

# **Status Report on Implementation of the Protection of Women from Domestic Violence Act, 2005 in Uttar Pradesh, India**

## **ABSTRACT**

**This study examines the implementation of the PWDVA, 2005 in Uttar Pradesh between 2006 - 2012 and highlights the multitude of challenges faced by key stakeholders in seeking to enforce the Act, identifying recommendations for improved statewide implementation of the PWDVA in coming years.**



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## **Acknowledgement**

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Our special thanks to Ms. Seema Misra, our Leading Trustee, for analyzing the data.

We would like to thank Oxfam -India for supporting this study and sharing the need to conduct a study in Uttar Pradesh on the status of implementation of the Protection of Women from Domestic Violence Act, 2005, in the initial years of it's coming into force.

We hope that this report draws the Uttar Pradesh government's attention to the need to address the lacuna in the implementation of the PWDVA, thereby ensuring that women are able to live in peace and security in their homes.

**- AALI Team**

**“Violence against women remains pervasive worldwide. It is the most atrocious manifestation of the systemic discrimination and inequality women continue to face, in law and in their everyday lives, around the world.”**

**Kofi Annan**

## **I. Introduction**

Regardless of income, class, ethnicity, religion or nationality, most women worldwide experience violence, in one form or another, at some point in their lives. Such violence may take place in the public sphere or from within the supposed safe space of a woman's own home; it may be physical, verbal, psychological, economic or sexual in nature. In India, women are discriminated against beginning from birth, thus commencing a cycle of violence that permeates their entire lives. Girl children are labeled as family burdens, fed differently and less than their male siblings, and prevented from receiving an education. As they grow and mature, Indian women are constrained in making career choices, teased in public, married against their will, denied the right to end their marriages, and forced to endure social stigma when widowed or divorced, among other forms of discrimination.

Of pervasive types of gender-based abuse, domestic violence continues to be one of the most widespread, underreported and unrecognized. According to a National Family Health Survey (NHFS) study conducted in 2005-6, 37% of married women in India reported experiencing some form of domestic violence on at least one occasion during marriage. In addition, a large proportion of both men and women in India continue to condone domestic abuse. 51% of men surveyed in the NHFS believe that hitting their wives is acceptable in cases of refusing sex, poor cooking, or disrespecting their in-laws; among women themselves, 55% believe that spousal abuse may at times be warranted.

Though the Constitution of India guarantees women the right to equality under Article 15 and allows special laws to be made for women, the enforcement of constitutional enforcement of constitutional guarantees for women has proven to be fraught with difficulties, particularly with respect to rights in the private sphere. While Indian civil and criminal laws established prior to the Protection of Women from Domestic Violence Act (PWDVA), 2005 offer some remedies for women facing rights violations in marital relationships, they largely fail to address the need for relief and support among survivors of abuse. Additionally, the remedies provided are limited in scope in that they pertain to marriages only, thereby omitting the potential for violence in other types of domestic relationships, including abuse within live-in partnerships and natal families.

India continues to be dominated by a patriarchal social order that has historically viewed women as subordinate to men, in turn forcing women to keep silent and to uphold gender-discriminatory behavioral norms. Along this strain of thinking, men who batter their wives may feel that they are exercising a right by ensuring family order. Recognizing the widespread occurrence of domestic violence in the country, the Indian Parliament passed the Protection of Women from Domestic Violence Act in 2005, and the government framed rules for its implementation in 2006. Prior to 2005, there was neither a clear legal definition of domestic violence nor a law in India specifically addressing the issue. The PWDVA broadens the definition of domestic violence to include not only physical abuse, but verbal, emotional, sexual and economic violence as well, providing women with civil and/or criminal recourse in cases of violation.

By opening the doors of justice for both married women and women in other types of domestic relationships, the PWDVA was hailed among human rights defenders as a legal watershed for protecting women's rights in India. The PWDVA defines a domestic relationship as "a relationship between two persons who live or have, at any point in 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, "thereby extending protection to women facing abuse outside the realm of spousal violence. For the first time in India, a broadminded and comprehensive domestic violence law was put into place, offering a civil remedy that prescribes penalties for breaches of protection orders and establishing a support structure for survivors.

Remedies provided by the PWDVA include *ex-parte*, interim and permanent orders, including protection orders, residence orders, custody orders and monetary relief. Additionally, the PWDVA mandates the appointment of protection officers (POs) in each state district to assist survivors through the court process by filing domestic incidence reports (DIRs);preparing complaints; informing survivors of and assisting them in accessing their right to free legal aid, counseling, and the option of staying in a shelter home; and ensuring compliance. Notably, the PWDVA mandates the registration of service providers, consisting of various governmental and nongovernmental organizations, for the provision of medical, counseling and shelter services.

And yet, despite the wide array of remedies offered under the PWDVA and the enthusiasm with which its supporters initially greeted the Act, implementation remains highly problematic. As noted by the first four Monitoring and Evaluation Reports on the PWDVA, prepared by the Delhi-based Lawyers Collective, a variety of critical issues have arisen in relation to knowledge and training, infrastructure, budget allocations and stakeholder attitudes. Additionally, the chairperson for the National Commission for Women stated that "...awareness about the Act is low and implementation limited. Police and protection officers, who are supposed to be a first point of contact for the victim, are not aware of their duties and the legal procedure that needs to be followed to provide relief." Such findings have been corroborated in numerous reports by authorities, experts, social organizations and users of the law.

Among the Indian states, the status of women's human rights in Uttar Pradesh is particularly tenuous. According to the 2009 India Human Rights Report, Uttar Pradesh logged the highest incidence of crimes against women of any state; simultaneously, nearly half of all reports of human rights violations filed with the Human Rights Commission are from Uttar Pradesh. Statistically, the state's record on gender equality is poor: the sex ratio stands at just 898 women per 1,000 men, the female literacy rate is only 42.98% (as compared to 70.23% for men), and the maternal mortality rate surpasses the national average for India. In accordance with this continuing reality for the state's women, a critical need emerged for the commissioning of a comprehensive study on implementation of the PWDVA in Uttar Pradesh.

Taking the state's human rights record into consideration, and acting upon claims by social organizations active in Uttar Pradesh that the PWDVA has not been adequately implemented, the Lucknow-based Association for Advocacy and Legal Initiatives (AALI) undertook this study with the intention of surveying the implementation of the Protection of Women from Domestic Violence Act, 2005 in Uttar Pradesh. In the process, AALI uncovered pervasive implementation issues at the levels of protection officer, service provider, magistrate and police.

