Reliefs

- Monetary Relief to meet expenses incurred and losses suffered, including maintenance, medical expenses, etc.
- **Temporary Custody** of any child (Best Interest of child principles)
- **Compensation** and damages for injuries caused by acts of domestic violence committed by the respondent (mental injury)
- **Interim & Ex parte Orders** on the satisfaction of Magistrate



Consequence of Breach of Protection Order

- ✓ Breach of a Protection Order passed is deemed to be a punishable offence.
- ✓ Charges under Section 498A IPC can also be framed by the Magistrate in addition to the charges under this Act.
- ✓ Offences are non-bailable and cognizable.
- ✓ Punishment may extend to one year imprisonment and /or a maximum fine of Rs 20,000/-.
- ✓ The trial for the offence under Section 31 to be summary in nature.

Nirbhaya Fund

In order to empower women and enhance their security and safety, the Union Budget had allocated Rs. 1000 crore to *Nirbhaya Fund*. The central government directed the concerned Ministries to formulate proposals to utilize this fund. However, the amount remained unutilized in 2013-14. In Union Budget 2014, the following three programmes pertaining to women's safety under Nirbhaya Fund have been announced:

- Scheme for Safety for Women on Public Transport by Ministry of Road Transport and Highways - Rs 50 crore
- Scheme to increase safety of women in large cities by Ministry of Home Affairs - Rs. 150 crore
- Crisis Management Centre in all government and private hospitals in NCT of Delhi

However, the meager amount of Rs 1000 crore, which comprises hardly 0.05 percent of the Total Budget expenditure of the Union Government, has been criticized. This fund could have been used to accord increased priority to women safety in terms of policy.

(Source: "Response to Union Budget 2014-15". CBGA Delhi)



6. Gaps in Implementation of the PWDVA

The PWDVA, being a relatively recent enactment implementation methods and practices of the law are still in an evolving phase. While establishing infrastructure is left to the discretion of the State Governments, a partly federal Constitution demands that guidelines setting minimum standards of implementation and a national plan of action be spearheaded by the Central government. This will ensure that such standards are adhered to by the respective State governments.

International Principles on Effective Implementation of Laws on Domestic Violence

(UN Handbook on Legislative Approaches to Violence Against Women)

- Zero tolerance to domestic violence
- Setting up of legal provisions to protect women
- Facilitating access to justice and support services
- Implementation of laws giving effect to women's agency
- Effective implementation measures including action plans/strategies/policies, adequate budgetary allocations, making protocols, provisions for training and capacity building of stakeholders
- Preventive measures like awareness creation, dissemination of information about reliefs and remedies etc.

Budgetary Issues

- The Central government has not provided funds exclusively for implementation of the Act, though it is under consideration by the Ministry of Women and Child Development. In the absence of financial support from the Centre, some States have initiated Plan Schemes or allocated some basic resources (e.g. an allocation of Rs.7 crore by the Karnataka government). However, 19 States have not initiated any such scheme. Therefore, it becomes imperative to have a Centrally Sponsored Scheme (CSS) to bring to effect the various provisions laid in the Act.
- States like Bihar, Jharkhand, Uttar Pradesh, Rajasthan, and Mizoram have not formulated a scheme for implementation of PWDVA.



The lack of adequate financial resource is the major gap in implementation of the PWDVA. The allocation towards the PWDVA increased from Rs. 20 crores in 2012-13 to Rs. 67.5 crores in the current budget; however, this remains Rs. 22.5 crores below the recommended outlay for the scheme by the Steering Committee on Women's Agency and Empowerment as outlined within the Twelfth Five Year plan.

The allocation has further fallen to Rs. 50 crore in the current budget (BE 2014-15). This remains 50 crore below the recommended outlay. Moreover, in the years 2012-13 and 2013-14, we witnessed a complete non-utilization of allocated funds for this scheme. The further reduction in allocation this year is an unfortunate reflection of the Union Government's lack of commitment to address violence against women.

Utilization of funds also varies, from near 100% in Andhra Pradesh to 34.2% in Madhya Pradesh in 2009-10. There is no minimum benchmark set by the Union Ministry of Women and Child Development for providing allocations for the various provisions under the Act. Capacity building of key stakeholders has not taken place adequately owing to the budgetary constraint resulting in perpetuating the institutional bias against women. Coordination to effectuate a multi-agency response system, monitoring and evaluation of the law has also not taken place owing to the same budgetary issues.

