Battered Wives or Dependent Mothers? 
Negotiating Familial Ideology in Law

Chulani Kodikara
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### Acronyms and Abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>CENWOR</td>
<td>Centre for Women’s Research</td>
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<td>CWBDs</td>
<td>Children and Women Bureau Desks</td>
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<tr>
<td>CPOs</td>
<td>Civil Protection Orders</td>
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<tr>
<td>CCP</td>
<td>Code of Criminal Procedure</td>
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<td>CEDAW</td>
<td>Committee on the Elimination of Discrimination against Women</td>
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<td>CBOs</td>
<td>Community Based Organisations</td>
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<tr>
<td>FGD</td>
<td>Focus Group Discussions</td>
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<td>IPVW</td>
<td>Intimate Partner Violence against Women</td>
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<tr>
<td>LAC</td>
<td>Legal Aid Commission</td>
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<tr>
<td>MOH</td>
<td>Medical Officer of Health</td>
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<tr>
<td>NCPA</td>
<td>National Child Protection Authority</td>
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<tr>
<td>PDVA</td>
<td>Prevention of Domestic Violence Act</td>
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<tr>
<td>PWDVA</td>
<td>Protection of Women from Domestic Violence Act</td>
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<tr>
<td>PO</td>
<td>Protection Order</td>
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<tr>
<td>WIN</td>
<td>Women in Need</td>
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<tr>
<td>WDC</td>
<td>Women’s Development Centre</td>
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<td>WHO</td>
<td>World Health Organisation</td>
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ICES Working Papers:


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The follow up to the passage of a law is of greater concern to women’s groups now than it has been in the past, in large part due to the failure of a slew of reformist laws . . . to make any impact in the courts. (Rajan 2002: 292)

Following a number of years of lobbying by women’s organisations, the government of Sri Lanka in 2005 passed the Prevention of Domestic Violence Act (PDVA). The Act grants jurisdiction to Magistrate’s Courts to issue Civil Protection Orders in the case of domestic violence as defined in the Act. The Act fell short of the expectations of women’s organisations on a number of counts (see Kodikara 2012). Nevertheless it is a victory gained by the women’s movement in Sri Lanka in a long struggle to address the problem of violence against women within the family and particularly intimate partner violence against women (IPVW). It is generally recognised as a key milestone in women’s engagement with the law. Prior to its enactment the only “legal’ remedy available for a survivor was to make a police complaint, which was rarely taken seriously. The police response was to treat these complaints as a private matter between family members, at best warning and discharging the perpetrator and at worst, trivialising the experience of survivors and re-victimising them in the process. From the perspective of women survivors, although criminal prosecution is almost never the end goal of a complaint, and the long-term deterrence value of a complaint is limited, it is a strategy which is often deployed by women to interrupt an episode of violence or prolong violence-free intervals.

Civil Protection Orders (CPOs) for domestic violence are one among a repertoire of legal and social service interventions promoted by the global women’s rights movement to address the problem of IPVW (other interventions are counselling, shelters strengthening of criminal laws, consciousness raising programmes and research). Implicit in the demand for a civil remedy for IPVW is the understanding of law as an important site of feminist action that can challenge women’s subordination. Along with various forms of direct action to support victimised women, women’s movements placed a strong emphasis on legal reform with the expectation that it can play a critical role in interrupting the pattern of domination and control inherent in such violence. However, as Rajan points out in the opening quote, the enactment of these laws are in themselves insufficient to ensure protection of women from violence. This paper examines whether the promise of the PDVA as a civil remedy for IPVW is being fulfilled in Sri Lanka through an examination of the number of cases being filed under the PDVA, as well as the experiences of women filing cases under this law.

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1 This paper is concerned with intimate partner violence against women and not with domestic violence as defined by the PDVA which includes violence perpetrated by one family member against another.
The findings of this study reveal that the Act remains a remedy of last resort to women-survivors of violence. Furthermore, in the case of women who do decide to file a case under the PDVA the outcomes are unpredictable and contingent. The paper argues that familial ideology operates equally within society and within Magistrate’s Courts limiting the number of cases filed as well as the protection available under the Act. However, in contrast to number of cases filed under the PDVA, large numbers of women are accessing the Maintenance Act of 1999 to exit a violent relationship without the same censure and stigma that attaches to those filing cases under the PDVA. Drawing from the work of Ratna Kapur and Brenda Cossman (1996), the paper goes on to argue that familial ideology works in unpredictable ways within judicial systems and that women litigants navigate both institutional barriers such as delays and inefficiencies as well as familial ideology in claiming rights. Both activists and academics need to be attentive to these tactics and strategies if we are to more effectively support women survivors seeking redress under the law or use law reform as a tool for promoting respect for women’s rights. This is not to completely negate the ability of the PDVA to ensure protection for women-survivors of IPV. Rather the purpose is to highlight implementation problems with a view to begin to address them.