## **II. Objectives**

As a feminist legal advocacy resource group, AALI has been at the forefront of the struggle to ensure proper implementation of the PWDVA in Uttar Pradesh.

Operating within a rights-based framework, AALI undertakes research, advocacy and direct response to violations of women's human rights, often in partnership with other organizations. AALI focuses particularly on violence against women; in addition to providing direct legal aid in cases of domestic violence, the organization generates awareness of and conducts research related to implementation of the PWDVA. AALI regularly collates and shares technical resources with various stakeholders, conducting advocacy and engaging with the state on issues of concern to women.

The primary objective of this study is to examine the status of implementation of the Protection of Women from Domestic Violence Act, 2005 in Uttar Pradesh. Information from 31 districts across the state was collected and analyzed to this end, with AALI's findings detailed under *Section V. Findings and Analysis*. In addition, the study aims to highlight the multitude of challenges faced by key stakeholders in seeking to implement the PWDVA, with the intention of identifying recommendations for improved statewide implementation of the Act in coming years.

### **III. Methodology**

To conduct this study, AALI collected data in two phases. In the first phase a series of four zonal workshops from October to November 2010 in Varanasi, Lucknow, Allahabad and Bareilly. At that time, organizations working on women's human rights were invited to come forward to share their experiences in relation to the PWDVA and to gather information on the implementation of the Act within their work areas. AALI prepared and distributed questionnaires to the participating organizations for the purpose of information collection from protection officers, service providers, magistrates and police. In total, 87 organizations from across the state participated in the workshops, where they agreed to take part in the study as well as subsequent advocacy efforts.

Following the completion of the zonal workshops, collection of information for the study was undertaken from December 2010 to April 2011. While AALI had originally planned to collect and analyze data from 70 districts in Uttar Pradesh, ultimately it was unable to retrieve information from all of the organizations that took part in the data collection effort. Due to a variety of factors, including



timeframe restrictions, coordination challenges, limited human and financial resources, as well as lack of cooperation from questionnaire respondents, data collection results proved unsatisfactory on several occasions. In all cases, the data was collected by AALI from organizations using their own resources, as well as the provisions of the Right to Information (RTI) Act, to gain access to information within the given timeframe.

With the aim of producing quality analysis on the state of implementation of the PWDVA in Uttar Pradesh, comprehensive information from 31 districts has been examined and included in this report. Incomplete and unclear data has been discarded, and where necessary secondary sources have been used to enhance the quality of analysis.

In the second phase data was collected and analyzed for the period of January, 2011 to December, 2012 from 31 districts of the State. The districts chosen in the two phases of the study were not the same due to issues around accessibility of information and availability of partner non-governmental organizations in the districts. Information was gathered through interviews by AALI and partner organizations and the right to information process.

## **IV. Scope**

The survey research for this report was conducted with an aim toward identifying successes and barriers to implementation of the PWDVA among the four key stakeholders responsible for upholding the Act: protection officers (POs), service providers (SPs), magistrates, and police.

Under the PWDVA, POs are the central stakeholders for ensuring that women suffering from violence obtain access to justice and support. POs form the key link between survivors and the courts, and are also responsible for referring women to service providers. POs are charged with a variety of key responsibilities, including: preparation and filing of DIRs, service of notices, monitoring compliance with court orders, and preparation of safety plans. Appointed by the state government, 31 POs across Uttar Pradesh were identified and interviewed for the first phase of this study with the aim of obtaining primary information and evaluating their knowledge, resources, skills and attitudes related to the PWDVA.

By calling for the registration of service providers (SPs) offering shelter, medical care and counseling support, the PWDVA envisaged that various civil society organizations would strengthen the implementation efforts of POs, in particular by offering services relevant to the needs of women survivors of violence. The PWDVA empowered SPs to record DIRs; to ensure that the aggrieved undergoes a medical examination and that the report is submitted to the PO and police; and to certify that the aggrieved is provided stay in a shelter home and that a copy of the report is forwarded to the police. Through its survey research, AALI gathered information on SPs registered in Uttar Pradesh and held interviews with 11 of them to gauge the process by which SPs are appointed and their services utilized within the state. In the second phase 6 service providers were interviewed.

Though a number of factors determine whether a woman is able to access justice in the event of domestic violence, the judicial system enables relief for the survivor, as the magistrates are responsible for determining the nature and effectiveness of relief granted. Under the PWDVA, they have been empowered to adjudicate claims, determine the rights of the parties and provide remedies to the complainant. Ultimately, the attitudes, knowledge and perceptions of these judges determine the orders passed and relief obtained by women under the PWDVA. To monitor trends in the judiciary pertaining to implementation of the Act, magistrates in 21 districts of Uttar Pradesh in the first phase and in 23 districts in the second phase were interviewed to provide basic information regarding the PWDVA.

The police are most often the first point of contact for a woman experiencing domestic violence. Presently, they are the most well-known, accessible and available entity that survivors may approach for help, and the level of response, support and guidance women receive from the police may influence the choices they make regarding their situation. The PWDVA defines the role of the police in implementing the Act at two critical junctions: upon receiving a complaint of domestic violence, and upon a breach of order. When an aggrieved woman approaches the police to complain of domestic violence, it is the duty of the police to inform her of her rights, notably: the right to file an FIR or a complaint in court under the PWDVA, to obtain free legal aid, to receive information regarding POs and SPs in the area, and to be informed of the specific reliefs available to her. Breaches of order are considered to be cognizable offenses, and in such cases the role of the police is therefore automatic. To evaluate understanding of the police in Uttar Pradesh as to

their role in implementing the PWDVA, police stations in 20 districts of Uttar Pradesh in the first phase of the study and 24 districts in the second phase of the study were approached for information related to the Act.

In targeting these four key stakeholders for research and evaluation, this study seeks to analyze the effectiveness of the support structure mandated by the PWDVA. Because successful implementation of the Act can only occur if the multi-response system envisioned by the PWDVA is properly established and coordinated, the survey responses of POs, SPs, magistrates and police provide critical insight into the current gaps in understanding and execution of each stakeholders' specified functions.

## **V. Findings and Analysis**

The trends that have emerged from the analysis of data for this study indicate that the current implementation status of the PWDVA in Uttar Pradesh is far from encouraging. Moreover, there is also clear indication that providing relief to women in facing of domestic violence is not a matter of importance, let alone priority. Multiple issues pertaining to the roles of protection officers, service providers, magistrates and police have arisen from AALI's examination of the survey information, the most critical of which are highlighted below.

