

Shyamala Gomez

New Law on Domestic Violence: Ensuring Implementation

August 9th 2005 saw the Sri Lankan legislature passing a new law on domestic violence. A few women have already started to use the law to get relief from various forms of abuse. Women In Need (WIN), the Legal Aid Commission and a few other organizations have assisted these women. How is the Act being played out? What are the issues that have cropped up in using the law, both by lawyers and by the victims themselves? What are the Sri Lankan government's obligations in ensuring that the law is implemented? What are the developments in international jurisprudence as regards domestic violence? We look below at these issues.

First Few Applications under the Domestic Violence Law

The first case under the Act that WIN helped file in court involved long term physical abuse. The woman in this case had been physically assaulted by her husband with a rod taken from the baby's cot. The woman applied to the Magistrate's Court asking for an Interim Protection Order (IPO) under the law. At the inquiry, the husband had asked for access to the children. At the inquiry, the court 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 did. WIN has filed eight cases so far and more are pending.

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.

Judicial Awareness

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.

Problems 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.

Finding Answers

The problems 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.

Obligations of the State

The passing of the law on domestic violence in Sri Lanka has imposed positive obligations on the State. Sri Lanka is a signatory to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which obliges the state to take measures to eliminate discrimination against women in all its forms. Violence against women is one form of discrimination and the state is under an obligation to take steps to eliminate violence against women. The passing of the law is only the first step. Making sure it is implemented is more important. For the Act to be implemented in a meaningful manner, the active participation of several actors is required. The police, medical professionals, social workers, probation officers, civil society groups and women's organizations, lawyers, the judiciary, family counselors and the survivors of violence themselves.

The National Committee on Women (NCW), which was set up under the Women's Charter was instrumental in preparing a National Plan of Action to implement the new law. The NCW collaborated with civil society groups in coming up with a comprehensive action plan which looks at short term, mid term and long term strategies in implementing the Act. Discussions are underway to formulate strategies to implement the Plan of Action.

Link between Domestic Violence and the Woman's Right to Housing

The UN Special Rapporteur on Adequate Housing, Miloon Kothari has in his 2006 report to the Commission on Human Rights drawn the links between violence against women and women's right to adequate housing. He points out that lack of adequate housing can make women more vulnerable to violence and conversely, violence against women can lead to the violation of women's right to adequate housing. He cites his 2005 report where he discusses the issue of domestic violence and its impact on the housing rights of women. He notes that domestic violence increases women's vulnerability to homelessness, especially where no protection is offered by law enforcers and by the legal system itself. A lack of opportunities also makes women more dependent on partners, and family to meet their economic and housing needs. This dependency makes women fear being homeless which in turn makes them more vulnerable to violence in the home. The Special Rapporteur notes that cultural assumptions force women to leave a violent household and instead, do not focus on the option of removing the violent partner. This undermines a woman's right to enjoy her right to adequate housing.

Testimonies received by the Special Rapporteur from domestic violence victims reveal that they do not want to risk losing their children being taken into state care if they report violence and obtain protection orders. Instead, they opt to remain in violent households with their children. Women had also testified that there was a lack of shelters and that they were unable to stay in shelters for long periods of time. Women who have stayed in shelters are also discriminated in situations where rental leases are denied to them further violating their rights to housing and shelter.

International Developments

Sri Lanka cannot remain immune to international developments in this sphere. Recent jurisprudence emerging from the UN Committee on the Elimination of All Forms of Discrimination against Women, established under the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), reiterates that states must act with due diligence to prevent and respond to acts of violence against women. The recent case (*A.T. v Hungary* (1995)) involved a woman from Hungary who had been suffering years of physical and sexual abuse by her common law husband. She alleged that the state had failed to effectively protect her from serious risk to her physical integrity and her physical and mental health. She had been unable to go to a shelter as shelters are not equipped to take care of disabled children and one of her children was disabled. She also stated that under the prevailing Hungarian law, protection orders and restraining orders were not available. She complained that the state party 'passively' neglected its 'positive' obligations under the CEDAW Convention by permitting the continuation of the situation of domestic violence against her. Sri Lanka is a signatory to CEDAW and has also ratified the Optional Protocol which allows for individuals complaints to be heard by the CEDAW Committee.

Future Directions

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.

Shyamala Gomez is a lawyer and works with the Centre on Housing and Eviction Rights (COHRE) Sri Lanka, 106 1/1 Horton Place, Colombo 7. She also serves as Gender Advisor to the UN.