

Monk Prayogshala Working
Paper # 2023-03

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August, 2023

**DOMESTIC VIOLENCE
AND THE LAW: A STUDY
OF COMPLAINTS UNDER
THE PROTECTION OF
WOMEN FROM
DOMESTIC VIOLENCE
ACT, 2005 IN
MAHARASHTRA, INDIA**

Domestic Violence and the Law: A Study of Complaints under the Protection of Women from Domestic Violence Act, 2005 in Maharashtra, India

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The authors declare that there are no potential conflicts of interest with respect to the research, authorship, and/or publication of this article. No funding was received by the authors for this article. The authors would like to thank Advocate Monica Sakharani who was Co-Principal Investigator with the first author of the original research work titled 'Quest for Justice – A Study of the Implementation of the Protection of Women from Domestic Violence Act 2005' completed in 2014 at the Tata Institute of Social Sciences, Mumbai with funding support from the Ministry of Women and Child Development, Government of India New Delhi. The authors would also like to thank Dr. Anirudh Tagat for his help in navigating the data; Advocate Kartikeya Bahadur for his legal knowledge that contributed to the research design for this paper; and Shivani Chunekar for her assistance in data cleaning. The authors thank their colleagues at Monk Prayogshala for their valuable feedback and suggestions.

The authors are grateful to the editor and anonymous referees at the journal Violence Against Women, valuable comments and suggestions on the paper. This version of the paper is a pre-publication version of the paper titled 'Domestic Violence and the Law: A Study of Complaints under the Protection of Women from Domestic Violence Act, 2005 in Maharashtra, India' published in Violence Against Women. Please cite the published version, available at [this link](#)

**Domestic Violence and the Law: A Study of Complaints under the Protection of Women
from Domestic Violence Act, 2005 in Maharashtra, India**

Abstract

Violence against women is a complex phenomenon that is deeply embedded in Indian society. In this mixed methods paper, court records data (2005-2010) from two sites in Maharashtra, India along with in-depth interviews with stakeholders were analyzed to examine the implementation of the Protection of Women from Domestic Violence Act, 2005 (PWDVA). Out of 77.28% married women who filed a case under the PWDVA, 60.28% of them reported dowry-related harassment. Maharashtra has the social infrastructure in place to implement the law, although optimal use needs to be ensured for speedy delivery of justice.

Keywords: Domestic Violence; Intimate Partner Violence; Protection of Women from Domestic Violence Act (2005); Maharashtra; legal process; Court Records Data

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1. Introduction

The phenomenon of violence against women within the family is complex and deeply embedded in Indian society. Domestic violence, as per The Protection of Women from Domestic Violence Act, 2005¹ (henceforth PWDVA), includes any form of violence suffered by a woman from a biological relative, typically by a male member, which is the most prevalent form of violence against women. The issue of domestic violence has long been a contentious issue because of the patriarchal social structure, the tradition of familial piety, and the asymmetrical gender expectations in India (Ahmed-Ghosh, 2004). It is due to such a sharp distinction between public and private life, that the law against such a ubiquitous human right violation was rife with a long and tireless struggle in the women's movement in India (Agnihotri & Mazumdar, 1995; Gangoli & Rew, 2011; Katzenstein, 1989). To this end, this study aims to add to the existing evidence to evaluate the effectiveness of the PWDVA in addressing domestic violence against women in the state of Maharashtra in India.

Prevalence of Domestic Violence in India

The National Crime Records Bureau (NCRB) in their Crime in India (National Crime Records Bureau, 2020) reported that out of 3,71,503 cases of crime against women registered in 2020, 30% cases were filed under Section 498A of the Indian Penal Code (IPC), which deals with cruelty by husband or his relatives. In Maharashtra alone, there were 6,749 cases filed under Section 498A. Additionally, the National Family Health Survey-3 (NFHS) in 2005-06 revealed that more than half of women (54%) and men (51%) agree that it is justifiable for a husband to beat his wife under some circumstances (Kishor & Gupta, 2009). This is also reflected in an earlier study by Jeejeebhoi and Cook (1997) where three-quarters of the respondent women justified wife-beating as natural and

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the prerogative of male family members.

In Maharashtra, the NFHS-5 survey conducted in 2019-2021, shows that 25.2% (including rural and urban) of ever-married women (18-49 years) have experienced spousal violence (physical and/or sexual) in their lifetime. A woman who asserts her rights over the use of her earnings is more likely to face violence as compared to a woman who makes joint decisions with her husband, or her husband alone takes decisions regarding the expenditure of her income (Indian Institute for Population sciences, 2015). About 48.5% of women who were earning members of the family and took their own decisions regarding the expenditure of their income, faced at least one form of spousal violence as compared to 32% of women who had no earnings and were unemployed (Kishor & Gupta, 2009). Using data from NFHS-4, Parekh, Tagat et al. (2021) find that the husband's frequency of alcohol consumption is significantly associated with all forms of interpersonal violence for the woman.

History of Domestic Violence and the Indian Women's Movement

Although the women's movement in India traces back to the 1920s, from its inception up until the 1970s it focused on the external economic and political forces of the nation. The 'Towards Equality' report published in 1974 by the Ministry of Education and Social Welfare, Government of India, highlighted the condition of women in India and stated that it had worsened in several ways. The report mentioned that due to the traditional and socio-cultural institutions, governed by patriarchal mindsets, women were unable to access their constitutional rights, therefore recommending reforms to inheritance and marriage laws (Sen, 2000).

Starting with the highly publicized Mathura rape case in 1972, the issue of violence against women attracted large-scale attention. This resulted in nation-wide protests demanding rape law reforms. In addition to custodial rape, the death of married women through kitchen fires, also known

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as 'dowry deaths' and 'bride burnings' were also associated with violence against brides by their conjugal families. Issues of such severe forms of violence against women which were central to questions related to women's safety provided a common ground for mobilization in the New Women's Movement, followed by the 1980s which brought in a variety of women-centric legislations in the country (Sen, 2000).