### ***Protection Officers***

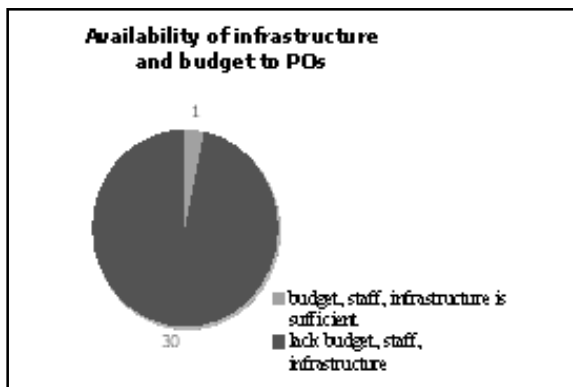
<i>16 types of government officers in the state hold additional charges as POs.</i>
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As POs are charged with a variety of key responsibilities under the PWDVA, it is essential, that the position is full-time and that the necessary infrastructure and budget allocations are in place

for the effective discharge of duties. In Uttar Pradesh, however, PO responsibilities are frequently delegated as additional charges to already appointed officers; 16 types of government officers in the state hold additional charges as POs. Moreover, POs rarely have the appropriate infrastructure and funding to carry out their duties, and receive little to no standardized training.

For government officers holding additional charges as POs, their primary duties continue as per their designations. While POs are expected to send quarterly reports to the Department of Women and Child Development, the DWCD has little

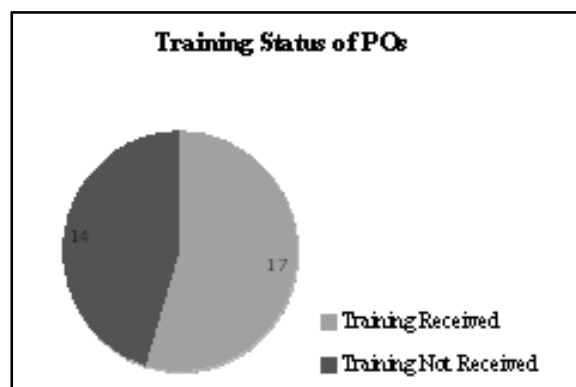
authority to enforce compliance, since POs report and are accountable to their respective departments. Moreover, as regular training for POs is not provided, the assumption that officers holding additional charges possess the specialized knowledge required to function as POs is questionable. Information collected from 31 districts in Uttar Pradesh reveals that additionally charged officers retain extensive responsibilities related to their primary posts; all 31 officers surveyed expressed that their work loads are too heavy and that their PO duties are compromised as a result.



Of the 31 protection officers evaluated for the first phase of this study, 30 stated that there has been no budget allocation for their work under the PWDVA. In addition, POs typically lack the office space, infrastructure, vehicles and staff for the fulfillment of their responsibilities. 12 of the 31 officers said that they have repeatedly raised budgeting issues

during their monthly department meetings, but have received no response. The chief officer of the DWCD additionally corroborated that budget requirements are sent to the state government every year, but have never been considered. At present, most of the officers rely on their personal contacts and resources to fulfill their PO duties, raising serious concerns as to the effectiveness and sustainability of their efforts.

In addition to the above, the majority of surveyed POs have little to no information on the available service providers in their district. Most of the POs stated that they do not use the services provided by SPs and have expressed a lack of coordination with other

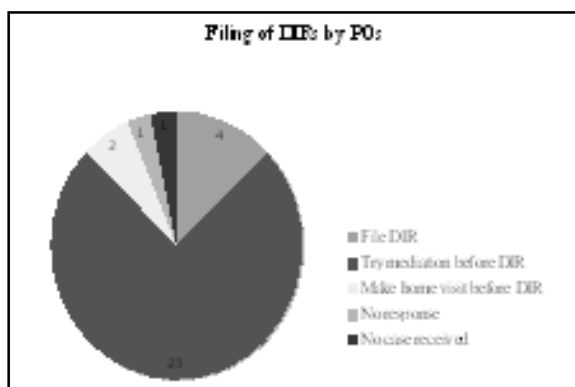


departments, including the police. Only one of the 31 POs interviewed is linked to a helpline service, and almost all of the POs demonstrated a lack of understanding of the helpline system. Along the same lines, only 13 POs verified that they had made any concerted effort to publicize their presence. Such responses indicate the absence of a strategy for generating public awareness of the role of POs, including a serious lapse by the concerned authorities' vis-à-vis ensuring the availability of information among POs themselves. Among the POs surveyed, none claim to have received any regular training to aid them in understanding and fulfilling their responsibilities under the PWDVA. While 17 POs stated that they received some instruction in the form of one-day workshops resourced by civil society organizations, 14 responded that they have not received any training at all. Moreover, some of the POs revealed significant gender bias through their responses, opining that "women should try to live peacefully with their families," that "women should understand their rights and responsibilities before fighting," and that "women should be aware of their rights and use them to benefit their families, as the chances of misuse are high."

When asked to define the rights attributed to women under the PWDVA, a majority of POs responded in general terms, referencing the right "to file a case," to "live a violence-free life," and to obtain "residence, protection and maintenance." 23 POs stated that they attempt social mediation prior to filing DIRs, and one PO responded that he conducts home visits first. Additionally, the POs demonstrated a lack of knowledge of the amount of time required to file a DIR. While five POs said that they file DIRs in the prescribed time frame of one to three days, two POs

responded that filing a DIR takes two to three months. Of the 31 POs surveyed, only 17 were able to provide information on the number of complaints received and the status of cases pending in court.

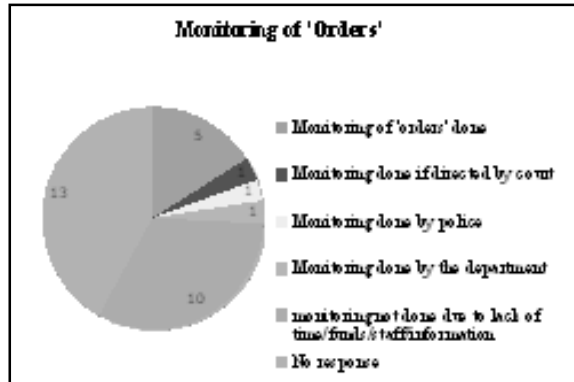
Additionally, while only seven POs stated that they file DIRs based on information provided by the aggrieved party, the majority said that they do not prepare DIRs until



they are able to talk to both parties. One PO responded that he does not file DIRs at all, as he only solves cases through mediation. While 19 of the POs confirmed that there is no fee for filing a DIR, the others provided varied answers, ranging from no response to a fee of INR 150 per DIR. Among POs, there appears to be no set procedure regarding the serving of notices, as the officers reported that the postal service, peons, police, counselors, courts, subordinate office staff, and calling the party to the office are all employed as means of fulfilling this responsibility.

