

Reflecting Back and Looking Forward: 20 Years Since the Prevention of Domestic Violence Act

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October 3rd this year marks 20 years since the passing of the Prevention of Domestic Violence Act, No. 34 of 2005 (PDVA) in Sri Lanka. In the last two decades, many societal changes have taken place including the growth of new forms of violence such as cyber violence, and more nuanced forms of emotional violence such as narcissism, gaslighting, and manipulation, calling for the understanding of these newer forms of violence. Additionally, global and local crises have exacerbated the prevalence of domestic violence and impeded access to justice. The COVID19 pandemic is one such example (Cader and Gomez 2021; Centre for Equality and Justice 2022; Tegal 2020). Accessing justice was also fraught with impediments during the economic crisis, with limited physical access to courts, among other challenges.

This essay aims to shed light and reflect on the process of seeking civil remedies in the form of ‘protection orders’, for victims of domestic violence (DV). It traces the trends in reporting of DV in the last 20 years, and the seeking of protection orders, highlighting key challenges with the law and its implementation and enforcement. The essay then explores the social and systemic issues that impede effective access to justice in cases of DV.

The authors interviewed four lawyers who closely engage with the PDVA through representation of victim-survivors of DV: Attorneys-at-Law Ermiza Tegal and Jerusha Crossette-Thambiah; an Attorney-at-Law from Women in Need (WIN), an organisation that supports victim-survivors of violence with essential

support services; and an Attorney-at-Law working at another organisation that supports victim-survivors of violence, who wished to remain anonymous.

Our aim is to facilitate an enhanced understanding of the shifting patterns and challenges that have arisen in obtaining protection orders since the enactment of the PDVA and stimulate further debate on the issue of DV within Sri Lanka, while pointing to new avenues of resistance and reform.

Civil protection orders: Legal gaps and barriers in practice

The PDVA was the first time the protection of victim-survivors of DV was recognised explicitly in Sri Lankan law and is considered a landmark law for introducing civil ‘protection orders’. It provides a process for obtaining interim protection orders and protection orders. Notably, the Act also provides for a range of supplementary orders including referrals to shelters upon the victim-survivor’s request, urgent monetary assistance, and monitoring of protection orders among others.

The four individuals interviewed all flagged the strengths of the law itself, pointing to several important and positive provisions, including the inclusion of emotional abuse as a form of violence in the Act. However, they also emphasised that the PDVA needed stronger implementation and enforcement mechanisms and safeguards at all levels. The lawyers interviewed pointed to several concerns through all stages of seeking a protection order—the reporting, inquiry, and granting and monitoring of both interim and permanent protection orders.

Preliminary practical barriers at the reporting stage

The barriers to accessing justice for women and girls at the stage of reporting cases of violence have been well documented (De Mel and Samararatne 2017; The Asia Foundation 2021; Women in Need 2019). Victim-survivors of DV often don't feel comfortable reporting violence to officers at the Women and Children's Bureau due to a lack of gender-sensitivity among officials. A lawyer providing legal support to victim-survivors also noted that women officers in some police stations don't work in the evenings, thereby resulting in a practical impediment to accessing justice at the very outset. In general, she noted that there is a lack of confidence and trust in the justice system.¹

Magistrates' approach to different forms of violence

The general consensus among the lawyers interviewed is that, while emotional abuse is covered in the Act, magistrates continue to primarily look for signs of physical violence to grant a civil protection order. Consequently, emotional abuse is not recognised as sole grounds for issuing a protection order. Ermiza Tegal noted that even in the case of physical violence, a high threshold is looked for, implying that *some* physical violence is condoned by the justice system.

A concerning trend is how magistrates have created their own ad hoc rules and conditions for what qualifies as sufficiently severe. For instance, Crossette-Thambiah notes that in some parts of the country, magistrates will only allow a victim-survivor to seek a protection order if they have had a minimum of three acts of violence perpetrated against them. The WIN lawyer noted that, in addition to physical violence, there has been a growing trend in recognising sexual abuse and violence, albeit only if there is sufficient 'proof'. Other newer forms of violence however, such as cyber violence, financial violence and manipulation are not recognised by magistrates.