With the focus of the women's movement on legislative reforms, cases of rape, violence and dowry-related crimes called attention to the need for laws specifically for the protection of women. Even though the term domestic violence came into place much later in the mid-2000s, the adoption of Sections 498A and 304B of the IPC in the year 1983 was the first step towards the PWDVA that we know today. The enactment of Section 498A of the IPC made cruelty towards wives a non-bailable criminal offense punishable with imprisonment for a term which may extend to three years and shall also be liable to fine. Section 304B made dowry deaths an offense with a minimum of seven years extendable to life imprisonment if the perpetrator was found guilty. This was a bold step in the history of India's legislative history for two reasons: one, it introduced criminal offenses in intimate relationships, which were considered beyond the reach of the law, and two, because cruelty was not confined to the demand for dowry alone nor confined to physical mutilation or injury but extended also to mental cruelty (Jaising, 2014).

Despite being a landmark law in the women's movement, Section 498A was critiqued because of its limiting terminology. The term 'cruelty' left other forms of violence such as economic and sexual violence outside of its ambit. The other shortcoming was the viability of its implementation because women's restricted accessibility to police stations to file a first information report (FIR) was discounted by lawmakers. Despite the number of reported cases under these penal provisions increasing every year, this was not reflected in the number of convictions in such cases (Centre for Social Research, 2005). Combined with the restrictive ambit of Section 498A and the consensus of

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the women's movement, the demand for a more comprehensive law on domestic violence was voiced. This law was to address other forms of violence such as verbal, economic, emotional and sexual violence. The campaign for such a law on domestic violence, spearheaded by the Lawyer's Collective, a group of lawyers who use the law as a tool to work with issues of domestic violence, harassment, etc. came into effect on 26 October 2005.

Challenges in the implementation of the PWDVA, 2005

Ever since the PWDVA has come into effect, its effective implementation has been a matter of concern. There are challenges at every level of the implementation ranging from lack of awareness about the Act, insufficient number of protection officers and service providers, absence of coordination, monitoring and evaluation of the Act, a meager budget allocation, failure on the part of the judiciary and police and paucity of basic services and infrastructure. However, these challenges are specific to states in India (Perappadan, 2015).

The fight for protection of women from violence began with a focus on how police apathy plays a central role in negligence of registering and following through domestic violence complaints (Agnes & D'Mello, 2015). Thus, other problems at the heart of these issues such as patriarchy, criticism of the institution of family were not in focus. Echoing these arguments, Ghosh and Choudhuri (2015) also highlight that one of the shortcomings of the law is that it does not make a difference to the larger fabric of society because it does not address structural issues. Family courts, which are supposed to protect women follow the logic of "preservation of family" and even police stations, while registering a complaint tend to ignore, or not register cases based on the same logic. However, these shortcomings do not erase the necessity of such a law.

Mukhopadhyay (2019) articulates PWDVA as an act that is particular to the socio-cultural context in India. People who want access to this law belong to various communities, with various cultural contexts, various languages, economic and social status - all of which must be taken into

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account while translating the law from its legal language to a more simplified and accessible language. However, Sinha et al. (2016) have highlighted the relationship between various societal variables and the phenomenon of domestic violence. The inclination of investigating urban crimes over rural crimes is prevalent, and the study also states that while social enablement of women helps in the action from the police, class differences do not matter to the judiciary. One of the central findings of this study attempting to understand the relationship between conviction bias and rurality of women, is that there needs to be a greater sensitization of the police force handling cases of domestic violence, but also a re-examination of the policy of recruiting women in police forces and their orientation (Sinha et al., 2016).

A policy brief by Oxfam India (2015) critiques the execution of PWDVA by stating how the lack of convergence among stakeholders responsible for implementing it resulted in a poor response to the issue of domestic violence. The report further states Protection Officers (POs) have an important role to play in the implementation of the PWDVA as they assist with accessing shelter, medical help and counseling. However, POs are overburdened and are generally government officers who have several responsibilities apart from being a PO. Additionally, there is no system to monitor the implementation of PWDVA. It is only monitored through state-wise reports by civil society organizations, and the findings from such reports have not been widely disseminated.

Advocacy Efforts for Effective Implementation of PWDVA in Maharashtra

More than five years after the PWDVA came into effect, the Maharashtra government till 2010 had not appointed full time POs, who play a crucial role in implementing the social legislation. There were two petitions that played a role in advocating for a more robust response to implement the Act effectively in the state. The first one was the case of Sou. Ratnabai Jaising Patil v. State of Maharashtra judgment passed by the Bombay High Court in 2008. The Court, while issuing directions, asked for one social worker in each of the 20 Special Cells for Women and Children to

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be notified as a PO by the Government of Maharashtra within 4 weeks. The Court also directed the Maharashtra Government to establish a Special Cell for Women at the district level in every district of Maharashtra within the jurisdiction of each Police Headquarter within 12 weeks of the passing of the order. The Court assigned the responsibility of the smooth functioning and necessary infrastructure of these cells to the Home Department and the Superintendent or Commissioner of Police, of the Government of Maharashtra. The Judicial Officer's Training Institute and the Police Training Academy for the State of Maharashtra was also directed to introduce in its curriculum topics related to violence against women, with assistance from the Tata Institute of Social Sciences and Nirmla Niketan. The Government of Maharashtra was also directed to create more Special Cells for Women and Children at the Taluk level in a phased manner (Lawyers Collective, 2009).

Around the same time, a Public Interest Litigation (PIL) was filed in the Bombay High Court contending that many provisions of the PWDVA had not been implemented by the state, especially the ones relating to the appointment of POs. Acting on this PIL, the Bombay High Court directed the government to devise a method to ensure that measures are taken to help the aggrieved woman and women are made aware of POs posted in each taluka and at the district level for their assistance. Maharashtra is among the few states of India that has a full-time cadre of POs and notified Service Providers.