From responses given by the POs in relation to suggestions for relief, it is clear that they are uninformed of remedies offered under the Act. In cases of domestic violence, the availability of support ensures the welfare and safety of the aggrieved; moreover, suggestions for relief provide critical information to survivors, as they are typically unaware of possible remedies and are unable to ask for them on their own. When surveyed, most of the POs similarly revealed that they are unaware that the Act requires them to prepare safety plans in consultation with the aggrieved. POs from seven districts stated that they do not prepare safety plans, while others gave varied responses, including "involve the police" and "follow court directives."

Lastly, six POs claimed that protection orders have never been violated, and it is inferred from their responses that most POs do not conduct any follow-up once a case is sent to court. Only five POs asserted that they monitor court orders, while 10 POs stated that they do not conduct any monitoring due to lack of funds, information, know-how and staff.



Several POs commented that they rarely receive feedback from the court on the orders issued, and usually only receive information on court orders once summons are received.

From the data collected, in the second phase for two years from January, 2011 to December 2012, it emerged that the situation related to Protection Officers had not changed and the issues and challenges remained the same. No independent protection officers have been appointed and the system of giving district level

government functionaries of different departments additional charge of Protection Officers has been continued. In most districts it is the *District Probation officer* who has been designated as the PO, in other districts it is the *District Program Officer*, who is in-charge of the ICDS program, or the *District Disability Welfare Officer* or the *District Social Welfare Officer*.

These designated protection officers, have developed their own methods and systems of tackling cases depending on individual understanding of the PWDVA, as no guidelines have been issued by the government to ensure streamlined and uniform procedures in accordance with the PWDVA. More than half the POs interviewed, said that they had not received any training on the PWDVA, amongst whom at least 6 of them had been appointed in 2009 or before. Most of them said that they learnt about PWDVA by reading the law themselves, while the others said that they had attended one training. The main challenges for the POs in carrying out their work continued to be lack of funds, human resources and support from other agencies, for example no vehicle being available or shortage of staff, due to which they were not able to provide prompt relief to the "aggrieved women". Almost all the Protection Officers stated that on the whole there was little awareness of the law amongst the women and this was also a challenge to the effective implementation of the law.

No uniform system of functioning of the POs, coupled with the little training and understanding of the law is evident in the manner in which the POs deal with the aggrieved women who approach them and in particular the procedure adopted for preparing the Domestic Incident Report (DIR) , which is required to be filed in court by the PO before the final disposal of the cases. Each of 23 POs interviewed followed a different process for preparing the DIR, for example, conducting home visits to verify the facts or speaking with neighbors or making lawyers prepare the DIR or sending notices to the other party and only after hearing them, preparing the DIR, etc. Three POs have developed procedures similar to court hearings, wherein dates are given to parties to appear before the PO, both sides are heard, their statements recorded and then depending on the satisfaction of the PO, whether the case should be sent to court is the DIR prepared. Sometimes parties may be required to appear more than twice before the PO before their case is sent to court. Not only is there no consistency but the procedures are not based on the provisions of the PWDVA. Only 5 POs followed

the procedure as laid down in the PWDVA, which is preparing the DIR after speaking with the aggrieved woman. Majority of the POs interviewed said that when the women approach them they try resolving the cases through mediation, which they are not mandated to do under the PWDVA. A few POs said that they had provided shelter, legal aid, taken help of the police or filed cases in court. Almost all the POs were involved with service of notice. Only 5 POs said that they played a role in the implementation of the interim or final orders. One of them said that he had been involved in the execution of a residence order. Majority of the POs said that they did not have a list of hospitals, service providers, shelter homes, etc to contact when an aggrieved woman approaches them for help.

Interestingly, the data in the second phase, shows that many more aggrieved women were approaching the Protection Officers for relief. Protection Officers from 8 districts said that they handled over 100 cases between January, 2011 to December,2012. Another 5 POs said they handled more than 50 in the same period. Out of these, the PO in Lucknow had handled 670 cases in the two years . However, there were POs from 4 districts who said that they had not handled any cases in the 2 years of the study period. This indicates that some problems exist, related to the functioning of the POs or even awareness around who the POs are which needs to be addressed on a priority basis.

### ***Service Providers***

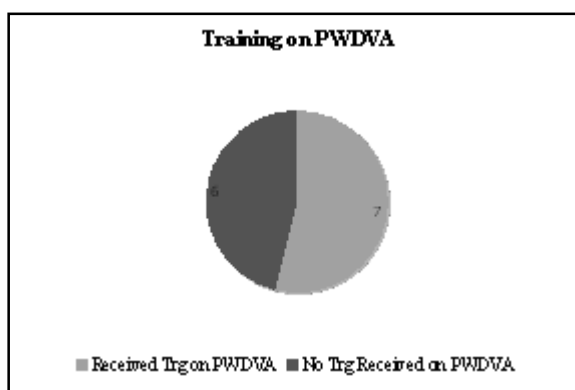
Although the government of Uttar Pradesh has appointed 112 service providers for implementation of the PWDVA, most of the SPs are organizations that have executed government-funded projects in the state. Anecdotal information shared during the zonal workshops held prior to the initiation of this study reveals that the state government has rejected registration applications collected from privately funded organizations in favor of appointing organizations that receive government funding. Among SPs that were accepted, many organizations were never informed of their appointment. AALI itself had applied to register as an SP, but its application has been completely ignored.

To date, the Department of Women and Children has handled the registration of SPs, despite the fact that the DWCD is not the nodal department for service provider organizations. As a result, SPs are not accountable to any authority for the fulfillment of their responsibilities under the PWDVA. There is no clarity as yet



on which governmental department is responsible for monitoring the services provided by SPs.

For the completion of this study, 27 districts in Uttar Pradesh were contacted to gather primary information on the status of SPs listed by the DWCD. Of them, 13 districts reported that the listed SP does not exist or that there is no registered SP under the PWDVA. Additionally, one district reported that the registration of all SPs in the district had been cancelled. Information gathered on the status of SPs and subsequent interviews with 11 of them revealed that in Uttar Pradesh, SPs are typically appointed by the government in a top-down fashion. There is an overall lack of uniformity in the appointment of SPs by the state, and SPs themselves are typically unclear on the process by which they have been registered by the government.