Practical impediments in the granting of protection orders

In theory, the Act places the burden on the respondent to explain why an interim protection order should not be made permanent—a type of 'quasi-criminal' model. In practice, the burden is placed on the *victim-survivor* to provide reasons for why the order should be made permanent—a manifestation of how entrenched patriarchal values are in the justice system.

¹ The barriers to reporting cases of DV cut across several factors which are further outlined in different sections of this essay. In particular, see sections on the lack of safety and protection and social and systemic issues.

Moreover, there is strict and often unnecessary adherence to certain formalities. For instance, the WIN lawyer noted that old methods of serving summons on the perpetrator need to be revised to avoid delays in granting relief to the victim-survivor.

The lack of safety and protection

The safety of survivors is not guaranteed at any stage of the PDVA process. Safety is a concern from the outset as women don't feel safe to leave their homes to report cases of domestic violence. Upon reporting of the case, at the inquiry stage before the magistrate, and upon the granting of the orders, there are no extra safety measures in place for the victim-survivor nor for the lawyer representing the victim-survivor.

Another practical concern which compromises the safety of the victim-survivor is when hearings to grant a protection order stretch out over several months. The objectives of the Act in this instance are compromised when the victim-survivor is forced to be in contact with the perpetrator several times, often resulting in the re-traumatisation of the survivor.² A related issue pertains to children. Tegal noted that the best interests of the child are often not taken into account during hearings—"the child's *story* becomes more important than the child", and the safety of the child in the home and during hearings is forgotten.

In a more positive vein, Crossette-Thambiah noted that when she had used the Assistance to and Protection of Victims of Crime and Witness Protection Act No. 10 of 2023 in conjunction with the PDVA, safety guarantees to the victim-survivor and others were effective. This development is promising and points to the need for synergies between relevant officers and officials, and increased understanding on how best to implement laws and regulations in conjunction with each other.

The counselling provision: problems and potentials

Section 5(2)(a) of the Act provides that where an interim order has been made, the Court may order a social worker or a family counsellor to counsel the parties. Moreover, the Court may order the parties to attend mandatory counselling sessions as a supplementary order under section 12(1). The interviewees had differing opinions on the effectiveness and value of counselling in cases of domestic violence. They noted that counsellors

² Some interviewees noted that the very fact that the law requires the perpetrator to be present at each proceeding compromises the objectives of the Act, and emphasised that the law should be amended to address this issue.

appointed in DV cases are often family counsellors who work in family matters at the District Court, trained with the goals of reconciliation or settlement over a short period of time. Often, counsellors don't understand the nuances of violence nor the severity of the victim-survivor's situation. A lawyer working with victim-survivors also referred to the lack of privacy and confidentiality as a serious problem, leading to the lack of trust in counsellors. Crossette-Thambiah on the other hand opposed counselling in cases of DV. She was of the view that counsellors shouldn't force women to stay in homes and marriages that are unsafe. She suggested instead that the focus shift to rehabilitation and related therapies for perpetrators.

Civil remedies vs. criminal remedies

The interviewees offered mixed responses on viable remedies for DV. On the one hand, the WIN lawyer pointed to the need for further 'criminalisation' to ensure that the severity of the offence is made apparent. The fact that what exists at present is a civil remedy leaves room for continued and further violence. Another lawyer working with victim-survivors concurred—she believes the Act in its present form isn't a sufficient deterrent. On the other hand, Crossette-Thambiah indicated that the PDVA doesn't impede simultaneous criminal proceedings and advocated that filing for protection orders and a separate criminal case must be encouraged. She also noted, however, that police are not receptive to the filing of a criminal case, indicating the need for more systemic changes in the justice sector.

