

Policing in Domestic Violence Act in Sri Lanka

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Abstract

Domestic violence is a critical human rights violation under international legal norms because of the serious social problems caused by its symptoms and characteristics (United Nations, 1989). In response to this issue, domestic law of Sri Lanka provides for a legal framework that includes the prevention of particular thing that perpetrators do. It guarantees non-discrimination in connection with acts of domestic violence and protection of individuals. The primary agency which assists co-ordination and monitoring of action against abuse and violence in Sri Lanka is the Police Department. Since an application has to be made to the magistrate's court for protection orders for the prevention of such acts of domestic violence, a Police Officer (a member of the regular police force and includes all persons enlisted under Police Ordinance) is commonly chosen to make the application to the District Court on behalf of the aggrieved person. The Police play a dual role in a society that includes maintenance of law and maintenance of order. In performance of these roles, a higher level of knowledge of the Police Officials about the significance and importance of various social legislations like the Prevention of Domestic Violence Act No. 34 of 2005 is essential. Awareness of the duties and liabilities of police officers according to the Police Ordinance is also important in Policing in the domestic laws of the country. Therefore, this study examines the response of the Police operated to cover the movement for protecting children, women and factors associated with abuse as a key measure in controlling domestic violence in two purposive Police Divisions as selected by the author.

Keywords: Domestic Violence, Protection Order, Police Ordinance, Aggrieved Person

Introduction

Domestic violence in Sri Lanka could be understood only if the background of the Sri Lankan society in which the women's lives are considered first. Traditionally women in families are respected to varying degrees in the rural and urban societies. The majority of people are religious-minded with strong beliefs in cultural norms. However, some of the socially and culturally accepted practices seen in other South Asian countries such as female genital mutilation, "sati" or widow burning are mostly unknown in Sri Lanka. This may lead to a misconception that domestic violence is not an important issue in this country, and denial of the existence of this problem.

When the issue of domestic violence was raised initially in early 1980's in Sri Lanka, it was brushed aside as a western idea that was likely to disrupt the family unit. Now, society as a whole is much more aware of this problem. More and more victims now seek the help of support groups and the legal system. Domestic violence is an important area of action for both governmental and non-governmental organizations concerned with women and their welfare.

The cultural values inculcated in the minds of Sri Lankan women on the institution of marriage seem to result in women continuing their marriage in spite of an abusive relationship. Some women remained with their abusive husbands or partners. On the other hand, some women who experienced violence left home, but returned and continued to experience violence, as they did not consider leaving as a permanent solution.

Domestic violence is a problem that requires proactive mitigation strategies by the society, government, families and individuals. The significance of the problem comes from the fact that its effects not only lower quality of life but also leads to physical harm, emotional and psychological torture and even death. Negatively, domestic violence is on the rise, a crime committed in the very areas where one should feel safest. The issue of domestic violence is a major problem in the society given that the main victims, women and children suffer from it “In places where they should be safest within their families at the hands of somebody close to them somebody, they should be able to trust”. Domestic violence is thus a real problem that can be likened to in-family and social relationships.

The results of this study significantly contributed to understanding of the various issues relating to domestic violence. Specifically, it was possible to analytically understand and appreciate, with an aim of reducing, the various causes and effects of domestic violence. Further the study is critical for the victims of domestic violence, care givers, law enforcement authorities, the policy makers and the society in general, in attempts to help curb the crime based on the espoused effects of groups and individuals. In effect, the various special interest groups would be able to develop mitigation and intervention strategies that would assist the victims, punish crime and promote harmonious living in families.