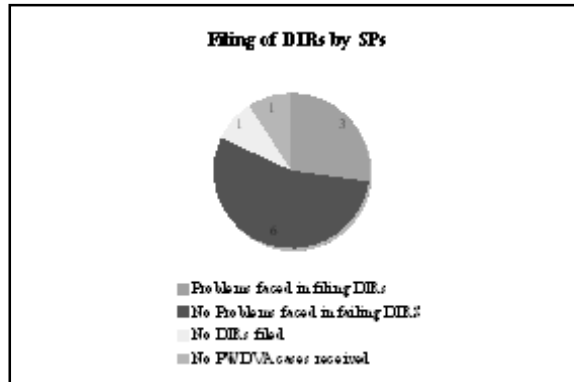


Most of the organizations listed as SPs are shelter homes functioning under central and state government schemes; by and large, they have the necessary infrastructure to provide shelter services, while some also offer counseling and legal aid. Women were found residing in almost all of the shelter homes surveyed, sometimes accompanied by children. Of the 11 organizations interviewed, none has

been allocated extra funding, resources or infrastructure to meet the needs of women under the PWDVA. Along the same lines, all of the organizations expressed a need for regular budget outlays for the provision of additional services. By law, the PWDVA does not require the state government to make a separate budgetary investment. However, a common sentiment expressed by the interviewed SPs is that additional budgeting is needed if quality services are to be provided to women under the PWDVA. Almost half of the SPs stated that they have not received any training on the PWDVA.

All of the interviewed SPs indicated the need for building greater awareness of the PWDVA among women, appointing full-time POs with an independent charge,

sensitizing government officials and stringently applying time limits for various processes as mandated by the Act. Nine out of 11 SPs stated that they have registered cases under the PWDVA. Four SPs responded that they have intervened in PWDVA cases through mediation, as well as referrals to magistrates and POs; two stated that they have intervened through mediation only. Through the interview process, it became apparent that mediation is the most commonly used method of intervention among SPs in dealing with PWDVA cases. Approximately half of the surveyed SPs expressed that they face difficulties when filing DIRs, including lack of funding and staff, interference by lawyers and relatives of the aggrieved, corruption and inadequate counseling services.



During the second phase of the study, SPs in 6 districts were interviewed, while 4 districts did not have any SPs and no information was available in the other districts. One organization had been appointed a SP in April, 2013 and the rest in 2007. This seems both curious and confusing, as at a meeting the Deputy Director told AALI that due to non -availability and allocation of funds, the Department of Women and Child Development (DWCD) had discontinued the process of renewal or selection of organization as SPs. In both the phases of the study the SPs said that they had not received any funds or infrastructure, not even DIR forms, from the government. Therefore in all likelihood, the organizations designated as service providers were not aware that renewal was required every three years, and continued to consider themselves as SPs. Moreover, from the interviews it was evident that the mainstay of the functioning of the SPs was "counseling" the parties and encouraging them to reach a compromise.

### **Magistrates**

Secondary information gathered from Human Rights Law Network offices across India has indicated substantial apprehension concerning the role of the judiciary in

implementation of the PWDVA, as numerous advocates have pointed to a lack of training on the Act's requirements and purpose and insensitivity regarding the issue of domestic violence among magistrates. In some cases, magistrates have prolonged the court process, forcing survivors to appear several times and to revisit their trauma repeatedly.

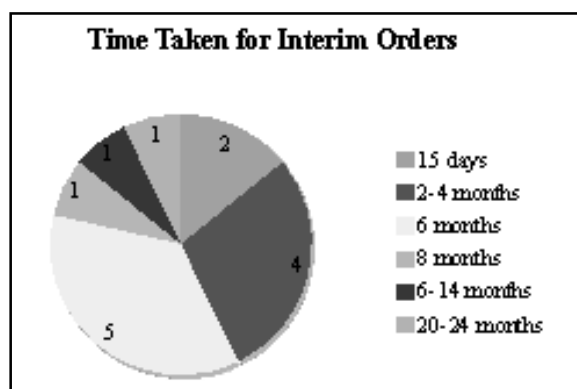
Although magistrates from 25 districts in Uttar Pradesh were contacted to supply data for this study, magistrates from four districts refused to release any information without the provision of a high court directive. Therefore, the responses of magistrates from 21 districts are included in the final analysis. After being asked to provide information on the number of cases filed in their courts since 2006, all of the magistrates except one revealed that the number of pending cases outweighs the number of disposed cases; it is apparent that disposal of cases is not being carried out as per the specified time frame of 60 days mandated under the PWDVA. In total, 2,761 PWDVA cases are pending in 19 magistrate courts across 17 districts of Uttar Pradesh.

Moreover, magistrates from only seven districts agreed to provide data on the number of interim relief orders given by them. Among magistrates who released the information, only 353 interim relief orders have been granted; the most common relief granted is the maintenance order, followed by the residence order. As viewed

against the number of PWDVA cases filed in the courts, the amount of interim relief provided is quite small, revealing reluctance among the magistrates to provide immediate recourse to the aggrieved.

When asked to define a time frame for issuing interim relief orders, the responses of the magistrates from seven districts varied from 15 days to "no fixed time." While two

magistrates responded that it takes 15 days for a survivor to obtain interim relief, five magistrates said that it takes a minimum of six months, and one magistrate answered that it takes 20-24 months. The magistrates expressed that the reason



survivors are required to wait so much time prior to obtaining relief is that the law may be "misused"; therefore, the magistrates prefer to wait until the survivor makes at least one appearance in court prior to issuing orders. Interim relief orders are of the utmost importance to women enduring domestic violence, as they often require access to safe shelter, emotional support, and safety and security for themselves and their children. Under the PWDVA, interim orders are supposed to be issued one to three days after an application is filed in court.

While 10 magistrates from across 21 districts responded that breaches of protection orders have not occurred in a single case, the magistrate of one district said that violations have taken place in 62 cases, and another responded that breaches occur in 50% of cases. Under Section 31 of the PWDVA, the breach of any interim or protection order carries a minimum one-year sentence and/or a maximum fine of INR 10,000. The offense is cognizable and non-bailable; a report of a breach may be made to the PO, or a complaint may be filed directly with the police or magistrate by the aggrieved woman. Through the data provided, it can be posited that breaches of order occur with some frequency.

Of the 21 magistrates surveyed, 15 reported that they have never punished a PO for failing to discharge his duties in upholding protection orders. Among those who have penalized POs, the penalty has been meted out as a fine only. Under the PWDVA, POs who fail or refuse to discharge their duties properly as directed by the magistrate can be imprisoned and/or fined up to INR 20,000. Moreover, there is no uniform judicial structure that has been set up for processing PWDVA cases: 11 magistrates responded that there is only one court in the district where PWDVA cases are heard, while the others stated that such cases are heard in all civil courts.