2. Objectives of the Study

The objectives of this study were to add to the existing evidence to evaluate the effectiveness of the PWDVA in addressing domestic violence against women in the state of Maharashtra. As a first of its kind, the PWDVA acknowledged that domestic violence was widely prevalent in India. This study aims to answer the following research questions:

1. Based on the PWDVA cases analyzed/recorded, what was the nature of the relief sought by the aggrieved women?

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2. Did aggrieved women ask for relief and whether it was granted or not? If yes, what type of interim relief did women ask for and what interim was granted?

3. Methodology and Rationale

The study is based on a larger exploratory study using a mixed methods approach. The quantitative data were collected from two Magistrate courts of Maharashtra: Mumbai and Ahmednagar between March 2012 to May 2013. As there are no countrywide statistics available on the PWDVA, the High Courts of the states were requested to provide with state-wise data of cases filed under the PWDVA. Therefore, it was decided to purposively sample districts based on statistics on crimes relating to violence against women published by the National Crime Records Bureau (NCRB). NCRB publishes district-wise desegregated data of the various crimes committed including crimes under Section 498A and Section 304B that are the principal criminal provisions that deal with violence. The data was evaluated starting from the year 2005, the year PWDVA came into force across the country, to the year 2010. Based on the highest and lowest incidence of crimes under Section 498A and Section 304B two districts were chosen from each state. The qualitative data for the study sought to understand the implementation of the law through the voices of women and other key stakeholders under the Act. This was done through semi structured interviews with three groups of interviewees: (i) women survivors of violence who had accessed the PWDVA, (ii) women survivors of violence who had accessed alternate justice mechanisms, and (iii) key stakeholders such as Protection Officers, Service Providers, police officials, NGO/CBO workers, Legal Service Authority, lawyers handling these cases and experts to gain an understanding of the nature of implementation of the Act.

Table 1: Number of persons interviewed about here

Figure 1: Stages of Domestic violence cases in court about here

Demographic characteristics

To capture the demographic features of the data, summary statistics with estimated means were generated using some variables central to the study. Variables such as religion, marital status, occupation, whether the respondents were granted interim relief, and whether the respondents were granted the final order were analyzed. For each of these, dummy variables were generated and included in the summary statistics with estimated means to illustrate the proportion occupied by each category in the data. For instance, the dummy variable for 'religion' was created by tabulating 'religion' and generating the dummy for each category present under 'religion': Hindu, Muslim, Christian, Other, No religion, and Data not available.

The following table summarizes the demographic details concerning religion, marital status and occupation. For each variable, the percentage share of each category out of the total responses is shown.

Table 2: Demographic Characteristics about here

Though the definition of domestic relationship has been broadened by the PWDVA, most cases were filed by married women. Although in small numbers, 1.18% unmarried women, 6.76% widowed women and 0.59% women in live-in relationships filed domestic violence cases under the Act. Out of 77.28% married women in our sample who filed a DV case, 60.28% women reported dowry-related harassment. Furthermore, out of the 60.28% women who reported dowry harassment, 0.82% constituted divorced women. Of all the DV cases filed, the highest percentage 63.42% were filed against the husband and in-laws, followed by the husband alone (19.96%) and 5.80% of cases filed against the in-laws alone.

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In about 64.2% of the cases, there was no case filed under Section 498A, and in 10.75% of the cases there was a case filed under this Section. In about 67.52% of the cases there was no filing for divorce and in 12.54% of the cases the respondent filed for divorce as compared to 1.88% of the aggrieved person filing for divorce.

The in-depth interviews with women revealed that violence was the primary reason for approaching the court. Women filed cases when there was a threat to their lives, when there was a lot of verbal and physical abuse. Many women were thrown out of their homes, and therefore had no choice other than to file the case. Some men, though being the father and natural guardian, kidnapped their children from the custody of their mothers (without the permission of the women), forcing the women to file cases on them for the custody of their children. Some women filed cases as it was suggested by their natal family, or a lawyer, a friend, or the police took it forward. In some cases, as settlement talks failed or were not possible, the women had no choice other than to file the case. The types of violence faced by women is provided in Table 3.

Table 3: Types of Violence about here

What type of relief was sought?

Based on the data collected, the types of relief sought were divided into three categories, namely monetary relief, compensation orders, and custody order. In addition to other reliefs granted under this Act, the Magistrate may pass an order on an application made by the aggrieved person directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent. A custody order involves the Magistrate granting an order that the child or children of the aggrieved person involved in the case be taken into temporary custody for their protection.

Table 4: Types of relief sought about here

Table 4 shows that 93.29% of all women who filed a case under the PWDVA sought monetary relief followed by 78.46% seeking relief by way of Compensation Orders and 13.65% of women sought relief under the Custody Order. In the larger study, it was observed that in most cases, multiple orders were sought. The mode was seeking all the four orders (572 applicants) followed by the combination of Protection Order, Monetary Relief and Compensation.

Monetary Relief

Monetary relief is the compensation that the Magistrate orders the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence. Monetary Relief, to a large extent replicates the maintenance rights under Section 125 of the Code of Criminal Procedure as does the compensation orders under Section 22 brings in the tortious remedy for violence within the ambit of this omnibus law. The remedies of monetary relief, compensation and custody orders are envisioned as ancillary reliefs on the plain reading of the PWDVA.

Figure 2: Monetary relief amount granted about here

In Figure 2, the Monetary Relief amount (in ranges) that have been granted to different percentages of women. Among the ranges of amounts, Rs 20,001-50,000 has been the highest amount granted with regard to monetary relief (7.64% of the beneficiaries) followed by Rs 2,00,001-5,00,000 (granted to 7.31% of the beneficiaries) and Rs 5001-10,000 (granted to 6.31% of the beneficiaries) out of the total respondents. It is important to note that 15.5% of the women were not granted any monetary relief. In many cases separate residence orders were not passed but the

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prayers for alternate accommodation and rent were merged in monetary reliefs wherein a specific sum for rent was added to the relief granted.