The legal framework of Sri Lanka considers that “Domestic Violence” includes specific offences as sexual abuse and exploitation, sexual harassment, physical abuse, assault, use of criminal force, incest, rape, causing miscarriage, wrongful and unlawful confinement, attempted murder as well as extortion and criminal intimidation. Such activities are particularly informed with regard to intimate partner violence or gender-based violence (Russo & Pirlott, 2006). In addition, ‘emotional abuse’ is defined to mean a pattern of cruel, inhuman, degrading or humiliating conduct of a serious nature including repeated insults, belittling, cursing and threats directed towards an aggrieved person (Bonnie E. Carlson, Alissa Pollitz Worden, Michelle van Ryn, and Ronet Bachman. 2003). Any other controlling or abusive behavior which poses a threat to the safety, health or well-being can be regarded as domestic violence. (United Nations, 1989). Sri Lanka provides that all persons are equal before the law and are entitled to equal protection. The interests of children and women are promoted in Sri Lanka with special care to ensure their physical, mental, moral, religious and social development as a whole to protect them from exploitation and discrimination. No persons are subjected to torture or to cruel, inhuman or degrading treatment or punishment (Articles: 11 and 27 of the Constitution of Sri Lanka). Hence “The Prevention of Domestic Violence Act No. 34 of 2005” (PDVA) followed to guarantee nondiscrimination in connection with acts of domestic violence for the protection of individuals.

There are no legal provisions provided to consider "domestic violence" as a new offence and in its place, they define domestic violence as a pattern of cruel, inhuman, degrading or humiliating conduct of a serious nature directed toward an aggrieved person. Those offenses have already been recognized under

Chapter XVI of the Penal Code (i.e. murder, manslaughter, assault, wrongful confinement or restraint). The only provision that the PDVA section 2 provides for an aggrieved person is to make an application to Magistrate's courts for Protection orders for the prevention of such acts of domestic violence.

A protection order is an order issued by the magistrate under this act for the purpose of preventing further acts of violence against a woman or her child specified in Section 2 of this Act and granting other necessary reliefs to her. The provisions of the protection order shall be enforced by the Police Department as the law enforcement agency in the country. Hence the author exclusively observed whether the officials in the purposive sample were aware of the duties and liabilities of police officers according to the Police Ordinance and the processes of the legal framework applied in the country at present. The involvement of a Police official in the DV and SGBV also was observed in the study as an official in the Police Department has the power of a Police officer in every part of Sri Lanka and considered to be always on duty. And also, as defined in the ordinance, the duty of a Police Official is to use his best endeavors and ability to prevent all crimes, offences, and public nuisances; to preserve the peace; to apprehend disorderly and suspicious characters; to detect and bring offenders to justice; to collect and communicate intelligence affecting the public peace; and promptly to obey and execute all orders and warrants lawfully issued and directed to him by any competent authority (Section 56: Police Ordinance).

Sexual and gender-based violence against women, which is associated with domestic violence, plays an important role in police duties. Therefore, Police as the immediate law enforcement agency need to be well aware of the gender. A Police Officer must know Gender as a responsibility and a role assigned to a person, whether he or she is male or female according to their economic, social, and cultural heritage and opportunities. Further, sexuality as a condition is biologically determined and common to all human communities. Due to the activation of hormones, men are better suited for heavy work and more aggressive than women. Gender can be defined as the social morphology important in legislation associated with the roles and responsibilities assigned to it. Also, women perform the same functions that are traditionally performed by men (UN Woman, 2014). Hence, the study intended to explore the effects of domestic violence and intervention strategies by the police in combating domestic violence in the country.

Research Methodology

This study is primarily based on a quantitative and qualitative research plan that allows the researcher to understand the roles played by police officials within Kelaniya and Rathnapura Police Divisions. According to the Research and Development Division of the Sri Lanka Police service one area selected for the study has seen an increase in domestic violence against women while the other has reported the least. The most relevant tools used for collecting primary data in this study were interviews and questionnaires. The purposive samples for the study were selected in relation to the Domestic Violence Act. And the statistical data of domestic violence used in the study has been clarified by Sri Lanka Police Service. It is reflected by the chart below.

