

Prevention of Domestic Violence Act and why it doesn't Work

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Introduction

Domestic violence (DV) is the abuse of one person by another in a domestic setting in the form of physical, emotional, sexual and verbal abuse. Domestic violence has been identified as a problem occurring across all religions, ethnicities, cultures, ages and economic status (Pyles & Postmus, 2004).

The impact of the insufficiency of the Act to provide adequate protection to the victims of Domestic Violence as expected by the Act has consequences not only for the victims of domestic violence but also the society as they can be indirectly impacted by it. Thus, issues of domestic violence need to be considered as an urgent and important matter because a substantial proportion of resources are demanded from everyone in dealing with this problem (Ghani, 2014).

Prevention of Domestic Violence Act No 34 of 2005 was introduced in 2005 with the aim of preventing domestic violence with the idea that all forms of violence are unacceptable, regardless of background, culture, religion, gender, age, marital status or sexuality and that the safety and wellbeing of those experiencing domestic violence must be the first priority for any response (NCW, 2005).

However, the current Act fails to meet the above expectations; in a study conducted in the Western Province it was found that more than half the battered women (58%) had not revealed the violence to anyone and only 23 Percent had accessed institutional services such as police, hospitals, courts, social services, legal aid, women's organisations and religious institutions (Jayasuriya, Wijewardene, & Axemo, 2011). Similarly, a study by CENWOR in six districts found that while 60.4 Percent women had sought help of friends, family, and religious leaders to resolve domestic violence, only 42.5 Percent had gone to the police. Those seeking other services such as counselling and legal aid were even less. Only 10.9 Percent of women had gone for counselling and only 14.4 Percent had taken legal action (2011, pp. 42-44). CENWOR's study also found out that the reasons for not disclosing the abuse included embarrassment (43%), concern for family reputation (24%) and fear of more violence (12%)(2011, p. 11).

In this paper, the problems with the Act at the grass root level will be dealt with paying special homage to the Legal Aid Commission in dealing with the Prevention of Domestic Violence Act. Even though the CENWOR's report in 2011 states that the Act is not used by the Legal Aid Commission, this paper hopes to shed light into the reality of the situation

by talking to the legal officers of the Legal Aid Commission to look into the insufficiency of the Act in protecting victims of DV.

Objective

The purpose of this study is to add to the growing body of knowledge in Sri Lanka on domestic violence by providing insight into opinions of officials at the grass root level who deal with the Act on a daily basis. Evidence found in this study can be used to assist in the future improvement of the provision of services, as well as to enhance the Act.

Methodology

This study was developed after a series of interviews with legal officials in Legal Aid Commissions around the country. Legal Aid Commission (LAC) established by the Act No 27 of 1978 has 81 Centres Island wide. The interviews mainly consisted of open ended questions and the legal officers were asked to comment on the Act, present situation and the recommendations that they could propose in order to address the issues that was relayed to the researcher.

The Sri Lanka introduced The Prevention of Domestic Violence Act No 37 of 2005 (PDVA) which defines domestic violence as “an act of violence committed by a person who is a relation of the victim. The violence could be physical abuse or emotional abuse” (Sec. 23).

Findings

Out of the 83 Centres 42 Centres responded while others had no suggestions due to the fact they specialised in one area of law and thus did not entertain complaints about domestic violence. The common complaint from many centres was that the Formal Equality enshrined in the Act goes against the protection of the victims. Although it sounds unimaginable, the laws were made without considering that Sri Lanka is a patriarchal society. As Rose Wijesekara stated that by stating that the women, men and children are equal and given equal opportunities in domestic environment, undermines PDVA due to its failure to recognize the entrenched nature of patriarchal power in Sri Lanka (2010).

The people who can make the application should be expanded (Sec.2 of the PDVA) to a situation where it is done with the interest in the wellbeing of the victim. Police should be given a mandatory requirement to file an application where a complaint has been made.

The ability to file applications should be extended to other officials and there could also be requirement to get an acknowledgement from the victim. However, this requirement should not be mandatory where the victim is unable to give consent.

The Respondent to be issued a warrant not a notice (Sec.4 of PDVA) and the IPO should be given if the Respondent fails to appear before court even after the warrant is issued. Emergency interim orders should be introduced where there is imminent threat to the life of the applicant and should be given within 24 hours of application. The police should have wider powers to monitor the interim orders and should maintain a book with all the details of the interim orders issued in that area.

The Protection Order (Sec. 10 (2) of the PDVA) should be issued on case to case basis not only for 12 months.

Words 'Following' and 'Hardship' used in the Act should be defined. The mandatory counselling also makes the process problematic. However, it should be made mandatory where the cause of DV is drug abuse, alcoholism or anger.

The Sec. 12 (2) should be amended to say that the aggrieved party can obtain maintenance from the respondent and should be given without the requirement to file a separate case for it. The fines should be increased from Rs. 10,000. Domestic Violence should be made an offence and the punishments should be mentioned in the Act itself. Thus, the applicant should be able to institute both criminal and civil cases in the same proceedings without instituting two separate cases in court.

The definition of DV should be extended to moral, social and economic integrity and should also include marital rape. The domestic violence should also mean harm, intimidation or a threat and should be looked at on case by case basis. The definition of aggrieved party should be expanded to circumstances where the client is separated from the respondent. It should also be extended to those who are not related to the respondent.

Conclusion

The basis of the Act should be to not to victimize the victim again but to enable the victim the ability to obtain all the reliefs that he or she desires through one application to court. Safe houses should be established to provide housing for the victim without making him or her re-enter the violent environment which could threaten her life and sanity. There should be a system enabling the real victims to gain an easy relief so that they will feel protected and will remain safe from further harm rather than dragging the victim through a tedious process in order to seek justice. In other words, in cases of domestic violence justice delayed is justice denied.

Keywords: Domestic Violence; Legal Aid Commission; Victims; Women

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