The sixty day time put forth in PWDVA for disposal of cases is rarely followed. Six of the magistrates answered that there is no set time for the disposal of cases and that the amount of time required depends on the nature of the case being addressed, the availability of the parties, and the serving of notices, among other factors. Though four magistrates responded that it takes two to three months to dispose of a case, this answer contradicts the number of cases successfully disposed of by the responding parties themselves. Three of the magistrates said that a time period of two years is required to dispose of a PWDVA case.

Lastly, only five out of 21 magistrates claimed to have passed a final order within the past 60 days, despite the fact that the PWDVA specifies a time restraint of two months. All of the magistrates responded that the survivor is informed by court notice, rather than summons or warrant. In cases of compromise, 17 magistrates affirmed that the agreement and affidavit are filed. Three magistrates said that they wait three months after a compromise has been reached before filing a final order.

In the second phase of the study information was gathered from 21 magistrates in 18 districts. The magistrates in rest of the districts did not respond to the questionnaire as they were wary how the information would be used. The most significant point that emerged from the study was that a large number of women were approaching courts to obtain relief under the PWDVA. In the two years of the study January, 2011 till December, 2012, a total of 4831 cases had been filed under PWDVA in 23 Districts. In Azamagarh district alone 1744 cases had been filed. In all likelihood it was the lawyers who were using the various provisions of the PWDVA to get relief for their clients.

Protection, residence and maintenance orders were commonly asked for in most of the cases filed before the courts. In one of districts the Magistrate had passed more than 300 protection orders, during the period of the study. The provision of ex-parte orders to provide relief in cases of violence is an effective mechanism in the PWDVA but was rarely used by the Magistrates. Only two magistrates had passed ex-parte orders under S. 23 of the PWDVA in fifty or more cases each. While only 7 magistrates had passed interim orders under the law. The Magistrates did not usually avail the services of the Protection Officers, Service Providers or the Police while dealing with the cases. Three Magistrates had disposed a few cases within 60 days and one magistrate disposed of more than 100 cases within 60 days. This illustrates that the time period laid down to dispose of the cases is not unrealistic and can be adhered to.

Most of the magistrates did not think that domestic violence was a personal issue but that it affected the entire society. They felt that the interference of parents of the parties especially the man's are responsible for delaying the disposal of cases. Only one magistrate said that false cases were filed under the PWDVA.

## **Police**

The confusion amongst the police about the functioning of the PWDVA in the initial years is evident in the information gathered from the police. The PWDVA is a civil law providing a wide range of relief to an "aggrieved woman". The Police have a role when any Protection Order issued by the Court is violated, as this is a cognizable offence, requiring the registration of an FIR. Besides this the Police have a duty to inform any aggrieved woman who approaches them that an FIR can be registered under the penal code and /or she can approach the PO for relief under PWDVA and direct her to the PO.

Police stations in 20 districts were approached for information in order to investigate the extent to which the police in Uttar Pradesh were aware of the PWDVA. In the state, a government order and DGP directive have been issued directing officers to file DIRs in cases of domestic violence. None of the police officers interviewed in any district claimed to have received training about the PWDVA, and all officers demonstrated a marked lack of knowledge of the Act and their role in implementing it.

Among the interviewed POs, SPs, and magistrates, the police were cited as regular actors in implementation of the PWDVA. While the surveyed POs stated that they employ the police to serve notices and enforce court orders, SPs specified that they seek the support of the police during the mediation process. Likewise, the magistrates responded that protecting women from further violence is the responsibility of the police. And yet, the police have remained largely neglected in terms of preparation for the multitude of tasks that the other major implementers have expected them to assume.

Sixty four police from 24 districts, above the rank of Sub-Inspectors and the S.H.Os of Mahila Thana's were interviewed in the second phase of the study. It emerged from the study that awareness amongst the Police of the PWDVA is still low. This is of concern as it is the police that an aggrieved woman first approaches in times of crisis and they are required to either register a FIR/complaint or direct her towards the POs. Only 9 police amongst those interviewed could give the correct definition of domestic violence under PWDVA, while 10 police officers admitted to not having any knowledge of the law and 45 of them said that they had not received any training on the PWDVA. About 24 police said that

they knew about the PWDVA as they had read the "Act" and 6 of them said that they had knowledge of the law from the prosecution branch. Twenty of them said that they still tried to compromise between the parties when a woman comes to complain of domestic violence against her husband.

From the responses to the query about whether they had received any directions from the Courts to ensure compliance of Court orders, it was evident that the police had limited understanding of their roles and responsibilities under the PWDVA. About 18 police said that they had not received any orders from the Court; another 11 said that they do not comply with the Court orders; another 31 police said that they had not intervened in the Courts orders. Some of the police only discussed cruelty provisions under the penal code and the maintenance provisions of the criminal procedure while being questioned about PWDVA.

## **VI. Recommendations**

Based on the above findings, a series of concrete suggestions for improved implementation of the PWDVA in Uttar Pradesh has emerged:

- **The U.P. Legal Services Authority (UPSLA) has constituted a panel of lawyers in each district in UP to specifically provides free legal aid to women in cases under PWDVA. The UPLSA must carry out regular programs for enhancing capacity and gender sensitization of this panel with respect to the PWDVA.** It must be ensured that this list of lawyers on the panel is available at every police station of the concerning district, PO and SPOs. The UPLSA should also display this information in their website and their district offices.
- **The state must make a separate budget allocation for the PWDVA in order to ensure its effective implementation.** Allowing for a separate budgeting allocation will allow POs to receive the funding and infrastructure necessary to carry out their responsibilities under the Act.
- **POs with independent charges must be appointed.** The government officials, who have been given additional charges as POs, face significant time and resource constraints and are overburdened by responsibilities. POs with independent charges are required if POs are to be expected to perform their duties properly.