Domestic Violence Against Women

	Police Division	2019	2020	2021
1	Rathnapura	1022	1171	979
2	Kelaniya	846	358	643

Source: Statics Division of Sri Lanka Police Department

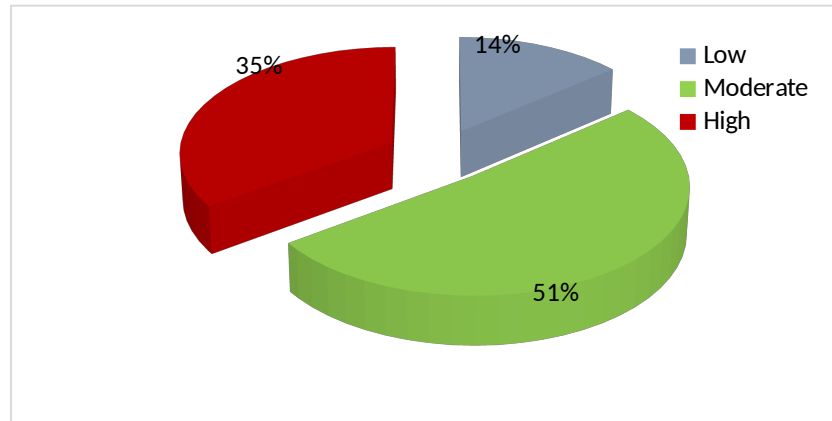
Considering the last three years of domestic violence in both Rathnapura and Kelaniya Police Divisions, the number of such complaints reported was 1,868 in 2019 and 1,529 in 2020 showing a decrease of 22.2%. Accordingly, 1,622 complaints were reported in 2021 showing an increase of 5.8%. The number of complaints reported in Rathnapura Police Division was always higher than that of Kelaniya Police Division. The complaints reported are often based on calamities related to alcohol abuse, hesitate to deal with police, deep-rooted attitudes and imaginations, drug abuse and low educational attainment and unaware of laws and regulations. A qualitative survey in the study was used to observe how the diverse factors combined in domestic violence undermine the values of family lives leading to increase and decrease of cases annually and the author used the purposive sample method to examine challenges faced by the Police in monitoring the under-protection orders.

Moreover, secondary data (literature) was gathered on women and gender studies, Police Ordinance and Statistic reports published by Research and Development Division of Sri Lanka Police Service were also used in order to support the study from the secondary data. Once the data collection completed, SPSS and narrative analysis were employed in order to analyze the data. Meantime, the scope of the study has been limited only to the Kelaniya and Rathnapura Police Divisions.

Results and Discussion

The analysis of both primary and secondary data revealed that the professional challenges of Police Officials primarily based on lack of efficiency and resources. The majority of respondents in the sample had only a general knowledge of sex, Gender, Domestic violence, and legal framework related to Policing in Domestic Violence Act in the respective Police Divisions. This indicates that the response of the police in connection with the complaints of domestic violence needs to be more effective. The Police play a vital role in implementation of the law in the country as the most immediate responsive agency. The study sighted that the Police need to be reinforced with the relevant piece of legislature and factors associated with domestic violence in order to perform that task by providing better solutions to the affected people. The following figure displays the level of understanding of the respondents on Gender based violence and Domestic violence act.

Level of Understanding on Domestic Violence Act No. 34 of 2005

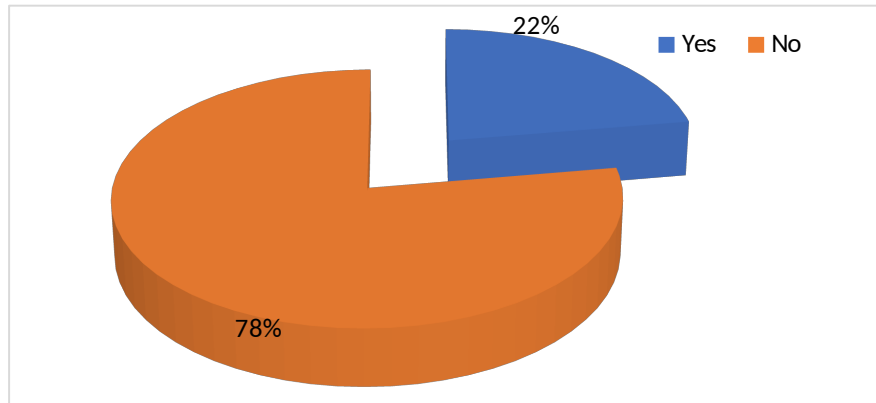


Source: Field Survey Data, 2022

This figure illustrates that the level of understanding of the majority of respondents on Prevention of Domestic Violence Act No. 34 of 2005, is moderate while that of 35% of them is adequate. Research shows that 14% of officers have minimal knowledge about the Act and even 51% have insufficient knowledge. 35% say their knowledge is at a positive level, but the high incidence of reported cases shows that their knowledge is not sufficient to devise anti-violence strategies. Knowledge of domestic violence and gender-based violence and the law are important for a police officer to prevent it but the study revealed that this preventive process has almost always been attempted seeking remedial action by following the criminal code.