The paper draws from a total of 25 interviews. The 25 respondents comprise five male lawyers, 14 female lawyers, three women’s rights activists from organisations providing legal aid to survivors of IPVW and three police officers attached to Women and Children’s Bureau Desks from the districts of Colombo, Kandy, Jaffna, Batticaloa and Anuradhapura. The interviews in Colombo, Kandy and Jaffna were conducted in 2010 and 2011. The interviews in Anuradhapura and Batticaloa were conducted in 2014. The paper also draws from one focus group discussion (FGD) with a group of women survivors of violence conducted in 2014, none of whom had made an application under the PDVA. The paper builds on the analysis by Dhara Wijayatilake of 37 PDVA cases filed by Women in Need (WIN) between 2005 and 2009, which was published in 2009. Even though judicial discourses are the subject of this paper, we were unable to interview Magistrate’s Court judges, as they are unwilling to be interviewed without authorisation from the Judicial Service Commission, which we were unable to obtain. Two judges shared their views off the record and their interviews are not reflected in this paper. We also did not interview any women who had made an application under the Act. The paper is necessarily a second hand account of women’s experience of using the PDVA. This is a limitation of the paper.

All respondents quoted or cited in the paper have been anonymised. The interviews were conducted by myself and a team of four researchers. All interviews were transcribed verbatim. Interviews conducted in Tamil were transcribed and translated into English.

The PDVA as a Civil Remedy for Domestic Violence
The PDVA allows ‘any person’ who suffers or is likely to suffer domestic violence to seek a protection order from a Magistrate’s Court. The court is empowered to summarily issue an Interim Protection Order valid for 14 days. A Protection Order (PO), valid for 12 months can then be sought on the basis of evidence presented before the court. These orders can bar the aggressor from committing further acts of violence as well as make a
number of other prohibitions. The Act defines domestic violence, firstly, as acts of ‘physical violence’, which constitute those offences already recognised under Chapter XVI of the Penal Code and secondly it recognises ‘emotional abuse’—defined as a pattern of cruel, inhuman, degrading or humiliating conduct of a serious nature directed towards an aggrieved person. In issuing interim protection orders and protection orders, the court is required to balance the needs of the applicant and children (including their accommodation needs) and any hardship that may be caused to the aggressor. The Act focuses on ensuring the safety of the applicant by providing a civil remedy even while preserving her right to initiate separate civil or criminal action as permissible. Failure to comply with the protection order is an offence punishable with a fine not exceeding 10,000 rupees or with imprisonment of either description for a term not exceeding one year or both. In addition to the aggrieved person, the Act recognises that a police officer may apply for a PO on behalf of an aggrieved person. In the case of a child, the Act allows a parent, a formal or informal guardian, or a person authorised in writing by the National Child Protection Authority (NCPA) to apply for a PO.

Civil Protection Orders are now part of the legal landscape in a number of countries. This proliferation of civil laws that address IPVW can be attributed to the development of international normative standards for addressing violence against women and the work of feminist activists and state level bureaucrats who act as intermediaries between transnational fora where women’s rights norms are discussed, debated and produced and the local context where they are adopted and implemented (Merry 2006). Of particular significance in this regard is the work of the UN Special Rapporteur on Violence against Women who reframed violence against women in the family as a violation of human rights. Her 1996 report which was dedicated to the issue of domestic violence challenged the public/private divide, developed the concept of due diligence, and recommended that national governments should undertake legal reform to address the problem in accordance with model legislation proposed by her (Kois 2007). Following the articulation of these standards, the Committee on the Elimination of Discrimination against Women (CEDAW) in particular began to grapple with interpreting these standards and giving it meaning both in the consideration of country reports and in individual cases. The concluding observations and decisions of the Committee built upon the principles discussed above and highlighted the practical need for protective measures and legal reform (Hasselbacher 2010). While there were already a number of countries which had adopted civil legislation on the issue of domestic violence prior to this report (for e.g. Between 1976 and 1992 all 50 states of the United States of America enacted civil protection order legislation, New Zealand 1990, South Africa 1993, Malaysia 1994, Australia 1994), the report provided the impetus for the adoption civil remedies in a number of other countries including Sri Lanka in 2005.

CPOs have been analysed both in terms of their symbolic power as well as the material benefits to individual victim survivors. At a symbolic level, protection order laws have been analysed in terms of its ability to render public what was formerly a private family matter; its ability to send a message to society in general and abusers in particular that violence against intimate partners is unacceptable (Kelly 2005; Schneider 2000) and its potential to
challenge popular and dominant narratives about IPV which seek to trivialise, normalise and legitimise such violence (Kodikara 2012). Narratives of IPVW told before the judiciary as well as authoritative judgments of the court on these issues, are also recognised as playing an important role in challenging the cultures of tolerance and reconciliation which underpin and perpetuate such violence as well as myths about what is IPVW, its causes and its effects as well as appropriate responses to it (Hunter 2008; Fenton 1999).