Many women facing domestic violence were not only removed from their matrimonial homes, but also had no means of sustenance and required some kind of monetary relief. From the interviews, it was revealed that most women wanted to live in their matrimonial homes, but they also wanted the violence to stop. Since they were displaced from their homes, were not given any money for their daily sustenance, were injured, were dependent, they would require monetary reliefs too. Unfortunately, the respondents in several cases did not wish to live with the woman, due to varied reasons.

Figure 3: Compensation Order amount granted about here

Figure 3 shows the Compensation Order amount (in ranges) that have been granted to different percentages of women. Among the ranges of amounts, less than Rs 1,00,000 has been the highest amount granted for compensation orders (24.8% beneficiaries) followed by Rs 1,00,001-3,00,000 (granted to 14.63% beneficiaries) and Rs 3,00,001-5,00,000 (granted to 12.7% beneficiaries) out of the total respondents. Though Maintenance is a well- defined right under law, the Delhi High Court restricted the right to monetary relief under the PWDVA by holding that *"Court shall not grant maintenance to wife unless there is prima facie proof of husband being employed."* This judgment was contrary to the well settled principle of grant of maintenance which was laid down by the Delhi High Court in *Chander Prakash v. Shila Rani* (AIR 1968 Del. 174) when it held that an able bodied young man must be presumed to be capable of earning sufficient money so as to be able to reasonably maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them accordingly to the family standard.

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Maintenance for an aggrieved woman can be sought through various other overlapping provisions in law in addition to the DV Act, more specifically Section 125 of the CrPC and other personal laws related to marriage. It is hence likely why there was a higher proportion of protection and residence orders passed under the PWDVA than Monetary Reliefs where the respondent was the husband. This was indicative of the law evolving and the courts showing greater willingness to venture into new areas of jurisprudence. Further, where the substantive rights of the women were clearer, there was greater willingness to pass orders. This was seen in the higher incidence of residence orders against members of parental family and children on the one hand and of monetary reliefs against members of marital family and children on the other.

Table 5: Custody Order about here

Table 5 shows the percentage of women that sought custody order as a relief. 64.99% of women did not seek a custody order.

Figure 4: Interim Maintenance amount granted about here

Figure 4 shows the Interim Maintenance amount (in ranges) that have been granted to different percentages of women. Among the ranges of amounts, less than Rs 2000 and Rs 2001-5000 have been the highest amounts granted for interim maintenance (10.81% beneficiaries each) followed by Rs 5001-10,000 (granted to 3.82% beneficiaries). However, during the time period that the data was collected (March 2012 to May 2013), an interim order had not been passed for 35.15% of the total number of respondents.

Protection Order (PO)

The nature of at least one of the reliefs - Protection Order - breaks legal ground as all it

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requires is for the judge to state the obvious legal fact - direct the respondent to not break the law and thereby stop the commission of acts of violence. After hearing the case by the aggrieved person and the respondent and deciding that domestic violence has taken place, the Magistrate may pass a protection order in favor of the aggrieved person to prevent further domestic violence; or entering the school/place of employment of the aggrieved person; or attempting to communicate with the aggrieved person or any other acts of violence.

Table 6: Type of Protection Order Sought about here

Table 6 illustrates the percentage of women that sought relief via protection orders across different categories. The greatest percentage of women sought relief under the 'Stop violence' category of the protection order at 66.47% followed by the 'No contact' category at 34.88%. Next, 33.40% of women sought protection under the category of 'Not alienate assets' and 24.90% of women sought protection under the 'Do not harm applicant and other natal family members of applicant' category.

A 29-year-old homemaker from Mumbai spent Rs. 5 lakhs on the case by selling her mother's jewelry said:

I have not received any benefits till now. I got the protection order. But, it is of no use, as I am still living with my parents. The magistrate takes things very lightly and does not give importance to women's rights. They do not understand a woman's struggle.

In an interview with an advocate from Mumbai, she revealed that the Act was being reduced to the passing of Monetary Reliefs. She said:

The significance of Protection Orders is still not understood. The importance of the Act lies in the Protection Orders that direct the respondent to "stop violence". Gradually the courts and litigants will realize the importance of civil injunction orders as the

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jurisprudence evolves as it is still a young Act.

In the larger national study, out of a total of 1954 protection orders that were sought (either singly or in conjunction with other reliefs) and only 312 (16% of the total) interim Protection Orders were granted, and 70 orders (3.5% of the total) were granted in the final stage.

Table 7: What Kind and Percentage Of Interim Po Was Sought Vs What Kind Of Interim Po Was Granted about here

Table 7 illustrates (within the overall sample), the percentage of women that sought interim relief under Protection Orders and out of that, the percentage of women that was granted the sought interim relief. The first category of 'Stop violence' shows that 66.47% sought interim relief for this category out of which 13.45% were granted the said relief. Next, for the 'No contact' category, 34.88% sought interim relief out of which 4.32% was granted the relief sought. Now turning to the 'Not alienate assets' category of Protection Orders, while 33.40% of women sought interim relief, 3.60% was granted the said relief.

From all the respondents who identified as Hindu, 23.68% received a fully or partly granted interim relief and for 40.96% the relief order has still not been passed. 66.67% of unmarried women were fully or partly granted interim relief while only 28.31% of married women were granted full or part interim relief. 57.14% of divorced women were granted this type of relief. The interim relief order for 66.67% of separated women was not passed. The interim relief order for all the women who marked 'Business' as their occupation was not passed. 50% of women who marked 'Student', 'Home-based' and 'private service' as their occupation were fully or partly granted their interim relief orders.

Residence Order (RO)

The nature of most reliefs being prohibitory in nature, do not require careful consideration of

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evidence and application of law before grant of relief. Section 17(2) makes it clear that the Residence order is an equitable relief and does not create any substantive right but merely protects a woman from illegal egress or eviction without due process of law. While disposing of an application, the Magistrate may pass a residence order restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household. The order may direct the respondent to remove himself from the shared household; restrain him or any of his relatives from entering any portion of the shared household in which the aggrieved person resides; restrain the respondent from alienating or disposing off the shared household or encumbering the same; restraint the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or direct the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require.