Few other gaps are Lack of adequate mechanism (like POs and Sps) for proper implementation and Denial of access to justice for women.

Lack of Adequate Mechanism- Protection Officers and Lack of Access to Justice for Vulnerable Women

- POs have been appointed in only 7 states and that too in inadequate numbers.
- Existing officials in the government machinery (like ICDS CDPOs, welfare officers, probation officers, Dowry Prohibition Officers, Child Marriage Prohibition Officers etc) have been given additional charge as POs
- POs are overburdened, under-skilled without adequate infrastructure or sufficient funds to carry out their duties
- Several vulnerable sections of women, such as lesbians, bisexual and transgender etc, are unable to use the law
- No special provision in the law for disabled women

Lack of Adequate Mechanism- Service Providers and Lack of Immediate Relief to Women

- Out of 33 states and UTs, only 15 states and UTs have notified SPs under the Act and even that number is inadequate
- No clear guidelines exist for enlisting of SPs, defining their roles, engagement with other stakeholders etc
- SPs lack adequate infrastructure to carry out their duties
- In spite of a limited timeframe under the statute within which cases are to be disposed off, the actual time taken for an application under the PWDVA to be disposed off takes much longer



The Centrally Sponsored Scheme (CSS)

In 2012, The National Commission for Women (NCW) and a committee of representatives from civil society released a draft Centrally Sponsored Scheme (CSS) to remove inter-state and inter-district disparities in implementation of the law. It estimated a realistic annual Union Budget of Rs. 1158 crores for the implementation of the Act. Elements of this scheme have been taken up by the Union Government but this action remains largely symbolic due to low budgetary allocations.

The draft scheme lays down an elaborate mechanism for the implementation of the scheme. It envisages the creation of the unit of the Protection Officer as a single window where multiple needs of the aggrieved women will be met. For the unit of the PO to be accessible to women, it lays down the location of the unit in all the three tiers of administration. POs must be provided: 1. infrastructural support; 2. computer; 3. vehicle/budget for transport; and 4. two separate rooms to house each PO. The draft also envisages creation of Coordination Committees at the three levels of administration.

Finally, at the national level, the draft scheme creates a PWDVA Council which will be the sole authority for monitoring the implementation of the scheme under PWDVA. This will be an advisory body whose task is to annually review the state reports on effective implementation of PWDVA and take necessary action to ensure that gaps in implementation are fulfilled.

Synergy with Gram Nyayalayas, awareness generation, training and capacity building, untied funds for immediate relief to survivors are some other aspects of the Scheme.

To this effect, the Central Government will provide financial assistance to States for effective implementation of the PWDVA as a Centrally Sponsored Scheme to be implemented through the State Governments and Union Territories. Also refer to Annexure, Pg. 30 'Umbrella Scheme for Protection and Empowerment of Women'

In the light of the gaps in implementation of the law, this scheme worth INR 1,158 crores recommended by the National Commission for Women is a very welcome step. Allocation of a dedicated funding will ensure that the mechanisms under the law function

Objectives of the Scheme:

The primary objectives of the Scheme are to ensure the effective implementation of the Protection of Women from Domestic Violence Act, 2005, in letter and spirit and increase women's 'access to justice' by providing sufficient financial assistance to States to create and strengthen appropriate and adequate institutional mechanisms to combat domestic violence and provide socio-legal services to aggrieved women"



7. Judicial Response to the PWDVA:

The Ripples of the Batra Judgment and Some Positive Development

The higher judiciary has passed an interesting mix of orders, in the context of the woman's right to reside in her husband's rented premises, the right to claim residence in a particular shared household, or the right to reside in property belonging exclusively to the In-Laws and the like.

In one of the most celebrated cases under PWDVA, the Madras High Court in 2007 (less than a year after the PWDVA came into effect) opined that a 'healthy and correct interpretation of Section 2(f) and 2(s) would be that the words 'live' and 'have at any point of time lived' would include within their purview the 'right to live'. This judgment upheld the aggrieved woman's Right to Reside in her husband's home despite the contention of the husband that they had never lived in the Shared Household after marriage.

As recent as 2012, in *Kavita Dass v. NCT of Delhi & Anr.*, the Delhi High Court noted (following a Supreme Court decision in *Smt. Kanwal Sood v. Nawal Kishore and Anr.*) that the phrase 'shared household' includes any household owned or tenanted by either of the parties in respect of which either the woman or the respondent or both, jointly or singly, have any right. Since the woman was the legally wedded wife of the respondent, the High Court held that she had a right to live with the respondent, whether he lives in an ancestral house, his own acquired house or a rented house.