At an individual level, CPOs give complainants the power to invoke the law as a protection measure without the same degree of coercion and state control inherent in criminal remedies and without criminal sanctions against the perpetrator (Murphy 2003: 504). They are less time-consuming and less-burdensome to obtain and the evidentiary standards necessary to prove violence is less than in criminal proceedings. They have the potential to ensure immediate relief and protection from violence, by empowering a judge to order the perpetrator to alter his behaviour, leave the home, and cease contact with the victim. They can also ensure diverse forms of other relief (e.g., maintenance, temporary custody and return of property) (Ko 2002: 367-68). Some CPO laws also make provision for counselling for both parties with a view to effecting reconciliation between them.

CPO’s have also been analysed in terms of their power to shift the burden of blame that is often carried by a survivor and offer her a new subjectivity as a bearer of rights (Engle Merry 2006) and in terms of a ‘bargaining chip’ that enables complainants to regain or bolster their relative power in the relationship through the authorisation of a judge (Goldfarb 2008; Murphy 2003). Hunter sees the complainant in these cases as the subject of her own action, rather than merely being the object of proceedings (2008:1). Michelle Waul (2000) thus describes the protective order as unique among the array of judicial responses to domestic violence because it “represent[s] the intersection of traditional community-based and justice system approaches: victim empowerment coupled with deterrence” (cited by Murphy 2003: 504). The transformative potential of CPOs is perhaps best summarised by Rajan when she states that:

... these laws create divisions within the family, pits rights against naked power, counters violence by a legal protection order, a piece of paper, a threat of arrest, a form of surveillance, checks patriarchal privilege by imposing the law as limit, rule, restraint, protocol or pedagogic instruction about behavior; undermines the autonomous regime of the patriarchal household operating as a regime with its own rules, regulations, forms of control, surveillance, obedience, hierarchies, contempt and punishment by bringing it within the overarching regime of a single, uniform formal legal system. (2005: ??)

But to what extent is this potential of civil protection orders being realised in Sri Lanka? In the next section, I examine the way in which familial ideology operates to limit the number of cases filed under the PDVA as well as within judicial decision making once a case is filed. I elaborate on the concept of familial ideology before going on to argue that violence against women, and in particular intimate partner violence against women tend to be trivialised, normalised or dismissed in society.
Familial Ideology
Dominant social and cultural norms in Sri Lanka tend to privilege the family unit over a woman's right to bodily integrity. Indeed such violence is often seen as a normal part of married life or as a temporary disruption in an otherwise peaceful household (Kodikara 2012). This discourse about violence, is part of a broader discourse around the family where, a good wife is one who listens to and obeys her husband, remains silent in his presence, avoids socialising outside the family and attends to household chores and childcare (de Alwis 1995; Marecek 2000). Violence is to be endured silently and not be disclosed to the public. As enjoined by the Sinhala idiom ‘Gedara Gini Eliyata Danna Epa’, (roughly translated as ‘home fires’ must be kept confined to the home) breaking the silence surrounding violence is taboo.

In this cultural context, only a small percentage of women who experience abuse dare to seek institutional redress. Furthermore, in the case of the few women who do decide to file a case under the Act, an Interim Protection Order and/or Protection Order is not guaranteed, because of judicial privileging of the family unit over women's right to be free of violence. Familial ideology thus operates both explicitly and implicitly through the judicial process to delay or deny women protection promised by the Act. The discourse around family values is of course not unique to Sri Lanka. Whether described as familial ideology in India (Kapur and Cossman 1996), the public-private divide in the USA (Schneider 1994) or cultures of reconciliation in Trinidad and Tobago (Lazarus-Black 2007), cultural norms that recognise and privilege the family as the basic unit of society and which seeks to define the roles of men and women within the family persist across cultural contexts. In these discourses, women are considered to be primarily responsible for child rearing and domestic labour, biological and cultural reproduction and protection of family honour; men are considered to be the providers and breadwinners. Violence in the family is considered private business to be resolved privately and not a matter for courts of law. The trope of good and bad wives and mothers are also ubiquitous within these cultural norms. Good women are those who accept and obey the roles defined by the ideology as natural and immutable without question and make sacrifices in fulfilment of the role assigned to them. Bad women are those who go against the grain of these discourses. Thus as Kapur and Cossman point out, 'the family’ in these discourses, does not simply describe the empirical reality of kinship or household structures, rather it has an additional ideological dimension and meaning, which operates to naturalise and universalise the sexual division of labour, while obscuring and legitimising unequal power relationships within the family structures (1996: 89).