Table 8: Type of Residence Order Sought about here

Table 8 displays the percentage of women that sought relief via Residence Orders across different categories. The greatest percentage of women sought relief under the 'Alternate accommodation' category of the Residence Order at 49.51% followed by the 'Not dispossessed' category at 33.66%. Next, 30.11% of women sought relief under the category of 'Not alienate or renounce rights on Shared Household' and 28.68% of women sought relief under the 'Respondents to remove themselves or not enter premises' category of the Residence Order.

Table 9: What Kind and Percentage of Interim Ro Was Sought Vs What Kind Of Interim Ro Was Granted about here

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Table 9 displays the percentage of women that sought interim relief under Residence Orders and the percentage of women who were finally granted the sought interim relief. The first category of 'Not dispossessed' shows that 33.66% sought interim relief for this category out of which 8.32% were granted the said relief. Next, for the 'Respondents to remove or not enter premises' category, 28.68% sought interim relief out of which 3.29% were granted the relief sought. Finally, the 'Not alienate or renounce rights on Shared Household' category of ROs: 30.11% of women sought interim relief and 4.62% were granted the said relief.

A 38-year-old graduate Muslim mother of a 6-year-old daughter married to a receptionist working in a hotel in Dubai woman filed the case for maintenance for self and daughter and for the residence order. She said:

I had asked for Rs.8,000/- as maintenance, and I got only Rs.1,000/- as maintenance.

I even got the residence orders. But, my in-laws are not letting me inside the house.

One of the important and landmark reliefs that the Act provides for is Residence Orders which not only include the right to reside in the "shared household" but also to have alternate accommodation or payment of rent where this is not possible. The definition of "shared household" has also been so drafted as to provide relief even in cases where neither the aggrieved woman nor the main respondent or the husband has proprietary rights over it. Similarly, the landmark law provides relief in all cases of domestic relationship including those "in the nature of marriage" giving legal rights to those women whose relationship falls outside the legal ambit.

The Bombay High Court has passed several progressive judgments on the right to residence. In *Ishpal Singh Kahai vs Ramanjeet Kahai* (*Ishpal Singh Kahai vs Ramanjeet Kahai*, 2011), Justice Roshan Dalvi stated, "...there is no place for proprietary rights under the PWDVA. The Act is an extension of the deeper and profound principle of Women's Rights as a part of Human Rights... The very consideration of ownership rights would put materialism before matrimony... In fact, the lesser the

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entitlement to property rights, the more is the entitlement to protection of human rights against violence.... Hence notwithstanding the law relating to ownership of immovable property any victim of domestic violence in a domestic relationship would require to be granted the protective right of residence in the shared household, including the protection against dispossession therefrom whether or not she has any legal or equitable interest therein. This right to reside contains within itself not only an injunction for protection against her dispossession, but statutorily follows as a matter of corollary, the order of injunction of the Court for removal of the violator from such household and thereafter restraining him from entering thereupon. The order of removal of the violator and an order of injunction restraining him from entering upon the shared household is, therefore, conditioned upon his abusive behavior violating the person of his wife or any other woman in domestic relationship and not upon his proprietary rights therein. Consequently, the right to reside without having any title to the property contains within itself the right to reside peaceably and to the exclusion of the violator. Further since the Act puts the woman's personal rights above proprietary interest, even if the Respondent who is the violator has title to the property, he would be restrained by a Court from exercising unrestrained domain over his ownership property by an order of injunction restraining him from alienating or disposing of or encumbering the shared household or the matrimonial home in which the victim has been granted the right of peaceful residence for her protection."

Table 10: Final order about here

From Table 10, for 76.33% of Hindus, the final order is pending and only 3.55% of final orders have been fully or partly granted, and for 13.31% of Hindus the final order has not been passed. For those who identified as Muslim, 5.62% of final orders were granted and 14.06% were not granted. One half of those who identified as 'Other' religion were not granted and the other half were fully or partly granted the final order. 16.67% of unmarried women were not granted a full or partial final order, while 8.33% of unmarried women were granted a full or partial final order. 81.36% of married

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women's final order cases are pending. The final order decision is pending for 50% of women who marked their relationship status as 'live-in', similarly, the decision is pending for 71.88% of women who are widowed. Of the women who identified as homemakers, 77.82% have their final order decision pending, along with 80% of women who identified their occupation as 'government service.

The Delhi High Court held that appeals lie against the interim order of Magistrates. This view was accepted by the Bombay High Court that held that appeals were permissible both under final and interim orders though not for purely procedural orders and only in cases where it was found that the discretion was exercised arbitrarily, capriciously, perversely or that the Court had ignored settled principles of law regulating grant or refusal of interim relief. Thus, the failure to follow the procedure laid down is not a ground for oversetting the orders of the lower court, but if the court passes an order which is arbitrary or unreasonable or opposed to or unsupported by evidence on record, then the appeal can be filed both against interim or final orders.

Almost all the lawyers interviewed gave the same list of barriers to justice - failure on the part of the judiciary to take the cases seriously leading to delays in every stage of the proceedings from the service of summons to passing of interim reliefs to the final order and difficulty in execution of orders where they were passed due to non-compliance on the part of the respondents. Most felt that more stringent provisions for non-compliance and extension of Section 31 for violation of all orders was required for the law to be taken more seriously.

4. Discussion

The PWDVA does not provide for any monitoring mechanism or regulatory framework to assess performance of the Act or the non-legal provisions that have been put in place for aggrieved women before she finally decides to approach the court. There is a need to add a provision of monitoring at the state level and require the submission of annual reports to the center from individuals as well as institutions such as family counseling centers. Moreover, due to the lack of

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coordination between the states and center, the reporting formats issued by the center do not often fit the state's model of implementation. This paper recommends a uniform reporting format for court data records to be maintained.