While these judgments reaffirm the wife's right to reside in the shared household by virtue of her marriage, irrespective of whether the property is *Rented or Owned* by the husband, the repercussions of the (in)famous *Batra v. Batra* continue to be felt in the lower echelons of judiciary. The negative impact of the Batra judgment in denying women the Right to Reside where property belongs to the in-laws is also noticeable in the judgments delivered by High Courts.

In *S.R. Batra v. Taruna Batra* (2007) 3 SCC 169 restricted the right of residence only to property of the husband. The court in the judgment excludes the self-acquired property of the in-laws from the purview of "shared household". In doing so, the court contradicts the express letter of the law, which in Section 2(s) clearly provides that: "shared household" means a household where the person aggrieved lives or at any stage had lived in a domestic relationship... irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household. Hence, the PWDVA expressly states that the ownership of the shared household is irrelevant to the question of the right to reside in the shared household [Section 17(1)].



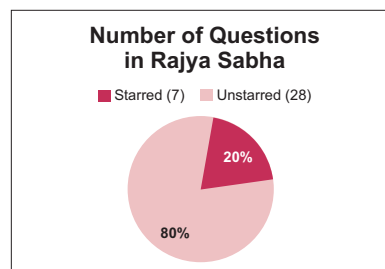
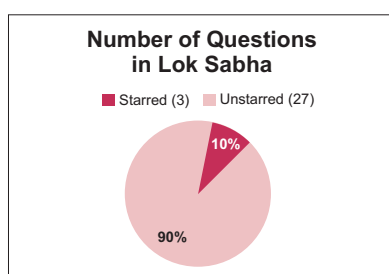
8. The PWDVA in the Parliament

Assessment of Parliamentary Questions: October 2006- March 2013

Methodology: The assessment is based on the analysis of questions asked in both the Houses of the Parliament between October 2006 and March 2013. The analysis is limited to PWDVA questions raised till date. Keeping in mind the time constraints, questions answered by the Ministry of Women and Child Development have been examined.

Results: In the lower house, from 2006-2013, thirteen political parties were active participants with BJP being the most active party. During the same period, ten parties played a dynamic role in the Upper House. It is noteworthy, that BJP, INC and CPI-M have been most active in this regard.

Questions by Parliamentarians



Active Participants

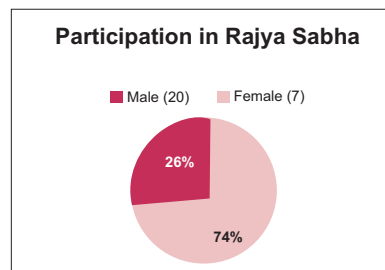
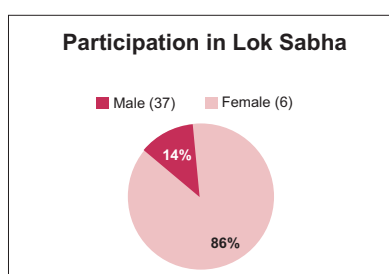


Figure 1



Participation of Women MPs: Though the 15th Lok Sabha has about 10% female representation, yet the contributions by the female MPs have not been outstanding, as just 6 female MPs in LS and 7 in RS raised questions with regard to PWDVA. (Figure 1)

Geographical Distribution: In addition to it, MPs from 15 states were active and raised questions with regard to PWDVA, where Rajasthan played a pivotal role with a lead of 9 questions. On the other hand, we can draw the conclusion that though Andhra Pradesh had the highest number of DV cases registered, they failed to bring this matter to the table of the house, which is inferred from 4 questions raised by the MPs from AP.