In the next section, I situate these numbers of women filing cases under the PDVA in the context of other statistics relating to prevalence, complaints to the police and support services drawn from different studies. The intention is to provide a generalised idea of the numbers of women accessing the PDVA as compared to the population of women affected by intimate partner violence rather than a rigorous and scientific assessment of the exact numbers.
The Matter of Numbers

As in other parts of the world, intimate partner violence against women (IPVW) in Sri Lanka is one of the most pervasive forms of violence which shatters the myth of the family as a sanctuary of tranquillity and harmony. Women irrespective of their class, caste, religion, ethnicity and geographic location are vulnerable to such violence. Although national level prevalence statistics are not available, several micro studies have nevertheless attempted to determine prevalence at the community, district and provincial levels (Kodikara with Piyadasa 2012). Of around 12 prevalence studies that have been done over the years, prevalence rates range from 18.3 percent in a study done among pregnant women in Badulla (Moonesighe et al. 2004) to 60 percent in a low income urban settlement (Deraniyagala 1992). In a study conducted in 2012 in the four districts of Batticaloa, Hambantota, Kandy and Colombo, 21 percent of women reported domestic violence while 24.2 percent of men admitted to perpetrating such violence. Ten percent of women also said they were forced into sex by an intimate partner, while 14 percent of men reported forcing their intimate partner into sex (de Mel 2013). Although there is a wide gap between the lowest and the highest prevalence rate in the 12 studies, five of the studies report prevalence rates between 30 percent and 36 percent. Two of these five studies used the questionnaire developed for the World Health Organisation (WHO) multi-country study on ‘Women’s Health and Domestic Violence’ and therefore claim to be comparable to studies done in other countries using this questionnaire (Kodikara with Piyadasa 2012). Based on an evaluation of these studies it is safe to assume that at least 30 percent to 36 percent of women in Sri Lanka face violence within their homes.

For instance, a recent Centre for Women’s Research (CENWOR) (2011) study of non-poor households in several districts found that only 42.5 percent women experiencing violence from a partner or husband had gone to the police. Those seeking legal aid were even less. Only 14.4 percent had sought legal aid and advice. In a community survey of domestic violence conducted in the Western Province, Jayasuriya et al. (2011) found that only 23 percent of the abused women had accessed any institutional services including the police, hospitals, courts, social services, legal aid, women’s organisations and religious institutions.

Of those women seeking institutional redress, those who will decide to file a case under the Act are likely to be even less. Exact numbers of women filing cases under the PDVA are however, impossible to estimate with any precision as official statistics of cases filed under the PDVA are not available. In the absence of such data, I rely on the number of cases filed by the police, the Legal Aid Commission (LAC, a semi-government institution), and Women in Need (WIN, a non-government women’s organisation) to get an idea of the

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2 Although media reports and some studies cite a 2006 survey conducted by the Ministry of Child Development and Empowerment to the effect that 60 percent of women across Sri Lanka as well as 44 percent of pregnant women are subject to domestic violence, the source of these statistics is unclear. See for instance “Domestic Violence: Facts, Legislation and Reality” by Sumaiya Rizvi, Daily Mirror, 25 February 2011 and “Women Battered Despite Domestic Violence Law by Feizal Samath, 11 October 2010, which both cite these statistics.

3 The LAC has approximately 75 centres across the country.

4 WIN works through nine crisis centres located in Anuradhapura, Colombo, Badulla, Batticaloa, Kandy, Mata, Puttalam and Jaffna; eight hospital desks, five police counselling desks and eight women’s resource centres.
extent to which the Act is being used. It should be noted that although the Act does not grant locus standi to women’s organisations or legal aid groups to bring an application on behalf of an applicant, this gap has not deterred such organisations from extending support to survivors of violence to file cases in their own right.

According to statistics obtained from the Children and Women Bureau Desks (CWBDs), the police commenced filing cases in 2009, when they filed 55 cases. In 2012, they filed more than 400 cases across the country. The LAC filed 46 cases in 2006 and 353 cases in 2013. Women in Need filed 13 cases in 2006 and 40 in 2013. In the case of the police and LAC, the number of cases being filed is slowly and steadily increasing (except for a dip in police cases in 2011). In the case of WIN, the number appears to have stabilised around 40 cases per year.

**Table 1: PDVA cases filed by the Police, Legal Aid Commission (LAC) and Women in Need (WIN)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases filed by the Police</th>
<th>Cases filed by LAC</th>
<th>Cases filed by WIN</th>
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<tbody>
<tr>
<td>2005</td>
<td></td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>0</td>
<td>46</td>
<td>13</td>
</tr>
<tr>
<td>2007</td>
<td>0</td>
<td>42</td>
<td>13</td>
</tr>
<tr>
<td>2008</td>
<td>0</td>
<td>59</td>
<td>17</td>
</tr>
<tr>
<td>2009</td>
<td>55</td>
<td>73</td>
<td>34</td>
</tr>
<tr>
<td>2010</td>
<td>(Jan. to Sept.) 247</td>
<td>150</td>
<td>32</td>
</tr>
<tr>
<td>2011</td>
<td>142</td>
<td>238</td>
<td>51</td>
</tr>
<tr>
<td>2012</td>
<td>405</td>
<td>-</td>
<td>74</td>
</tr>
<tr>
<td>2013</td>
<td>499</td>
<td>353</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td>948</td>
<td>961</td>
<td>278</td>
</tr>
</tbody>
</table>