The implementation of the Act, which includes the creation of infrastructure and the appointment of institutional actors have been left to the states. Although under consideration, the Central government has, till date, made no financial commitments to states for assistance in implementation of the PWDVA, 2005. Although there have been judgements such as in Maharashtra, there needs to be greater transparency in terms of the degree to which the PWDVA has been implemented by all states. All the state governments have appointed POs but most of them have been allocated on an additional charge or contractual basis, resulting in the limited effectiveness in implementation of the PWDVA. There are various states where District Programme Officers who are responsible for effective implementation of various women and child related government programmes are given the additional duties of acting POs adding to their burden of responsibilities, resulting in the delay in the justice delivery system for aggrieved women.

The Act stipulates that the first hearing of a case must be conducted within three days of filing of the Domestic Incident Report (DIR), and a final order be pronounced within 60 days of the first hearing. Not only is there a delay in the first step itself but there are also other lacunas in the judicial processes that hinder the aggrieved woman's quest for justice.

While the PWDVA does provide various kinds of reliefs to women, it does not address the inherently patriarchal familial mindsets that leads to a woman getting violated in the family. Apart from raising awareness about the Act, it is also important that there are larger sensitization campaigns that discuss domestic violence and women's safety. Including a need to increase the sensitivity of the institutional actors, such as POs, lawyers and the judges who are key stakeholders

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in justice delivery.

As the Protection Officers as well as the service providers are at the district level, it is often a challenge for an aggrieved woman to travel as far as the district headquarters due to various challenges such as lack of information or money which is why a system needs to be in place so that women are easily able to access service providers. Appointment of full-time POs who can devote more time in supporting aggrieved women may also improve the quality of evidence in court cases. Support of clerical staff/computer operators will enable better record keeping and monitoring. Deputation of police personnel at the PO office is also necessary to service summons at district level.

5. Conclusion

Given the timelines of the cases analyzed, it was observed that there were severe judicial delays which is one of the primary challenges for women in the quest for justice. Despite PWDVA providing an interim as well as an ex parte relief to women, there were low rates of granting interim reliefs. It is due to this trend that the aggrieved women are forced to live in violent homes with almost none or minimal support from the state. Additionally, the Act fails to deliver on its vision of a strong network of supportive stakeholders, in the absence of which the aggrieved woman must turn to familial and community-based patriarchal structures for justice and end up getting re-victimized.

There is also low awareness amongst women about the right to free legal aid, despite established provisions for free legal aid. The financial burden of pursuing a case often impedes an aggrieved woman's abilities to see cases through. Thus, free legal aid networks must be strengthened, and women should be informed of these services for which inter-stakeholder coordination is essential. An Act that was envisaged as a multi-agency response to the needs of the survivor, PWDVA was put in place to address the needs of an aggrieved woman as the single

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window for the delivery of services and needs of women. However, this paper reveals that there is a serious gap between what women expect and need from the law, and what the system actually delivers, which is evident from Table 7 and Table 9 on percentage of women who sought interim protection and interim relief and the percentage that were granted said relief. Additionally, from Table 10, nearly 70 % of women have their final order pending which is ample evidence of justice delayed. The state of Maharashtra has the social infrastructure in place to implement the PWDVA effectively and efficiently, if only the law is used optimally.

6. Limitations and Further Research

Due to inconsistencies in data collection, there is incomplete data for some variables across all 1022 responses. Hence, inconsistent values are taken to be missing and all results are reported as percentages. Furthermore, regarding the results reported in Table 2 that correspond to the types of violence women have encountered, it must be noted that some women have experienced more than one type of violence but could not be accounted for due to irregularities in the data. These limitations, however, largely stem from challenges in data collection and validation and do not necessarily impinge on the findings of the paper. The authors suggest that future research on the PWDVA could focus on the correlation between demographic data and the types of protection and relief sought and granted.

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Notes

¹ The Study on the Implementation of Protection of Women from Domestic Violence Act, 2005 (PWDVA) was commissioned by the Ministry of Women and Child Development, Government of India (GOI) and carried out by the Tata Institute of Social Sciences, Mumbai. This national-level study was conducted in four states in India- Haryana, Maharashtra, Odisha, and Tamil Nadu. The final output of the national study was published as a report titled 'Quest for Justice' (2014) that sought to reflect the experiences of women seeking justice under the PWDVA, understand women's experiences with the legal processes under the PWDVA, assess the implementation of the Act in terms of the stakeholder network, identify the kind of orders they obtained at court, and analyze how they navigated the legal system and used the law to get reliefs.

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Tables and Figures

Table 1: Number of Persons Interviewed

No. of Persons Interviewed	Mumbai	Ahmednagar
Women Who filed Case under PWDVA	25	25
Women who accessed alternative dispute mechanisms	26	26
Lawyers	4	11
Protection Officers	4	10
Service Providers	3	0
NGO	1	0
Legal Services Authority	1	0
Police Officials	2	0
Total	66	71

Table 2: Demographic Characteristics

Religion	Percentage
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<i>i. Hindu</i>	69.71
<i>ii. Muslim</i>	27.45
<i>iii. Christian</i>	2.25
<i>iv. Other</i>	0.39
<i>v. No religion</i>	0.1
<i>vi. Data not available</i>	0.1
Marital Status	
<i>i. Unmarried</i>	1.18
<i>ii. Married</i>	77.28
<i>iii. Separated</i>	13.12
<i>iv. Divorced</i>	0.88
<i>v. Widow</i>	6.76
<i>vi. Live-in</i>	0.59

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vii. <i>Data not available</i>	0.2
Occupation	
i. <i>Homemaker</i>	76.26
ii. <i>Student</i>	0.89
iii. <i>Home-based</i>	0.39
iv. <i>Daily wage</i>	0.3
v. <i>Government service</i>	1.58
vi. <i>Private service</i>	3.15
vii. <i>Professional</i>	1.18
viii. <i>Petty business</i>	0.3
ix. <i>Domestic work</i>	1.18
x. <i>Business</i>	0.39
xi. <i>Other</i>	0.99

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<i>xii. Data not available</i>	13.4
Age Group (by percentage)	
<i>i. 18-25</i>	32.84
<i>ii. 26-30</i>	25.40
<i>iii. 31-35</i>	13.19
<i>iv. 36-40</i>	8.73
<i>v. 41-50</i>	5.95
<i>vi. 51-60</i>	2.98
<i>vii. 60+</i>	4.27