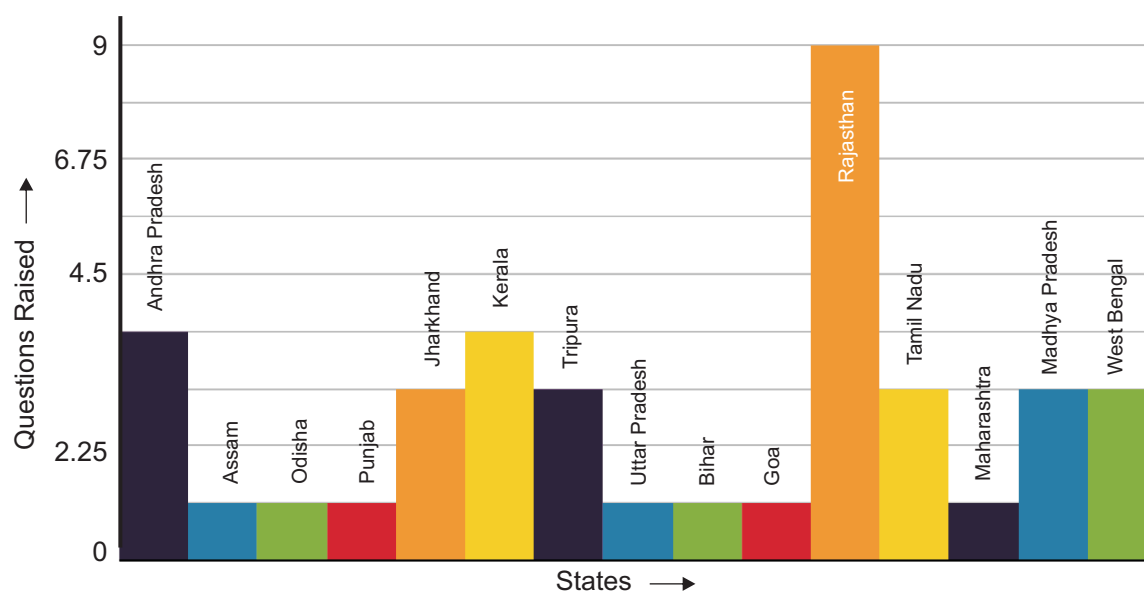


Figure 2

Nature of Questions Asked/Quantitative Results: As per the quantitative result, a total of 65 questions were raised on PWDVA in both the Houses of the Parliament. There is a trend of repetition. Highlighted areas include 'came into effect', 'budgetary allocation', 'effective measures for implementation', 'number of cases registered/disposed', 'increase/decrease in number of cases', 'misuse of Act', 'achievement', 'review/amendments', 'timely disposal'. Repetition might indicate a lack of research on questions previously raised on the floor.

Subject Matter: The most significant questions were raised with regard to POs and budgetary allocation.

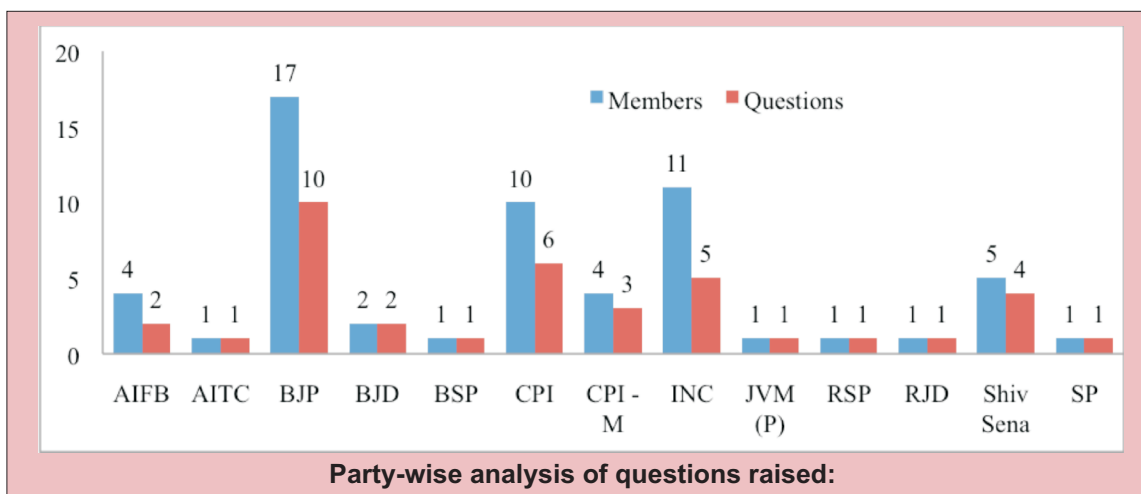


Figure 3

- ◆ BJP has been the most active party, raising one-third of total questions
- ◆ The INC (ruling party) is the second most dominant party in raising questions related to PWDVA

What Parliamentarians Can Do

Gender Mainstreaming	the process of assessing and taking into account the impacts on women and men of any planned action - including legislation, policies or programmes - in all spheres and at all levels.
Gender Sensitive Parliament	A gender sensitive parliament responds to the needs and interests of both men and women in its structures, operations, methods and in its work as the nation's top legislative institution.
Gender Sensitive Budgeting	Gender sensitive budgeting is an approach that aims to mainstream gender in economic policy-making and seeks to transform the entire budgetary process. Gender budgeting refers not only to expenditures earmarked for women but also to an analysis of the entire budget from a gender perspective, including security, health, education, public works, and so on, to ensure that the allocations and resulting impacts respond to the needs of both women and men.