Source: Police, LAC and WIN

Contrary to official discourses of political leaders (see Kodikara 2012), lawyers filing cases under the Act state that it is only in extreme cases of violence that women resort to the Act and that these cases represent only a fraction of those who are affected by intimate partner violence or even those who make complaints to the police. A survey conducted by the International Centre for Ethnic Studies (ICES) in fact revealed that CWBDs received more than 90,000 ‘family disputes’ in 2009, a large proportion of which, according to sources within the police, pertain to complaints of violence lodged by women. The number of PDVA cases filed by the police in the same year amounted to less than 1 percent of the complaints of violence received by them (Kodikara with Piyadasa 2012). (Similar comparison is not possible for other years as we do not have access to the total number of complaints received by CWBDs for these years).
Yet the extent to which women access civil protection orders may still differ across cultural and geographical contexts. In India for instance, approximately 10,000 cases were filed under the Protection of Women from Domestic Violence Act (PWDVA) in the first year of its operation.⁵ According to an Evaluation Report of the PWDVA, in a nine-month period between April and December 2013, 16,947 cases were recorded.⁶ In Trinidad and Tobago, (with a population of only three million people) Lazarus-Black documents more than 8,000 protection order applications received by 11 Magistrate’s Courts during a period of six months from January to June 1994, a mere three years after the enactment of the Domestic Violence Act of 1991(2001).

**Implementation Problems**

The passage of civil protection order laws do not automatically resolve a number of serious shortcomings of the legal system in relation to women’s experiences (see Lazarus-Black 2007; Hunter 2006). Feminist engagements with the state to achieve legal rule and policies that respond to women’s harms have repeatedly been dogged by implementation problems. Studies on protection orders demonstrate that those responsible for implementing are often highly resistant to putting provisions of statutes into practice and that much-heralded legal interventions may have little or no impact in practice (Hunter 2006; see also Lazarus-Black 2007).

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In this section, the paper looks at the experience of women filing cases under the PDVA in Sri Lanka. The concern is not with explaining the objective outcomes of cases, but rather the ways in which judges make sense of the PDVA, frame their decisions, and select or create justifications (see Phillips and Grattet 2000:569).

As mentioned at the outset of the paper, despite the salutary provisions of the PDVA which allows a Magistrate’s Court to intervene in cases of IPVW, problems of implementation that normally bedevil the legal system continue to pose obstacles to obtaining POs. The obstacles to claiming rights under the law in Sri Lanka include institutional and structural factors such as bureaucratic delays and inefficiency as well as the lack of independence of law enforcement authorities including judges due to the steady erosion of the rule of law. These obstacles are further compounded in the case of women due to the overwhelming domination of the legal profession by men, lack of familiarity with rules of behaviour, lack of formal and informal connections, limited access to networks of power outside their immediate family and community and the constant threat of further violence and exploitation by men in power. As one lawyer pointed out women who access the judicial process have to necessarily be ready to deal with demands for bribes including sexual favours by male officials.

For a woman access is difficult. Women are economically also very weak. They don’t have that kind of money. And they don’t also know how to do things . . . When a woman goes to a police station to make a complaint of violence, the policeman who takes the complaint wants other favours or will ask for her telephone number. The attitude will be – “I am helping you, you help me”. And mostly it is a physical relationship that they want no? Almost all the women come and tell us similar stories. That’s a real problem.

Unlike women, male perpetrators on the other hand can typically access and mobilise networks of collusive power or cooperative power that reinforce and support their behaviour rather than condemn it. These networks can take different forms depending on the class, ethnicity and geographical location of perpetrators from old boy networks to patron-client relationships where some men align along shared (perceived or real) interests, which include friendships, mentoring relationships or patronage relationships. When studying police responses to domestic violence in a rural part of the United States, Websdale (1998) found relatively strong social ties between perpetrators and police. Local men who beat their wives were friends with the very police officers who should have arrested them for wife-beating. Police officers who should have supported the woman took the side of her abuser because he was their buddy. The perpetrators and the law enforcers were connected through social ties and shared patriarchal attitudes. As a result perpetrators could rely on allies with significant formal power whereas victims were cut off this very source of power; to them, old boys’ networks rendered the criminal justice system useless (Renate Klein 2012: 108).

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7 This has been compounded following the 18th amendment to Sri Lanka’s Constitution which ???
8 Interview with PD, Lawyer, Colombo, 24th September 2014.
Additionally, the relative autonomy of legal decision-makers, and the scope of the discretion they possess, provides ample opportunity for cultural norms to persist and even thrive in opposition to legislative mandates. As many lawyers pointed out judges bring their own personal biases to the decision-making process. One lawyer after another interviewed for this study expressed the view that the outcome of filing a case under the PDVA is impossible to predict and is contingent on the judge handling the case. A thread running through the narratives is the ambivalence about the PDVA among judges and police officers and the fact that not all judges involved in the judicial process see the Act in a positive light. Nor are they unanimous about the objectives of the Act. These include fears that the Act is undermining marriage and increasing the number of divorces, trivialisation and minimisation of violence, and discourses about vengeful and spitefulwives who are jeopardising family harmony and unity. Some lawyers reported of judges openly expressing concern that women use the Act to get a protection order, when they are having extramarital affairs and they want to get rid of their husbands so they can move in with their new lovers. It is possible that judicial discourses have drawn succour from political discourses about the Act which have questioned the cultural appropriateness of the Act (which I have documented elsewhere).