The author observed that the response of Police in connection with complaints of domestic violence needs to be more efficient as the offences committed by perpetrators in domestic violence are also recognized under Chapter XVI of the Penal Code. However, it is observed that the police officials must be educated to take preventive measures under the PDVA catering to protection orders at the same time for the safety of the victims. The study reveals that majority of the officers who are on duty in women and children's desks have no proper knowledge and understanding on the Act. And also, they are in need of proper training and sufficient resources for better implementation of the law against domestic violence in the respective divisions. The figure follows indicates the number of respondents who lack resources.

Sufficiency of Resources in Productively Implementing the Law on DV



Source: Field Survey Data, 2022

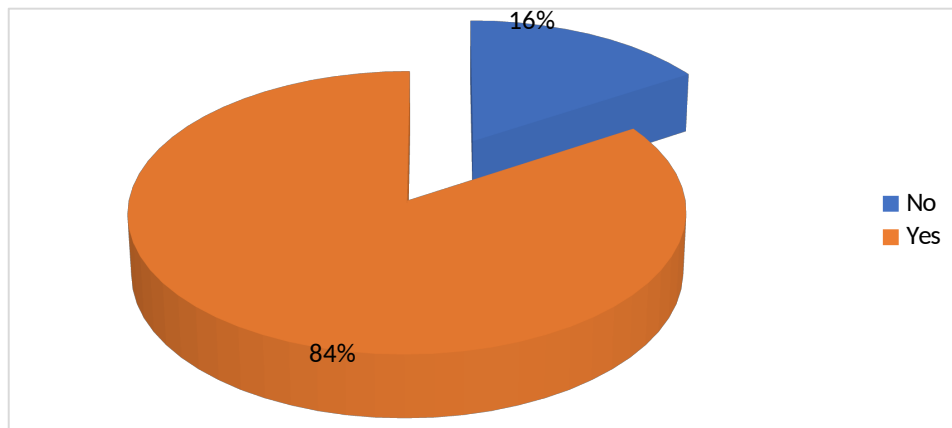
Only 22% of respondents said they have enough resources to provide an effective service to the community, and 78% expect more.

In addition, data and information on gender-based violence suggests that the police alone cannot reduce or control domestic violence without proper integration of the PDVA into the legal and medical fields. For instance, despite the PDVA recognizes offences contained in chapter XVI of the Penal Code under section 23 of the Act, it does not cover all types of violent acts experienced by women. However marital rape or forced sexual intercourse by a husband with an adult woman is considered as a criminal offence under amended Act of Penal Code 1995 only where parties are judicially separated. If only the offences against the human body are considered as crimes under the PDVA (SL), marital rape or sexual abuse between spouses should also be considered as offences against human body.

Accordingly, the study defined the importance of the mediation of the Police in enhancing standards of families and building a protective environment to establish effective protection service delivery including preventive, statutory, care and rehabilitation services. Police involvement needs to be put in place to ensure accountability at various levels for an effective community-based monitoring mechanism. In this regard, the study has probed into the levels of awareness of the respondents on sex, gender and gender-based violence. In the study, 76% of the respondents agreed that women react to stressful situations differently than men. 57% of them had the same opinion that women are less violent than men. The most vulnerable factor in domestic violence is the aggression of individuals and 55% of the respondent did not agree that both men and women are equally capable of being aggressive.

Therefore, the awareness of the gender identity of the individuals in the sample was examined. (Gender awareness) It sought to analyze how the respondents react to the socially and culturally determined differences between women and men based on socially integrated behaviors and their impact on the day-to-day life in the community. 84% of the respondents had the knowledge about gender-based violence (GBV). In depth interviews with respondents revealed that their awareness of the gender is limited to the minimal level that the preventive actions are not formulated based on the possible causes of GBV such as Patriarchy, Gender Relations, Gender Stereotypes, Gender Discrimination and Gender Blindness. The following figure displays the awareness of the respondents on Gender based violence.