Source: Union, I. P. (2013, October 9). Implementation of the IPU Strategy for 2012-2017. *Gender Mainstreaming at IPU*, p. Annex 1 Pg.4.

- Ensure that the financial allocation for the implementation of PWDVA is substantially increased, preferably to the tune of 1158 crores, as recommended by the National Commission on Women and other representatives from civil society.



- Each individual MP can use his allotted MPLADS funds for the construction and development of infrastructural facilities under the PWDVA, such as construction of shelter homes, medical facilities and medical equipment for such facilities etc.
- More campaigns should be organised for both functionaries under the Act and the beneficiaries. These awareness campaigns should be conducted in State specific regional languages.
- Spreading awareness about availing free legal aid services and legal counselling from the Legal Aid Services Authority of the respective States.

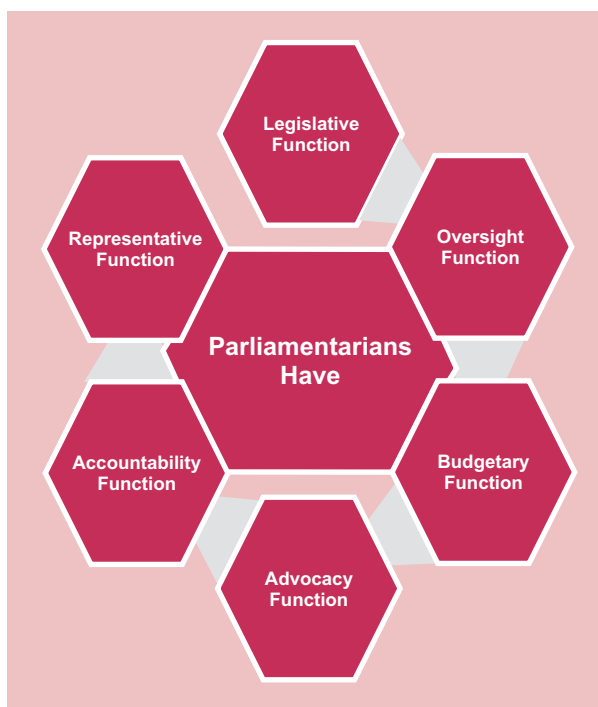


Figure 4: Functions of Parliamentarians

- Raise the issues related to PWDVA in the parliament through various measures such as Question Hour, Calling Attention, Urgent Motions, Private Member's Bill, etc.
- Be the spokesperson or speak out on behalf of the constituents for its effective implementation.
- Women Empowerment Committee can take initiatives to review existing laws and their implementation, including those on women's empowerment..
- Organize consultations on amendments, enforcement, etc.
- Hold public hearings with the stakeholders to identify gaps in legislation.
- Work with Courts and CSOs to audit and monitor legislation.
- Bring the implementation failures into the notice of the respective committees of the parliament and call for the committee hearings.
- Be active in the committee work and make the government accountable for its effective implementation.
- Advocate and persuade the government to allocate adequate budget for the implementation.



- Oversee government transparency in disbursement of funds.
- Request ministers to report back on the status of the implementation and be answerable for the implementation issues.
- Take leadership role for creating awareness, hold briefings with fellow MPs to advocate for greater budget allocation.
- Build alliance with women's groups and other CSOs and present their experiences in the legislative spaces.
- Speak at public events, mobilize constituents for community participation, use media, organize public hearing, educate constituents, speak out in the party for including the issues in the party manifestos, etc.
- Be the champions of this cause.

Recommendations

Effective implementation of any law requires a political commitment backed by adequate resources. Policymakers must ensure that budget is allocated, and allocated in a timely manner to do away with gaps in implementation brought about by poor infrastructure.

The Central government is obligated to evolve protocols for various ministries and courts on the delivery of services to women under this law. Section 11 of the PWDVA (2005) mandates the Central and State Governments to appoint and train personnel, including protection officers and service providers to ensure effective coordination between government stakeholders. However, there are silences in the law that need to be filled.