The initial challenge faced by organisations filing cases under the Act related to ignorance of the law within the judiciary and the police. When Women’s Development Centre (WDC) in Kandy first filed a case the judge was not aware of the existence of the law. Women in Need (WIN), Kandy also reported an instance where the primary court judge who was hearing the case had not heard of the Act and only read the Act after the case was filed. Many women’s organisations since then have engaged with the police, magistrates as well as lawyers to raise awareness and knowledge about the Act. WDC for instance printed 500 Sinhala and 500 Tamil copies of the Act and distributed it among Magistrates as well as police officers. WIN has conducted programmes for magistrates and the police together with the Judges Training Institute and the Ministry of Justice with visible impacts. However, as one lawyer interviewed for this study pointed out, unless these programmes are formalised as a routine part of the training received by judges and police officers, it would be difficult to maintain levels of awareness within the judiciary and the police. She further stated that in the current political/economic climate it is increasingly challenging for NGOs to organise training programmes for judges and police officers due to both lack of support from line ministries and the higher echelons of the judiciary as well as the astronomical costs associated with these training programmes which have to be held in five star hotels in keeping with the status of the participants. While lawyers in the process of defending cases can also perform the function of educator, much depends on the relationship between judges and lawyers (see further below under discussion on lawyering).

The lack of awareness about this law almost ten years after its enactment is testimony to its marginal status within legal education and judicial circles. Below I discuss how institutional and structural barriers come together with familial ideology to affect judicial decision-

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9 Interview with LC, women’s rights activist, Kandy, 3rd January 2011.
10 Interview with PC, Lawyer, Kandy, 4th January 2011.
11 Interview with WS, Lawyer, Colombo, 14th August 2014.
making at every level of the PO application from the inquiry to the counselling process to enforcement of POs.

1. Delays and Denials
The PDVA seeks to ensure the safety of victim-survivors through a two-step process; firstly through the grant of an Interim Protection Order (IPO) and secondly through a PO. In terms of section 3 of the PDVA, the application for a protection order has to be considered forthwith by the magistrate and an IPO granted or refused. The inquiry for a PO (which can be valid for a period of up to one year) has to be then held within 14 days of the application. An IPO in terms of section 4(1)(a) of the Act can be issued based on affidavits produced before the court and even without leading evidence from the respondent or other witnesses. These provisions of the PDVA give the magistrate the power to deal with applications under the Act as a matter of urgency. Delays in granting of the IPO and PO as well as denial of an IPO and a PO following an application to a magistrate can increase the vulnerability of victim-survivors to more frequent or greater levels of violence.

As Wijayatilake points out the meaning of the term forthwith is obvious, and it would be reasonable to expect that an application is considered immediately or on the same day. While Wijayatilake found a high degree of compliance with the requirements of section 3 (75.7 percent of PDVA cases studied by her were considered on the same day that it was filed (2009: 21), yet some judges do not treat these cases with the urgency that is required, because of their ambivalence towards the Act. In at least 19 percent of cases analysed by her the case was only heard one week later. Lawyers interviewed for this study also reported that even when the matter is taken up within a day or two there can still be considerable delay (sometimes up to 14 days) in obtaining the written copy of an order, placing the security of the applicant in such cases in jeopardy. There can also be considerable delays in fixing the date for and holding a full inquiry to determine the question of the PO and the issuance of a show cause notice on the respondent i.e. notice to show cause why a PO should not be issued against him (Wijayatilake 2009: 27). Some lawyers are, of course, not above ‘paying something’ to expedite the bureaucratic machinery whether to get a written copy of an order or to get notice served on a respondent. As one lawyer pointed “Yeah it should not be done, but in the interest of the victim-survivor, we are reduced to doing such things”.

2. Evidentiary Requirements
Different magistrates also take different approaches to the evidence required to establish the need first for an IPO and later for a PO. In terms of section 4 of the PDVA and its proviso, when the application is first considered, the IPO can be issued on the basis of the written application and affidavit evidence. The examination of persons including the petitioner, other witnesses or the respondent is not essential. The Act therefore takes cognizance of the fact that there will be situations in which the complainant may not even be able to present herself/himself in court for examination (Wijayatilake 2009: 23). While many magistrates consider the written application and affidavits sufficient for the issuance
of an IPO, there are others who refuse to issue an IPO without examination of the applicant. WIN, Colombo reported of an application for an IPO filed by them in 2011 which was supported by five police complaints and a medical report, where the judge still refused to grant an IPO without recording the evidence of the applicant (Case No.91609/DV).

