
PROTECTION UNDER THE NEW LAW ON DOMESTIC VIOLENCE

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As of August 2005 Sri Lanka has a new law on domestic violence. A few women survivors of violence have begun to use the law to go to court to get relief. They have been assisted by Women In Need (WIN), the Legal Aid Commission and a few other organizations. How is the Act being played out? What are the practical difficulties that have arisen during the process of using the law? What measures can be taken to overcome these difficulties? We look below at some of these issues.

Applications under the New Law

The first case under the Act that WIN helped file in court involved long term physical violence. The woman in this case had been physically assaulted by her husband with a rod taken from a baby cot. The woman applied to the Magistrate's Court asking for an Interim Protection Order (IPO). At the inquiry, the husband had asked for access to the children. The court in this instance had granted an access order where the husband could see the children outside the home once a fortnight. In this case, the Magistrate had ordered that both parties attend family counseling. Another case involved an older woman who had undergone over eighteen years of mental, physical and sexual abuse by her husband. In this instance too, although the Magistrate was hesitant to give an Interim Protection Order under the Act, he finally gave the order. WIN has filed eight cases so far.

The Balapitiya regional office of the Legal Aid Commission (LAC) has filed three cases under the new law. One case involved the husband coercing his wife to have sexual relations with his friends. In two other cases, the parties had reconciled after the issuing of the interim protection order and no final protection order was necessary. A few other organizations such as the Centre for Victims of Crime have also filed applications in court.

Lack of Awareness in the Judiciary

The cases cited above have some positive features. In one case, the Magistrate had requested that the lawyer

do some research on the internet regarding the Act before he gave the IPO. The lawyer representing WIN had handed over copies of the Act to the Magistrates handling the cases. The Legal Aid Commission's application for a protection order was handled by a female Magistrate who was aware of the Act, whereas in another case, a recently appointed male Magistrate was unaware of the existence of the Act.

The reality is that the majority of Magistrates are unaware of the new law on domestic violence. The state has an obligation to create awareness in the judiciary on the law, so that the judiciary is able to act accordingly when cases of domestic violence come before them.

Practical Difficulties in Implementing the Act

Numerous practical difficulties have been encountered by the lawyers filing applications for protection orders under the new law.

The law specifies that the court may order a social worker or family counselor to counsel the parties. It also states that the court may require the services of a social worker, family counselor, probation officer, family health worker or child rights promotion officer to monitor compliance with the Protection Order. The Magistrates have referred cases to the family counselors in many of the cases. Every court must have access to these officers. However, this is not the case. For example, the Gangodawila Court has no family counselor.

Another difficulty arises in the giving of protection orders where shelters are concerned. Currently, women's organizations such as Welcome House, Women's Development Centre in Kandy, Women In Need and the Salvation Army run shelters for abused women and children. The state has not set up any shelters and this is a major gap. Magistrates are reluctant to refer abused women and their children to privately run shelters. The judiciary would more easily refer women to state run shelters as they feel that the state would be more accountable than the NGO sector. The law stipulates that the court may order, if the aggrieved person

requests, that she be placed in a shelter or provided with temporary accommodation.

The law requires the court to hold an inquiry into the alleged violation within fourteen days of the application filed in court. This is practically not possible in certain cases where the heavy workload of the court does not allow for cases to be heard within this time frame. The serving of notice by the fiscal or other authorized officer to the abuser within this time frame has also proved difficult in situations where the whereabouts of the respondent is unknown. Magistrates also insist on a probation officer's report before giving a protection order and this also may delay the holding of the inquiry.

The lawyers who have assisted in filing applications in court say that proceedings are rushed through in court due to time constraints. The atmosphere in court makes it difficult to explain the facts of the case in detail. These lawyers were also of the view that Magistrates tend to trivialize cases on domestic violence as they deal with cases of murder etc, which to them, are more serious than domestic violence cases. They are also not sensitive to the issue of domestic violence.

The lawyer at WIN was of the view that due to the existence of the new law, it is now much easier to file applications in court and obtain relief. However, she stressed the need to educate the legal profession and the judiciary on the new law and its implications. Her experiences indicate that in some instances, domestic violence is almost a non issue to Magistrates who have to deal with the day to day workload of criminal cases.

Addressing the Difficulties

The practical difficulties in implementing the law highlights the fact that laws do not operate in a vacuum. Support systems have to be in place. The state needs to set up shelters so that women have a place to go to. Alternate accommodation is another option that women should be able to resort to if they need to be protected from the abuser. Well trained personnel capable of providing services need to be appointed under the law so that court orders are carried out. The services of family counselors must be made available to every Magistrate's Court, as should the services of probation officers, child rights promotion officers, social workers and family health workers.

The fourteen day time limit for serving of notice and the holding of the inquiry needs to be addressed. New options need to be explored to enable Magistrates to deal with domestic violence cases. One option would be to assign a few Magistrates Courts to handle cases of domestic violence. Another option to explore would be to look at establishing a special court to deal with such cases. This would ease the burden on Magistrates who have to deal with day to day criminal cases too.

Conclusion

More difficulties in implementing the law will come up with time. These problems need to be addressed by the state and NGO sector. The state needs to adopt a holistic approach to creating awareness on the law.

Awareness programmes that target grassroots level men and women and others who are needed to implement the Act is crucial if the Act is to be made use of. Awareness building must go hand in hand with training of state appointed officers such as probation officers, social workers, family counselors, family health workers and child rights promotion officers. The Department of Probation and Child Care Services, the Ministry of Social Services and the Ministry of Women's Empowerment and Child Development are the state entities involved in the appointment and training of these officers. Rigorous training programmes need to be commenced to provide information on the workings of the Act to these officers. The police also needs to be trained on the action they should take in cases of domestic violence.

Women's groups in this country fought long and hard for a law on domestic violence. We now have a law. The battle does not end with the passing of the Act. The battle continues to ensure that the state takes on its responsibilities seriously in implementing the Act. It is also up to civil society to assist the state in reaching out to abused women. We need to ensure that more and more persons who have suffered violence in the home make use of the law to obtain redress.

If you are a survivor of domestic violence and need assistance, please contact Women In Need (WIN), Hotline: 4718585



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