Section 11- The Centre and every State Government, shall take measures to ensure that-

- (a) the provisions of this Act are given wide publicity through public media including 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 the law, home affairs including law and order, health and human resources, to address issues of domestic violence and periodical review of the same to be conducted.
- (d) protocols for the various ministries concerned with the deliver of services to women under this Act including courts are prepared and put in place.

9. Frequently Asked Questions on PWDVA

Q.1	<p><i>Can a woman file a complaint against another woman?</i></p> <p>Yes. Under the Act not only can a complaint be made against any adult male member but also against the female relatives of the husband/ partner she is cohabiting with, who are perpetrators of the abuse.</p>
Q.2	<p><i>What kinds of relationship are included under 'domestic relationship'?</i></p> <p>The relationships can be:</p> <ul style="list-style-type: none">(a) By marriage: This includes relations with; wives, sister-in-laws, daughter-in-laws, widows, etc.(b) By blood: Blood relations such as, mother-sons, father-daughters, brother-sisters etc.(c) Others: Other relations may include those like the nature of a marriage – bigamy, legally invalid marriages. It also includes relationships through adoption.
Q.3	<p><i>Can rented accommodation be included under a 'shared household'?</i></p> <p>Yes, rented accommodations come under the ambit of 'shared household'. A 'shared household' includes property that is;</p> <ul style="list-style-type: none">- Owned or tenanted-- Where either party has any right, interest, title, or equity in the property- A household which may belong to the 'joint family'



Q.4	<p><i>What is a DIR and how is it different from a FIR?</i></p> <p>DIR is a 'Domestic Incidence Report'. It is made under the PWDVA in the simple format given under FORM I of the Act. She may fill it herself or take the assistance of Protection Officers, Service Providers or Police Officers. DIR is civil in nature, whereas a FIR is made under criminal laws.</p>
Q.5	<p><i>Can a woman file both a DIR and a FIR?</i></p> <p>Yes, she can file both a DIR and a FIR. If she proceeds to file a FIR first, then she can request the Police Officer to record a DIR under the PWDVA, and forward it to a Magistrate.</p>
Q.6	<p><i>What kind of relief can a woman get under the PWDVA?</i></p> <p>Various kinds of reliefs are provided under the Act. These include:-</p> <ul style="list-style-type: none">○ Protection Order (Sec. 18)○ Residence Order (Sec. 19)○ Monetary Relief (Sec. 20)○ Compensation Order (Sec. 22)○ Custody Order (Sec. 21)○ Interim/Ex-parte Order (Sec. 23)
Q.7	<p><i>What all agencies are involved in the implementation of the PWDVA?</i></p> <p>The agencies involved are:-</p> <ul style="list-style-type: none">○ State Police○ Protection Officers○ Service Providers○ Judiciary
Q.8	<p><i>What can a woman do if she is unable to report an incident of domestic violence?</i></p> <p>In case a woman is not able to report an incident due to circumstances like, a situation of grave emergency, or if it is too late at night, or any other reason, then in such cases the incident can be reported by any person to the PO or SP.</p>
Q.9	<p><i>Where can the contact details of the PO and the SP be found?</i></p> <p>The contact details of the PO and the SP can be accessed from the respective State Women and Child Development website.</p>
Q.10	<p><i>What can a woman do if there are no PO or SP appointed by the State?</i></p> <p>In cases where there are no PO or SP appointed the woman can go to the Police and report the incident. The Police Officer shall thereafter file the DIR and submit it to the Magistrate directly.</p>



Q.11	<p><i>What is the procedure involved under the PWDVA to get the appropriate relief?</i></p> <p>There are 4 stages involved:</p> <ol style="list-style-type: none">1. Filing the Complaint2. Application for relief3. Proceedings in the Court4. Passing of the Order <p><u>Filing the Complaint:</u></p> <p>When an incident of domestic violence takes place, then the woman can:</p> <ol style="list-style-type: none">(a) go to the PO or SP to report such incident, or(b) go to the nearest Police station to report the same. <p>The Protection Officer and the Police Officer can then directly approach the Magistrate with the DIR.</p> <p>In case where the report has been made to a SP, then the SP has to approach the Protection Officer, who will then approach the Magistrate with the DIR.</p> <p><u>Application for relief:</u></p> <p>An application for relief can be made to the Magistrate by the woman herself, the PO or any other person on behalf of the woman with her consent.</p> <p><u>Proceedings in the Court:</u></p> <p>As per the PWDVA the entire court proceedings should be completed within 60 days of filing the application.</p> <p><u>Passing of the Order:</u></p> <p>The Court shall then pass the appropriate order and grant relief to the aggrieved party.</p>
Q.12	<p><i>What happens if either party is not satisfied with the order of the Court?</i></p> <p>In case where either party is not satisfied with the order of the Court, then they can file an Appeal with a higher court, within 30 days of the passing of the order.</p>