Some judges go even further by insisting on leading evidence of the respondent before the issuance of an IPO. As an independent lawyer working in Colombo pointed out,

Some magistrates are reluctant to give ex parte orders even in the case of IPOs and insist on leading evidence of the husband before the IPO is issued, because of their belief that the law is sometimes abused by women who want to oust their husbands from the homes that belong to them (the husbands). This results in delay and consequently women face additional abuse.\(^\text{12}\)

The PO order is only issued following an inquiry. In making a determination as to the issue or otherwise of a PO, the court is required to consider the evidence that has been previously received (i.e. at the initial consideration of the application) and any further affidavits or oral evidence as the court deems necessary [see 6(1)]. The purpose of the inquiry is to establish to the satisfaction of the court, the fact of violence. Yet some lawyers for respondents attempt to justify the use of violence by the respondent and some judges follow this line of inquiry. In terms of the Act, it is not the role of the judge to inquire whether violence was justified or provoked by or caused by an act of omission or commission by the survivor. As one lawyer for this study pointed out a “PO is required to restrain the respondent in order to prevent the commission of an act of domestic violence and to ensure the protection of the aggrieved person. Yet, there is a tendency to look at contributing factors that provoke violence, whereas such matters should be addressed in the course of counselling”.

3. The Limited Nature of Protection Orders

The effectiveness of both IPOs and POs depends on the comprehensiveness of relief provided as well as the specificity of its terms. The PDVA in section 12(1) provides for a range of IPOs and POs which include prohibiting the respondent from entering and occupying the shared residence, preventing the respondent from using or having access to shared resources, contacting or attempting to establish contact with the aggrieved person in any manner whatsoever, committing acts of violence against any other person connected to the aggrieved person, following the aggrieved persons as to cause a nuisance, and selling, transferring, alienating or encumbering the matrimonial home so as to place the aggrieved person in a destitute position [See section 12(1)].

Thus the law provides for the possibility of issuing IPO/POs which do not merely restrain the offender from further violence, but those which also limit the possibility of such violence by limiting/restricting physical contact and proximity between the victim-
survivor and perpetrator going to the extent of prohibiting entry and occupation of the shared residence. The type of order received can have a significant impact on the security of the applicant. As Rajan points out the formulation of civil remedies of victims is premised not just on a feminist politics relating to the inviolability of women’s bodies but a feminist politics of space and a critical connection made between violence against women’s bodies and the dangers inherent in the domestic space (Rajan 2005). Thus protection orders are premised on the concept of urgency irrespective of ownership of the shared residency or right to custody of children of the offender. Thus an exceptional legal regime has been established via POs for the same.

Yet interviews with lawyers and the study of Magistrate’s Court decisions make it clear that not all judges are ready to embrace the radical potential of the law. Many judges are hesitant to issue protection orders which limit an offender’s access to the shared residence or his children irrespective of the seriousness of the violence. As reported by one activist from Ampara, one judge is reported to have told lawyers and women’s organisations “not to bring PDVA cases before him where the house belongs to the husband”. He believes that the PDVA is in conflict with property laws and the husband cannot be prohibited from entering his own house.

Thus where the right granted by the PDVA comes into conflict with other rights, there is a tendency to privilege the right to custody or the right to property over the right of women’s security.

4. Poor Quality of Counselling

Section 5(2)(a) of the PDVA provides for the court to order counselling following the issue of an IPO. Six out of the 37 cases analysed by Wijayatilake were referred for counselling to a family counsellor. In all of these cases, a report was called for by court and a report was submitted (2009: 28-29). Wijayatilake also states in many cases it was reported that counsellors had forced the aggrieved person to settle the matter and go back to the abusive environment. The pressure brought upon by the counsellor was able to be withstood only by those who were strong enough. Others succumbed to the pressure and the outcome was not positive. She refers to one incident where the family counsellor who was partial towards the respondent, forced the applicant to settle the case. When she refused in view of the abuse and the violence, the judge blamed the applicant and stated that she was wrong (2009: 29).

Many of the respondents that were part of this study also raised concerns about the quality and purpose of counselling as follows:

> Court mandated counsellors do a poor job. Clients complain saying that they are not given a chance to tell their story, instead they are prescribed solutions. Furthermore for all four courts in Batticaloa, there is only one court counsellor. So practically-speaking that counsellor is overloaded.13

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The family counsellor was judgmental which resulted in injustice to the victim. The applicant prayed for time to consider and to lay by the case. The request was turned down forcing the applicant to terminate the case.\textsuperscript{14}

I am not happy with the counselling process as it can undermine the safety of the women. There have been instances where women reconcile after attending these counselling sessions only to be subjected to violence once they get back together again.\textsuperscript{15}

A number of respondents linked the poor quality of counselling to the lack of proper qualifications of the counsellors. Respondents stated that although many counsellors have an undergraduate degree, it is completely unrelated to the task they are expected to perform. Counsellors may be qualified in agriculture or geography and have no training in counselling. As Wijayatilake points out,