Separately, Tegal noted that women might be discouraged from coming to the law at all if there is a criminal component to the Act as women may not want to be seen as 'faulting' their husbands. The PDVA as is, focuses on *protection*, and this seems to be the more important goal for victim-survivors. Further, perpetrators are also more willing to engage with the system when it is protection that is sought, and not criminal penalties.

The key takeaway from the interviews on the law itself and the practical implementation of it is that it is in fact the latter that needs to change. In the seeking of protection orders, an effective protection order ultimately depends on each individual magistrate, and their own perceptions of violence. This points to a larger systemic and structural issue rooted in patriarchal values and culture in society, which impedes access to justice for victim-survivors of DV.

Social and systemic issues: Impediments to the effective use of the PDVA

The interviews shed light on several social and systemic issues which undermine and impede the effective use of the PDVA. Many of these issues have been longstanding, and continue to prevail, while others have emerged more recently, compounding the challenges faced by lawyers, women's organisations, and victim-survivors who attempt to seek civil protection orders in DV cases in Sri Lanka.

Negative perceptions of 'domestic violence'

Twenty years ago, when the PDVA was debated in parliament, the tensions that arose were rooted in the perception of the concept of 'domestic violence' as a liberal, Western construct that intruded upon the sanctity and privacy of family life, and one that would lead to the violation of Asian culture and values, especially if recognised through the law (Kodikara 2012). The notion of 'violence' was often sidelined and diminished in these conversations reflecting the deeply embedded patriarchal norms that existed in society at the time. The interviews highlighted that, although today there appears to be more awareness and understanding on the issue of DV itself, these negative perceptions continue to prevail for the most part, with slight variations, impacting the victim's decision to seek protection and relief.

The WIN lawyer echoed many of these perceptions. She shared that women victim-survivors often chose to suffer in silence and bear violence in its many forms, instead of reporting it to the police and facing the consequences of bringing shame to the family or causing harm to the perpetrator of such violence, which in most cases is the intimate partner/husband. In addition, the attitudes of police officers recording the incident and their insistence that the victim-survivor "settle" the matter with the perpetrator; the pressure on the victim-survivor to preserve family ties; and the difficulty of accessing free or affordable legal aid have often pushed the victim-survivor away from seeking relief through the law. This triple burden also deepens the negative perceptions around "domestic violence" allowing for it to be further embedded and normalised in society.

The lawyers interviewed stressed that victim-survivors who take the courageous step of seeking a protection order in court are met with magistrates who hold similar negative perceptions towards DV as those held by police officers—particularly the notion that the PDVA "breaks

up” the family. This attitude prevalent within the court system consequently has a bearing on how the victim-survivor, the lawyers representing the victim-survivor, and other service providers are perceived and treated within the justice system.

Meanwhile, Tegal observed that since 2005, there is greater acknowledgement of the increased prevalence and gravity of DV within the country, which is a positive shift, even if a small one. However, there appears to be a gendered response to the issue of DV within the legal profession, with young female lawyers showing more sympathy and willingness to represent and defend victims of violence. While this has created a degree of recognition and capacity for female lawyers, it has also brought with it new challenges.³ Despite these minor shifts, there remain vulnerable victim-survivor groups lacking the means to access the law, adding to the layered complexity of the problem. For example, individuals who identify as LGBTQIA+ or sex workers find it difficult to seek the support of lawyers or directly access the PDVA for their protection. They are often treated harshly by law enforcement officials and have very little faith in the system, viewing it as an inadequate safeguard against the intersectional violence they might endure.

The underlying impact of the negative perceptions toward DV has consequently led to women and vulnerable victim-survivor groups, who make up at least half the country’s population, having to endure the physical and emotional toll of nuanced forms of violence in the ‘safety’ of their homes. The visible and invisible impacts of such violence are also passed on to their children, directly or indirectly. In this light, Tegal pointed out that the healthy and efficient functioning of the country’s economy as well as the wellbeing of society as a whole are adversely impacted, often leaving long-term, transgenerational scars.