Table 3: Types of Violence

Types of Violence	Percentage
I. Physical violence	82.82
<i>Types of Physical Violence</i>	
<i>i. Beating</i>	68.05
<i>ii. Burns</i>	3.25
<i>iii. Beating children</i>	5.12

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iv.	<i>Violence during pregnancy</i>	7.39
v.	<i>Causing miscarriage</i>	2.66
vi.	<i>Driven to commit suicide</i>	7.59
vii.	<i>Instigating violence</i>	25.74
viii.	<i>Overburden with work</i>	26.26
II.	Sexual violence	6.02
<i>Types of Sexual Violence</i>		
i.	<i>Forced to have sexual intercourse</i>	4.04
ii.	<i>Forced to watch porn</i>	1.18
iii.	<i>Forcibly using you to entertain others</i>	0.59
iv.	<i>Any other act of sexual violence</i>	1.72
III.	Economic violence	91.43
<i>Types of Economic Violence</i>		
i.	<i>Not giving money for expenses</i>	44.33
ii.	<i>Not giving enough food</i>	40.2
iii.	<i>Demanding money</i>	61.58
iv.	<i>Demanding house</i>	8.08

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v. <i>Not allowing to work</i>	4.53
vi. <i>Taking away salary or money</i>	4.24
vii. <i>Disposing of streedhana</i>	20.41
viii. <i>Dispossession from SH</i>	50.94
ix. <i>Sale or dispose of Shared Household</i>	3.16
IV. Emotional violence	97.04
<i>Types of Emotional Violence</i>	
i. <i>Abusive behaviour</i>	93.29
ii. <i>Aspersions on character</i>	21.32
iii. <i>Adultery</i>	14.99
iv. <i>Alcoholism/drug abuse</i>	22.09
v. <i>Not giving medical treatment when sick</i>	16.3
vi. <i>Not allowing to visit or meet parents</i>	13.24

Note: Some women have experienced more than one violence type, but data were inconsistent

Table 4: Types of Relief Sought

Type of Relief	Percentage of Women that Sought Relief
Monetary Relief	93.29

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Compensation Order	78.46
Custody Order	13.65

Table 5: Custody Order

Custody Order	Percentage of Women that Sought Relief
Yes	13.65
No	64.99
Not Applicable	21.36

Table 6: Type of Protection Order Sought

Protection Order Category	Percentage of Women that Sought Relief
Stop violence	66.47
No contact	34.88
Not alienate assets	33.4
Do not harm respondent and other natal family members of respondent	24.9
None	19.22

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Table 7: What kind and percentage of Interim PO was sought vs what kind of Interim PO was granted

Interim PO Category	Percentage of Women that Sought Interim Relief	Percentage of Women that was Granted Interim Relief
Stop violence	66.47	13.45
No contact	34.88	4.32
Not alienate assets	33.4	3.6
None	19.22	20.96

Note: The percentages for the 'None' category are irregular (percentage that sought relief < percentage that was granted relief) due to inconsistencies in primary data collection.

Table 8: Type of Residence Order Sought

Residence Order Category	Percentage of Women that Sought Relief
Not dispossess	33.66
Respondents to remove themselves or not enter premises	28.68
Not alienate or renounce rights on Shared Household	30.11
Alternate accommodation	49.51
None	18.56

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Table 9: What kind and percentage of Interim RO was sought vs what kind of Interim RO was granted

Interim RO Category	Percentage of Women who Sought Interim Relief	Percentage of Women who were Granted Interim Relief
Not dispossess	33.66	8.32
Respondents to remove or not enter premises	28.68	3.29
Not alienate or renounce rights on Shared Household	30.11	4.62
Alternate accommodation	49.51	4.83
None	18.56	31.86

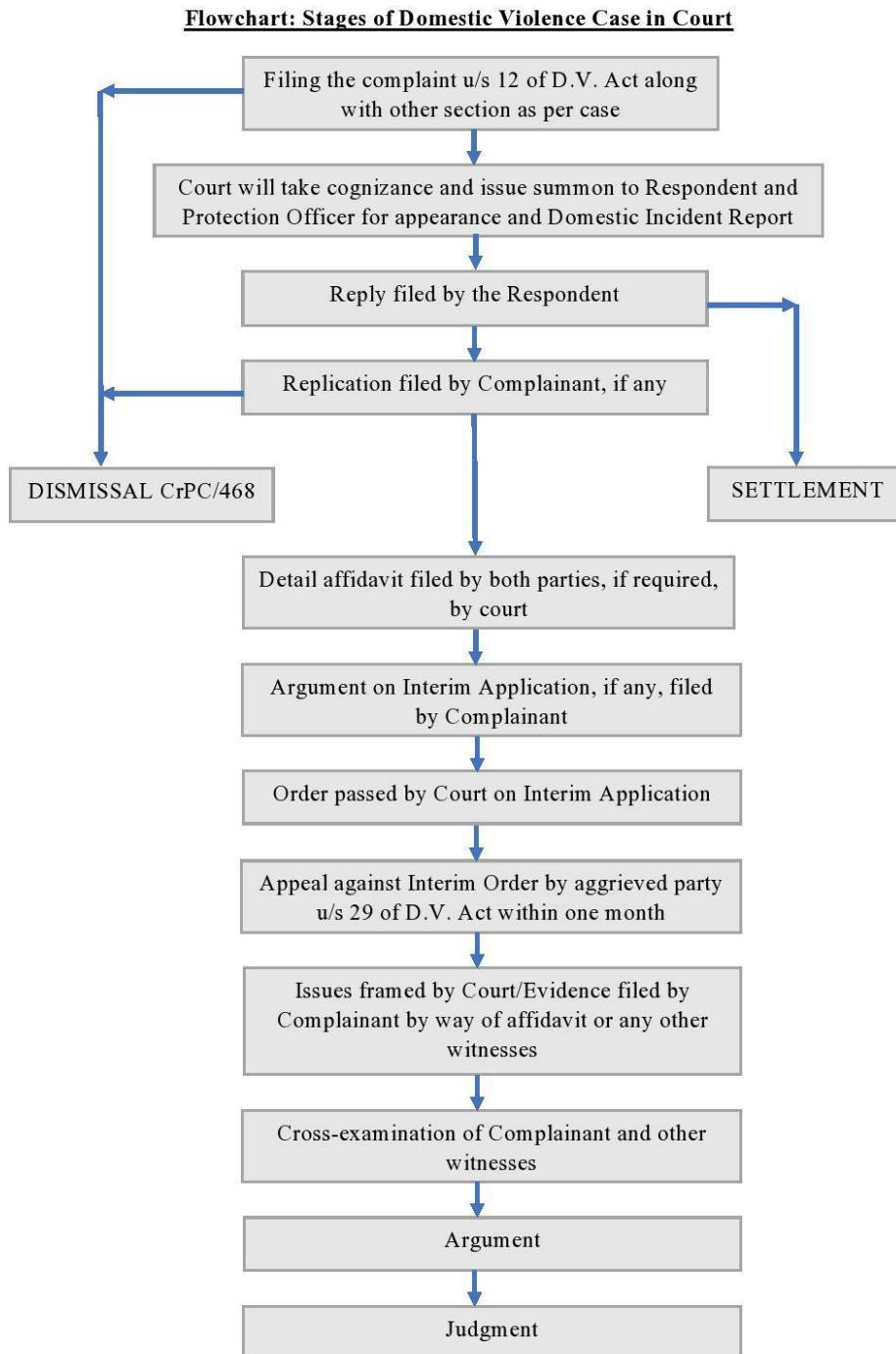
Note: The percentages for the 'None' category are irregular (percentage that sought relief < percentage that was granted relief) due to inconsistencies in primary data collection.