- **POs must be trained in the legal procedures involved in PWDVA implementation, as well as the basic concepts of gender, counseling and social work.** At present, most POs have not received any relevant or standardized training and lack significant experience in dealing with domestic violence complaints, hindering their ability to effectively understand and implement their role in upholding the PWDVA. Adequate training is required to ensure that POs are equipped with the background necessary to grasp the context of cases presented to them.
- **Public awareness of the Act and the responsibilities of the PO vis-à-vis enforcement must be raised.** Alongside basic information regarding the enforcement role of POs, the address and contact number of the nearest PO must be provided as public information; as the local police station is typically the first point of contact for women facing domestic violence, information regarding the PWDVA and PO responsibilities should be made available there.
- **POs must have access to information about the SPs in their district.** A current list of SPs with accurate contact information should be provided to all POs at the earliest date possible so that they are able to adequately inform survivors regarding the services available to them. At present, a majority of POs in Uttar Pradesh have incomplete or nonexistent knowledge of the SPs in their respective districts.
- **One governmental agency should be responsible for managing monitoring and accountability of POs.** Although the DWCD has been designated as a nodal agency for implementation of the PWDVA, coordination and monitoring of POs has been ineffective as POs are first accountable to their respective departments. Quarterly reports to be sent by POs to the DWCD are rarely received, and the DWCD has virtually no power to enforce compliance. It is critical that monitoring and accountability of POs falls under one governmental agency's jurisdiction only in order to improve implementation.
- **The state and central governments must take all necessary steps to ensure coordination between various governmental departments taking part in enforcing the Act.** The PWDVA defines the police and



legal services authorities as having key roles to play in upholding the PWDVA; however, neither reports to the nodal department responsible for implementation of the Act. Additionally, medical facilities fall under the purview of an altogether separate governmental department. The state government must prepare and put into place the necessary protocol for ensuring that coordination between various departments is upheld; the central government must do the same among the concerned ministries.

- **In Uttar Pradesh, district-level committees for ensuring a coordinated multi-agency response to domestic violence must be revived.** The coordination committees are at present non-functional; as defined by the nodal department, such committees are to be responsible for monitoring implementation of the PWDVA, facilitating coordination between stakeholders, generating awareness of the Act, reviewing the services offered by SPs and issuing guidelines, and collecting information on cases. In order to become functional and effective, the district-level committees require substantial investments in funding and infrastructure.
- **A regular practice of filing DIRs needs to be established among POs.** The recording of DIRs is the first step under the PWDVA for ensuring justice for survivors of domestic violence. As DIRs are public records completed by POs or SPs that provide proof of complaint, they are instrumental in seeking legal remediation for abuse. Regardless of whether or not legal action is taken, DIRs must be regularly recorded and submitted to the magistrate. At present, there is a trend among POs of attempting mediation first and of only recording a DIR when a woman elects to pursue litigation. This tendency must be broken and POs must be advised as to the importance of filing DIRs in an acceptable fashion.
- **POs should refrain from expanding their pre-litigation role.** In taking on activities such as home visits and counseling prior to recording DIRs, POs are expanding their pre-litigation role to include elements not defined under the PWDVA. POs are only instructed to refer the aggrieved to counseling services provided by SPs in their district; they are not expected to undertake pre-litigation counseling themselves. As counseling is a specialized field, informal mediation may inadvertently cause additional problems for the survivor, including preventing her from making an unbiased decision regarding

her situation. POs must be discouraged from moving beyond the pre-litigation role defined for them under the Act.

- **A mechanism for providing POs with feedback from the courts must be set up.** Once the aggrieved files an application in the court, the PO acts as a court officer and is under its direction. However, a majority of POs expressed difficulties in receiving feedback from the courts on the status and/or outcome of cases filed. Not surprisingly, this prevents POs from enforcing court orders, which is one of the key responsibilities endowed to them under the Act. Taking advantage of information technology, a system must be set up whereby POs are notified of orders granted by the courts.
- **Information should be regularly shared between POs and SPs and the courts.** In addition to setting up a notification system for informing POs of the status and outcome of court cases, a similar arrangement must be made for the regular sharing of information among POs, SPs and the courts. As the PWDVA has envisioned a multi-response system in which the identified stakeholders operate in conjunction with one another, proper implementation of the Act can only occur if regular communication and coordination are upheld by all of the involved parties.
- **SPs to provide the varied services as stated in the PWDVVA should be registered and be trained and their services monitored.** As SPs are charged with providing key services to the aggrieved, it is necessary to ensure that SPs are appointed and the facilities offered are of a suitable quality. There is confusion in Uttar Pradesh whether SPs have been appointed or not or once appointed how long do they continue to function as SPs. Moreover, counseling is one of the major services provided by SPs and requires specialized training to carry out properly, counseling SPs must be carefully monitored so as to guarantee that survivors receive the emotional and psychological support to which they are entitled. At present, indicators suggest that SPs lack the human resource capacity to adequately understand counseling needs and processes for the aggrieved as defined by the PWDVA.
- **The state must ensure the registration of SPs other than those funded by the central and state governments.** Under the PWDVA, any qualified NGO offering needed support and relief to women facing

domestic violence can register as an SP. However, anecdotal information gathered prior to this study indicates that privately funded organizations are denied selection as SPs. It is the responsibility of the state to ensure that NGOs other than those receiving government funding are incorporated into the SP registration process.

- **The Judicial Training and Research Institute, Uttar Pradesh,(JTRI) must carry out a regular program for training of magistrates and district judges on the PWDVA.** The number of women approaching courts for relief under PWDVA is increasing in Uttar Pradesh. Moreover, courts in other states in the country have passed some path-breaking orders under this law. Therefore it is necessary to have a therefore regular trainings of the judiciary on the provisions of the PWDVA, to ensure effective relief for women facing violence and clear the myths around the law. Ensuring that magistrates receive meaningful exposure to training and sensitization will aid in alleviating the frequency of judicial oversight.
- **More courts dealing solely with PWDVA cases must be established.** There is currently no systematic method by which courts are designated to deal with cases under PWDVA. While in some districts there is a specific court designated to handle such cases, in other districts all courts are endowed with the responsibility of hearing cases registered under the Act. Not only should there be a regular procedure for designating which courts are to hear PWDVA cases, but more courts dealing solely with such cases should be established.
- **The police must be provided with training and clarity on their role in implementing the PWDVA.** As many police officers lack basic awareness around the PWDVA and their responsibilities under it, structured workshops should be provided on a uniform basis to promote understanding among the police as to PWDVA processes. In addition, gendered perceptions are particularly common among the police, and may result in the establishment of barriers to justice for survivors of domestic violence; therefore, officers must be provided with appropriate gender sensitization workshops to raise knowledge and advocate support for combating domestic violence.

- **All of the major stakeholders (POs, SPs, magistrates and police) must achieve clarity and focus on the issue of gender justice through orientation and training efforts.** In cases of domestic violence, physical violence still appears to take precedence over other forms, and sexual violence in marital relationships has largely been disregarded as a legitimate type of abuse. Gendered perceptions are pervasive within the male-dominated governmental system, but can be alleviated through the intensification of gender sensitization efforts.