Social barriers

The interviewees also shared different perspectives when asked whether factors such as ethnicity, language, religion, disability, region of residence and/or age impact victims’ recourse to the PDVA.

Tegal noted the difficulty of generalising and observing clear patterns based on identifiable social factors, most often because victim-survivors who do seek help through the law, often do so as a last resort. When there has been a threat to their life or a threat to their children’s safety they are forced to take steps to move away from the

violence. More pointedly, Tegal emphasised that there are too many incidents of DV that remain unreported, although there might be differentiation based on social factors such as age, ability to access lawyers, ethnicity, educational background, and fear of law enforcement and the law, in these instances. However, the numbers are unknown, and the cases that do make it into the legal system are just the tip of the iceberg.

Crossette-Thambiah shed light on several social factors which act as barriers for victims accessing the PDVA. For instance, while language is a barrier for Tamil-speaking victims, this is further heightened for some more than others by the distinct dialects spoken by Tamil communities in different regions of the country. Likewise, she noted that there is sometimes a bias against minority groups when reporting DV cases and meting out justice through the legal system. Moreover, in some instances, the element of class plays a bigger role with some victim-survivors from higher income groups having an enhanced ability to access justice, afford lawyers, and even command the respect needed for a complaint to be recorded by the police. This points to the social and power dynamics at play and how the justice system itself is out of balance.

Funding and resource constraints

Speaking about the positive and negative aspects of mobilising and providing healthcare, psychosocial support, protection, and other ancillary services for victim-survivors of DV, the interviewees exposed critical gaps in the system. One of the overarching issues cutting across all sectors is the notable lack of state-backed funding and the absence of a budgetary allocation to specifically address the issue of domestic violence. Consequently, these resource constraints have adversely affected the quality, access and availability of support services for victims who may choose to report the violence inflicted on them and seek legal relief, exacerbating the challenges they already endure.

The lack of free and accessible legal aid has meant that victim-survivors must have connections to lawyers through their personal networks in order to access the law, which is often not the reality. Further, there is a lack of shelters available for victim-survivors seeking to move away from their abuser (or the site of violence), with only two shelters presently provided by the state across the island. While there may be options for temporary shelter, there are none available for long-term housing which is essential for victim-survivors to process and heal from their trauma. Moreover, there is an absence of trained professional counsellors to provide support for victim-survivors and rehabilitation for perpetrators of

³ See below for the discussion on access to justice and the legal profession.

violence alike.⁴ More significantly, while limited forms of counselling are available, often at a price through private services, there is no system in place to provide for holistic psychosocial support for victim-survivors.

The overall lack of resources, funding and state support to address the problem of DV points to a lack of prioritisation and interest and reflects an inadequate effort to respond to the issue of DV, an effort which fails to adequately protect victim-survivors and place their needs at the centre.

A lack of collaboration and coordination

The interviews also highlighted the lack of collaboration and coordination between institutions, processes and laws, exposing a fragmented system.

A lawyer from WIN pointed to the different approaches adopted by stakeholders, and their focus on fulfilling individual/independent roles, with minimum coordination and follow up between them. WIN, for example, prioritises psychological aspects and provides holistic care to the victim-survivor, supporting them through the court process. In contrast, a police officer's priority may entail mechanical tasks of recording, filing a case, and/or sending the parties for counselling, with little time for follow-up. Tegal shared how victim-survivors have to rely on informal networks for their support, to sort out temporary housing, finances, and a protection plan before they are able to take the step of seeking a protection order. Not every lawyer will consider whether such support systems exist, before advising their clients on seeking recourse through the law.

Pointing to the lack of coordination within the system, Crossette-Thambiah emphasised the importance of having a central mechanism, such as the Women's Commission, to oversee issues of DV specifically focusing on its impact on women, akin to what the National Child Protection Authority (NCPA) may do in the case of children. Likewise, this mechanism must be empowered to expand and coordinate service provision between institutions and compile a database with statistics available to the public to monitor the impact of DV on women. The WIN lawyer also pointed to the need to enhance networking and referral systems between institutions and organisations, with improved collaboration and follow-up.