Awareness on Gender based Violence



Source: Field Survey Data, 2022

16% of respondents were aware of gender-based violence. Gender-based violence represents a very serious social problem and is perceived by police officers as torture because of its features and characteristics. Its legal liability is broad, as it affects not only victims of domestic violence, but also individuals who testify or have knowledge of domestic violence. Therefore, it is important for police officers to be aware of this subject in line with crime prevention activities. Domestic violence is one of the most common forms of violence and is often the most frightening as it does not seem to be adequate. Violence often takes place behind closed doors, and victims hide both their fears of abuse and their shame for society. Intimate partner violence occurs between people in a close relationship. It comes in many forms, including physical abuse, sexual abuse, emotional abuse, intimidation, economic loss, or threats of violence. It is important for police officers to be aware that the influence of patriarchy and stereotyped attitudes can lead to domestic violence and a decline in gender sensitivity, which is at the root of many forms of torture. Data suggests that verbal abuse is primarily created by these social problems. The table below shows the data provided by the respondents on the cases reported to the police stations based on their experience. 79% of them reported that verbal abuse was common in relation to domestic violence.

Cases of Domestic Violence (DV)

No	Statement	Priority				
		1	2	3	4	5
1	Bodily harm inflicted on woman by man	49%	41%	6%	4%	0%
2	Bodily harm inflicted by woman on man	2%	2%	6%	35%	55%
3	Sexual assaults on women and children	2%	27%	22%	27%	22%
4	Psychological harm inflicted on woman by man	29%	35%	33%	4%	0%
5	Psychological harm inflicted by woman on man	2%	12%	33%	33%	20%
6	Early marriage	18%	37%	27%	12%	6%
7	Forced marriage	4%	2%	16%	29%	49%
8	All the above inflicted by parent on girl child	2%	6%	20%	33%	39%

9	All the above inflicted by parent on boy child	2%	4%	20%	31%	43%
10	Socio-economic deprivation of women by men	24%	39%	22%	6%	8%
11	Socio-economic deprivation of men by women	10%	27%	27%	37%	0%
12	Child neglect by parent	2%	6%	12%	39%	41%
13	Spousal sexual deprivation	2%	10%	18%	29%	41%
14	Verbal abuse	69%	27%	4%	0%	0%

Source: Field Survey Data, 2022

The findings of the study signify that the Police find it difficult to control the acts of Domestic Violence due to the inadequate provisions provided by the Prevention of Domestic Violence act of 2005.

Conclusions and Recommendations

A greater awareness needs to be created as to the objective sought to be achieved on the Prevention of Domestic Violence Act. The need to establish a broader public awareness on GBV and the PDVA has become a current requirement. And also, society in general should be made aware that domestic violence is a social issue and not a personal matter. In that context there is a need for making Police Officials aware of the duty they are compelled and the preventive measures they should follow.

The laws will be of useless if the Police as one of the law enforcement authorities do not take stern action when and where necessary. To fulfill that task by providing better solutions to the people affected by violent activities, Police officers who play a vital role in implementation must be made aware of the relevant piece of legislature and it’ s contents. The response of the police in connection with the complaints of domestic violence needs to be more effective. It is the normal pattern that the perpetrators of domestic violence are dealt with by the police under the Penal Code. However, the police must be educated to take preventive measures under the PDVA at the same time for the safety of the victims. The study reveals that majority of the officers who are on duty in women and children’s desks have no proper knowledge and understanding on the Act. It shows that they require necessary training and proper guidance on this subject.

The law alone cannot control occurrences in relation to domestic violence. It is not a responsibility of the police alone. The judiciary and medical fields and the members in the society are also accountable in the process of prevention of this social problem successfully. It’s only then the remedy will be meaningful and fruitful. It is a part of the Police duty to represent the law enforcement authority for raising awareness of people on values needed to be upheld with due care and recognition to women and children within the family circle.

This study observed the attitudes of the Police Personnel towards violent activities within the community and how they undertake these abusive situations. The whole carder of the Police must be educated that they also have a responsibility to take necessary steps to ensure the society free from domestic violence.

Acknowledgment

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