## **VII. Key Obstacles**

One of the key obstacles in carrying out any study on domestic violence is gauging the actual level at which such abuse occurs within the population. The findings of the 2005-6 NFHS study indicate that in India, only two percent of women experiencing domestic violence seek help from any institutional source, including the police, medical institutions, and civil society organizations. Moreover, two out of three women experiencing violence in India have never sought help of any kind, nor told anyone about the abuse they are facing. In light of this reality, the reach of the PWDVA remains extremely limited. As the vast majority of women suffering from violence within their households do not come forward with their cases, the potential impact of the PWDVA as a legal mechanism for social change is severely hampered.

In India, women consciously choose not to report domestic violence for a variety of reasons, many of which reinforce patriarchal social and cultural norms and hinder the effectiveness of domestic violence legislation. Some women fear enduring social stress or stigma should they choose to engage in legal proceedings against an abusive partner; others believe that private matters should not enter the public realm, and should rather be resolved by family members in order to preserve their honor. Because key stakeholders such as the police and magistrates are rarely sensitized on gender issues, women are often made to feel uncomfortable and blameworthy when seeking remediation through institutional channels, thus preventing them from initiating or continuing with legal proceedings.

Socio-cultural barriers aside, countless women fail to report violent incidents as a result of low levels of awareness about the PWDVA and the rights they can claim under it. In many cases, survivors are unaware of the Act until they contact SPs

for help. As public campaigns for publicizing the PWDVA as a mechanism for relief and justice are few and far between, women are prevented from coming forward in cases of abuse simply because they do not know that there are laws in place to protect them. Several years after the passage of the Act, knowledge of the PWDVA among the general public remains extremely weak.

Additionally, many women lack faith that the judicial system will allow them to access justice for the wrongs they have suffered. As court proceedings in PWDVA cases are often drawn out over an extended period of time - especially in cases where the concerned magistrate has not been sensitized regarding gender and domestic violence issues - women often grow disheartened after filing a case. With regard to mediation or counseling, lack of follow-up by SPs may lead to relapse in abusive behavior, thus leaving the aggrieved in a situation remarkably similar to the one she faced prior to coming forward for help.

As demonstrated through the findings of this study, monitoring and evaluation of the Act's effectiveness has remained grossly inadequate at all levels. Though stakeholders and users of the law have repeatedly raised concerns pertinent to the implementation of the PWDVA, reluctance among government officials to proactively address issues of budgeting, coordination with law enforcement agencies, capacity-building initiatives for stakeholders, and infrastructure has been widespread. This reluctance acutely disadvantages the state of Uttar Pradesh, which in 2009 reported the highest number of crimes against women of any state in India.

In terms of completing this particular study, AALI faced various obstacles to the successful collection of data. As noted in Section III. Methodology, the study was originally designed to incorporate information from 70 districts; however, due to a variety of organizational challenges, data from only 31 districts could be included in the final analysis. In working with more than 80 organizations in Uttar Pradesh to obtain information for this study, AALI was exposed to the frequent challenges of its partners, including lack of human and financial resources, coordination issues, and non-cooperation from stakeholders. In some cases, collaborating organizations found themselves unable to dedicate staff and time toward gathering research data; in others, piecemeal coordination among partners compromised the quality and completeness of the collected information, resulting in the discarding of data. Finally, the most significant obstacle endured by AALI and its partner organizations in conducting this study was that many of the stakeholders refused

to answer particular survey questions, or denied to be surveyed altogether, often leaving little room for analysis.

**Partner Organizations :**

<b>District</b>	<b>2010</b>	<b>2013</b>
Allahabad	Samarpan Manav Kalyan Samiti; Manjula Mahila Kalyan Samiti; Matrabhoomi Vikas Parishad	Samarpan Manav Kalyan Samiti
Ambedkar Nagar	Jan Shikshan Sansthan	Jan Vikas Kendra
Azamgarh	Sri Ramanad Sarasvati Pustkalaya; AALI; Gramin Punarnirman Sanathan Vilari Badhya Tarique (Fellow AALI),	AALI
Banda	Tarun Vikas Sansthan, Badhosa; Vanangana	Vanangana
Barabanki	PANI	AALI
Barreilly	Sakar Sansthan	Sakar Sansthan
Basti	SGVS; PANI	Gramin Vikas Sewa Samiti
Chandauli	Gramya Sansthan Naugarh	Gramya Sansthan Naugarh

Chitrakoot	Bundelkhand Sewa Parishad; Jan Kalyan Shikshan, Prasar Samiti; Matrabhoomi Vikas Parishad; Ibteda Sewa Sansthan	Ibteda
Faizabad	PANI	<i>Did not take part in the study</i>
Farrukhabad	<i>Did not take part in the study</i>	Madhuban Sewa Samiti Farukhabad
Fatehpur	<i>Did not take part in the study</i>	Madhuban Sewa Samiti, Fatehpur
Gazipur	Gramin Vikas Jan Jagran Sewa Samiti (Service Provider)	Institute for Creation and Development Society,
Hamirpur	Neeraj Samarth Foundation	Samagra Mahila Vikas Samiti
Jalaun	Shree Balaji Gyan Shiksha Prasar Samiti Virasani, Rashtriya Asahay Sewashram Parishad Samiti, Gram Post Virasani,	Samagra Mahila Vikas Samiti
Jaunpur	Ajit, Veer Bahadur Singh Purvanchal University,	Nirbhay Trust
Kannauj	Srijan Society	Madhuban Sewa Samit Kannauj

Lalitpur	Sai Jyoti Gram Udyog, Samaj Sewa Samiti	Sehjani Siksha Kendra
Lucknow	MASVAW, Breakthrough, DAG (Dynamic Action Group), Humsafar, Sahayog	AALI
Mahoba	Gramonatti Sansthan	Mahila Shakti Vikas Kendra
Mirzapur	SPS Chunar	<i>Did not take part in the study</i>
Muzzaffarnagar	<i>Did not take part in the study</i>	Disha sansthan
Mau	BMKS	<i>Did not take part in the study</i>
Pratapgarh	Tarun Chetna Sansthan,	Nigah Sewa Samiti
Saharanpur	<i>Did not take part in the study</i>	Disha Social Foundation
Sitapur	Jan Kalyan Shikshan, Prasar Samiti.	Wada Foundation
Sonbhadra	<i>Did not take part in the study</i>	Mahila Swarozgar Samiti
Sultanpur	Gram Vikas Sewa Sansthan,	Swami Vivikanand Samajik Sekshik Sansthan
Varanasi	Pragatisheel Jan Sangthan Sark, Ardali Bazar, Asian Bridge India.	Mahila Swarozgar Samiti