⁴ The issue of language barriers within the field of counselling is another problem in itself. Organisations like WIN rely on their own funds to provide the services of Tamil speaking counselors to overcome these barriers. Likewise, in offering legal services they bear the costs of translation and try to source lawyers who can speak in the preferred language of their client.

Both Tegal and Crossette-Thambiah spoke of the benefit of using the PDVA in conjunction with other available laws, to strengthen its effectiveness. For example, the Assistance to and Protection of Victims of Crime and Witnesses Act, has been heavily underutilised, and can be used in the future to strengthen protections available to victims and witnesses, alongside the PDVA.

Access to justice and the legal profession

Concerningly, the interviewees emphasised the weak attitudes and lack of gender sensitivity that exist within the legal profession, from their perspective as female lawyers. These practices continue to hinder efficient and effective access to justice for victim-survivors of DV.

This is strikingly apparent in the challenges faced by female lawyers when they step up to handle DV cases inside and outside of the courtroom. Often, they are subject to harassment and gender-based humiliation when they attempt to make submissions; ridicule for being “feminists”; personal/sexist jokes when they attempt to engage in their profession; and their work is trivialised and belittled alongside the concept of “domestic violence.”

In a male-dominated profession that is already steeped in hierarchy and structures of power, this culture makes it increasingly difficult for female attorneys to access a fair justice system and seek genuine redress for their clients. *If female lawyers who are a part of the legal profession cannot access “justice” on an equal footing, how can we reasonably expect victim-survivors of domestic violence to have faith in the system?*

These barriers have been created and normalised within the profession over the years, and a shift in culture and attitude is critical if these dynamics are to change for the positive. The system must be sensitised at every level, creating safer spaces for victim-survivors and their legal representatives, while building networks of allyship, solidarity, and trust within the profession.

Avenues for reform: Reflecting back and looking forward

The interviews shed valuable insights into the patterns and challenges that have emerged over the last 20 years on DV cases, particularly on the difficulties of obtaining protection orders under the PDVA. All the interviewees acknowledged that the law has several strengths, however without proper implementation, enforcement and oversight its value is significantly diminished. To this end, the interviewees shared several reflections based on their experiences and observations, which may

serve to enhance the effectiveness of the PDVA and its use in Sri Lanka over the next 20 years. A few critical recommendations include:

1. Advocating for more criminal prosecutions to run parallel to civil remedies sought through the PDVA, to ensure graver consequences for the perpetrator and enhanced protection for victim-survivors.
2. Digitising the justice system, in relation to filing for protection orders, serving summons, maintaining records, etc., to maximise efficiency and minimise delays.
3. Calling for state-backed funding and resource allocation to provide for shelters and safehouses for victim-survivors of DV, among other support services.
4. The provision of holistic counselling and psychosocial support by trained professionals, to support the victim-survivor and rehabilitate the perpetrator.
5. Enhancing collaboration and synergy between institutions, laws, and processes that address DV, including the Women's Commission, Victim and Witness Protection Authority, and other relevant officers in the justice and health sectors.
6. Shifting attitudes about 'domestic violence' within the legal profession and society at large, to stand by and advocate for the victim-survivor.

Based on reported cases, the interviews reflect that the issue of DV in Sri Lanka is notably gendered, affecting half the population of the country, pointing to the dire need for wider political recognition and prioritisation. As a consequence of women having to endure the physical and emotional toll of nuanced forms of violence in the 'safety' of their homes, the healthy and efficient functioning of the country's economy as well as the wellbeing of society as a whole is adversely impacted, often leaving long-term, transgenerational scars. If there are no visible, major shifts in practice over the next 20 years, alongside a change in attitudes and perceptions that prevail within society, the glaring systemic issues, and the lack of sensitivity among law enforcement officials and professionals working within

the legal system, the realisation of 'protection' at the very minimum, and more broadly achieving 'justice' for victims of DV will remain a mere illusion.

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