Table 10: Final Order

Final Order: Fully or partly granted	Percentage of Women that Sought Relief
Yes	4.51
No	13.85
Pending	74.71
NA	6.93

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Figure 1: Stages of Domestic Violence cases in Court



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Figure 2: Monetary Relief Amount Granted

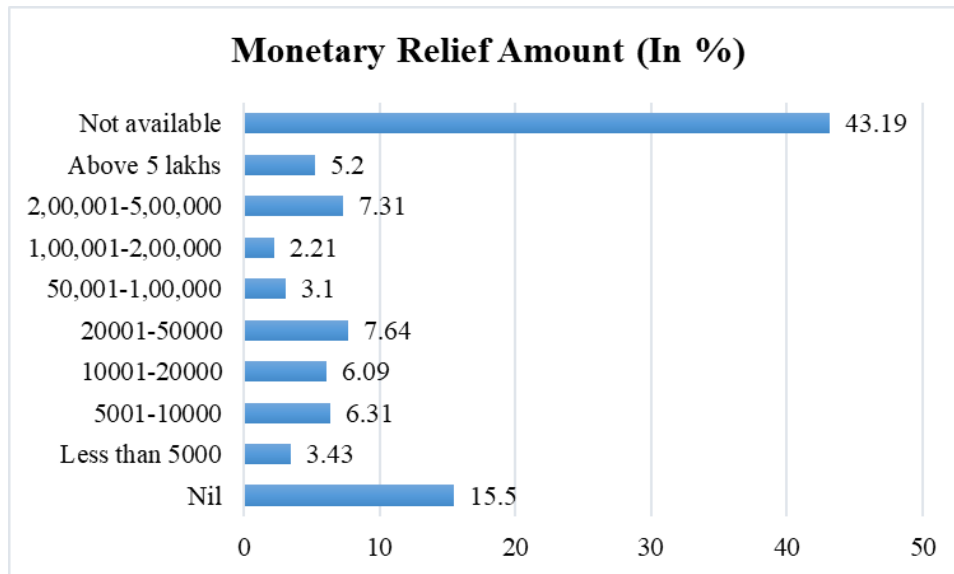
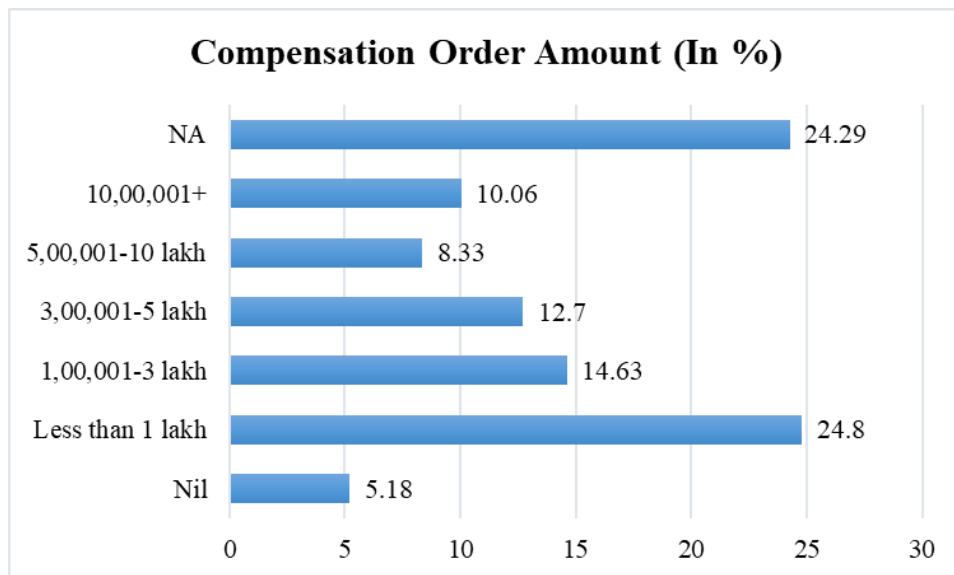


Figure 3: Compensation Order Amount Granted



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Figure 4: Interim Maintenance Amount Granted