10. Question Hour

SUGGESTED QUESTIONS FOR PARLIAMENTARIANS TO RAISE IN THE PARLIAMENT

	Budget Related
1.	What is the State-wise allocation under the budget for PWDVA? What is the expenditure made against such allocation?
2.	Which States have earmarked budgets under a separate budget code for PWDVA?
3.	What are the reasons for lack of uniformity in State-wise budgetary allocation for the PWDVA?
4.	What has been the budget allocated for training of Service Providers and Protection Officers? Which agency conducts the training?
5.	Have budgetary allocations been made for providing medical facilities to the victims?
6.	Have sufficient funds been allocated for spreading awareness related to the Act?
7.	Why has the entire allocation of Rs. 20 crore for the year 2012-13 remained unutilised?
8.	What are the criteria for deciding which projects would come within the ambit of Nirbhaya Fund, going beyond the generic 'women centric' approach?
9.	Who will decide these criteria? Would the already constituted task force have a role to play given the fact that they are representatives of the women's movement in the country?
10.	What is the proposed timeline for finalising the respective allocations to different Ministries?
11.	Who would monitor the spending or utilisation of the Nirbhaya Fund as well as the implementation of the decided projects?



Centrally Sponsored Scheme Under the PWDVA

1. When will the centrally sponsored scheme for PWDVA be rolled out for implementation?
2. What is the plan for implementation of the PWDVA in the rest of the country where the CSS will not be implemented?

Mechanisms for Implementation

1. How many states have appointed independent full time Protection Officers? How many states have contractual full time Protection Officers? How many states have Protection Officers with additional charge?
2. Is the number of Protection Officers appointed adequate?
3. Where are the Protection Officers located? Are they easily accessible to women and Magistrates?
4. Do all the states have a Protection Officer appointed at the block level?
5. How many Service Providers have been notified by the state?
6. Do all the districts have a shelter home notified as Service Provider under the Act?
7. Has staff received in-depth training/refresher training to meet the needs of women?
8. Are the Protection Officers fulfilling their role at all three stages: pre-litigation, litigation and post-litigation?
9. Are the Service Providers available to women throughout the litigation process, including the pre-litigation stage? Are they recording DIRs?
10. Have lawyers been specifically designated and sensitized to attend to cases filed under the PWDVA?
11. Has any agency been given the task of providing counseling for children who witness domestic violence?



For Effective Implementation of the Provisions

1.	How many women have received assistance under PWDVA in each state?
2.	How many cases have been registered under PWDVA by the Protection Officers.
3.	Which agency gives the complete data related to the total number of cases registered under DVA?
4.	Are women receiving services as per the timeline given under the Act?
5.	Are the medical facilities equipped to provide emergency care to women?
6.	Has the Act been translated into regional languages for easy understanding?
7.	What are the different mediums and forums employed to disseminate information under the Act?
8.	Is there a mechanism in place for grievance redressal in cases where the Officers under the Act fail to perform their duties?
9.	What is the role of the WCD and NCW in the effective implementation of the Act?
10.	What steps have been taken by the government to ensure the effective implementation of the provisions under PWDVA?

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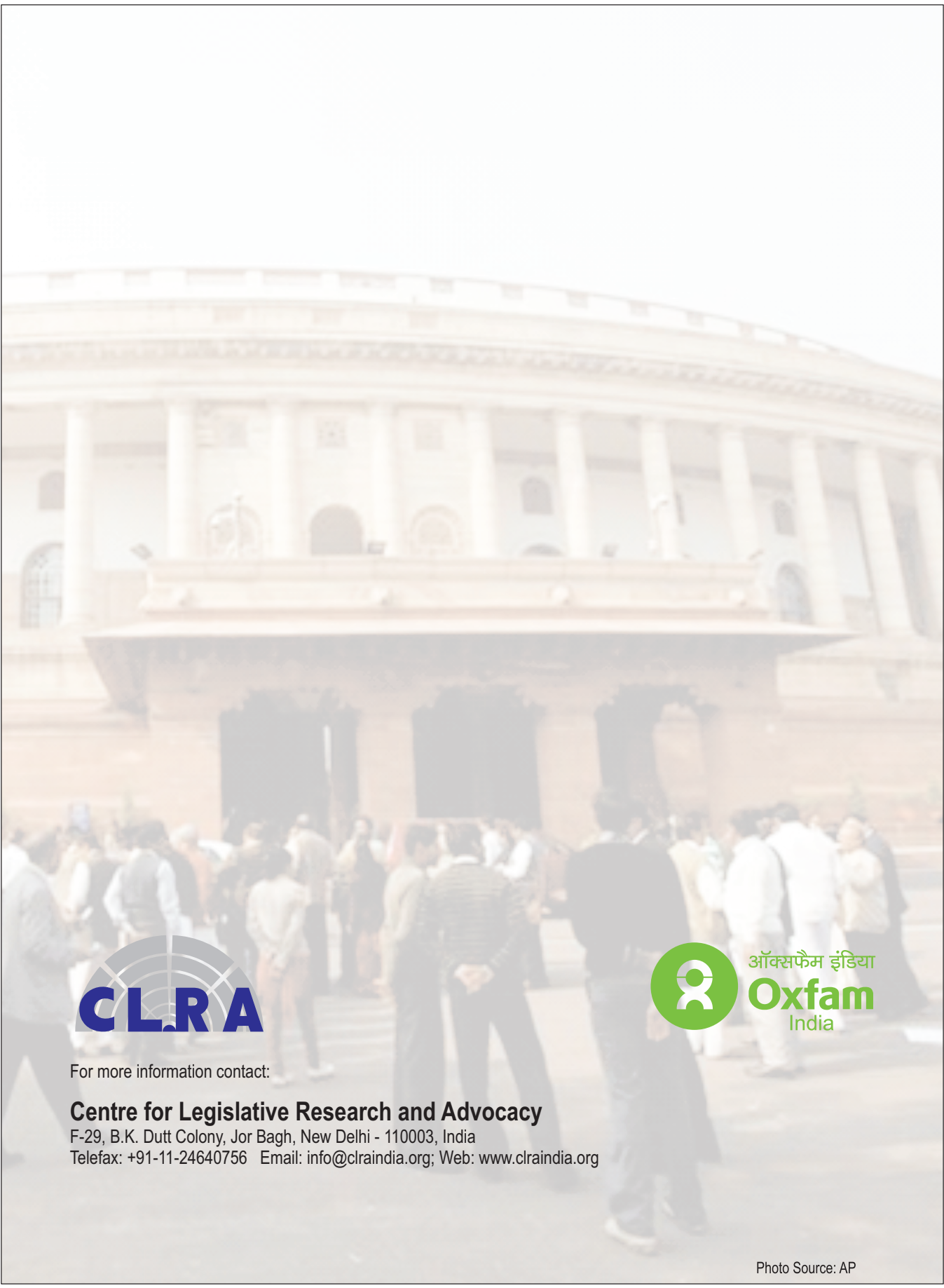
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Umbrella Scheme for Protection and Empowerment of Women

Ministry of Women and Child Development (MWCD) had held a Regional Consultation in November 2011 and a National Consultation in January 2012 to review implementation of PWDV Act, which has brought to fore the gaps in its implementation which includes insufficient financial assistance to States for establishment of an institutional mechanism, non streamlining of human resource and lack of monitoring. While protection officers are the focal point in the implementation of the Act, only 5 states have appointed independent officers, which have been critically affecting the implementation of the Act. In view of personnel management, wherever existing officials in the government machinery –like ICDA, CDPOs, welfare officers, probation officers, dowry Prohibition officers, child Marriage Protection Officers have been given additional charge as POs, they are unable to work effectively since they are already overburdened and sometimes under-skilled for the task at hand. The work also gets affected by poor infrastructure insufficient funds to carry out the duties.

In order to plug the gaps and inadequacies in the operationalisation of the scheme, the Ministry of Women and Child Development has formulated a scheme for 'Assistance to States for effective implementation of PWDV Act, 2005', as a component of the Umbrella Scheme for Protection and Empowerment of Women for implementation during the remaining years of the 12th Plan. The Scheme, inter alia, includes appointment of independent Protection Officers with basic infrastructure and Service Providers at the district level, protection officer at the sub-division/ tehsil levels in 100 most vulnerable districts and awareness generation programmes.



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