If unqualified persons become involved in counselling the consequences can be disastrous. The purpose of seeking court intervention will be brought to naught and the judicial process rendered a mockery, if counsellors compel the aggrieved party to go back to the aggressor without any attempt to reform the aggressor. It is vital that the counselling process addresses the root cause of the violence. Counselling should never amount to a temporary ‘patch up’ without an attempt to reform the aggressor. Counsellors should not approach their responsibility on the premise that responsibility of maintaining the family unit is that of the wife alone and that a husband may be permitted excesses. (2009: 29)

5. Lack of Monitoring and Enforcement of POs
Section 5(2)(b) and section 12(1)(e) of the Act provide for the court, at its discretion to appoint a social worker, family counsellor, probation officer, family health worker or child rights promotion officer to monitor interim protection and protection orders. In the case of interim protection orders the officer appointed to monitor may be requested to submit to court a report on the date specified for the inquiry into the application in terms of subsection 4(1). In the case of POs, such officer may be asked to submit to court a report every three months. Furthermore, failure to comply with a protection order is a criminal offence punishable with imprisonment or a fine or both (Section 18 of the PDVA).

These provisions relating to monitoring of and breach of a protection order are crucial to make the legal remedy under the Act meaningful and ensure the safety of victim-survivors. However, section 5(2)(b) relating to monitoring is a discretionary provision, and courts do not always make provision for it. In the experience of Women in Need, Colombo, the court only ordered for monitoring when requested by WIN lawyers. The lawyers at WIN also stated that they do not always request for monitoring and that monitoring is requested for only in cases where they think it is necessary. Lawyers working at WIN, Kandy stated

\textsuperscript{14} WS, Lawyer, Colombo, 14th August 2014.
\textsuperscript{15} FSD, Lawyer, Batticaloa, 18th January 2014.
that they had never requested for monitoring of an IPO or PO to date and it had not occurred to them to ask for monitoring of the POs.

Even where the court does order for monitoring of the IPO or the PO, it may not however be effective unless the person entrusted with the duty of monitoring takes this responsibility seriously. One respondent pointed to the fact that all persons named as monitors are supervised by and answerable to a different government department or ministries. Family health workers serve under the Medical Officer of Health (MOH) of the area. Family counsellors come under the Divisional Secretariat. Child rights promotion officers come under the NCPA. He was of the view that unless all these array of government departments and institutions are supportive of this additional responsibility placed on one of their officers by the PDVA, monitoring is bound to fail.

Respondents also referred to instances when officers appointed to monitor the IPO or PO end up supporting male perpetrators without addressing the safety needs of women. According to one lawyer corruption/collusion is so entrenched within some communities including the forces of law and order that they may actively collude in the act of violence or concealment of crime. Where the perpetrator is a wealthy or powerful member of the community, the likelihood of collusion between these men are particularly high. Middle and upper class women married to powerful elite (politicians, police officers etc.) may be at a disadvantage when it comes to effective monitoring of IPOs and POs.

There is also an issue with enforcement of IPOs and POs. Because POs are pieces of paper issued by judges, their ability to reduce violence depends significantly upon the police. Where the PO is violated, the complainant has to go back to court in order to get it enforced.

If a respondent violates the PO then you have to go back to court and say that he is violating the IPO or PO. The judge has to then direct the police to take him into custody or to take some other action. You can’t simply make a complaint to the police to take him in because you have a PO. It doesn’t work that way.

Respondents who were part of this study referred to instances where the police ignore complaints relating to breach of POs because of their own biases but also when the perpetrator is known to them. The possibility of collusion between perpetrators and the police are higher, when the perpetrator is a wealthy or powerful member of the community. Thus women married to powerful elites (politicians, police officers etc.) may be at a disadvantage when it comes to enforcement of POs under the PDVA.

The client obtained a PO against her husband who was a senior bank officer. But even after the PO, he was still forcefully trying to enter her home. She made an entry in the police but the police and husband had a link. […] Even though the
police station was next door, because he was a politician, they were not interested to monitor the PO. He once came and broke the door.\textsuperscript{19}

6. Settlements without Issuing of IPOs and POs
Settlement can be by the victim-survivor herself. Seeking a legal remedy for IPV is a difficult decision for most survivors. Indeed many are ambivalent about whether to take legal action or not and have to be convinced of the efficacy of these cases. Even after an application is made under the PDVA, many applicants withdraw the application or agree to settle the matter before the PO is issued. Some lawyers seem to think that the settlement rate is as high as 90 percent. The reasons identified for this high dropout rate include economic vulnerability and financial dependency, fear of retaliation, social isolation, community pressure, concern about losing custody of children, a deep emotional bond with the partner and wanting to preserve and improve the relationship. The ‘battered woman syndrome’ and women blaming themselves for the violence were also mentioned as reasons for why survivors seek to settle cases.\textsuperscript{20} What is of concern is that judges do not see anything wrong with settlements and in fact encourage applicants to seek a settlement. As Wijayatilake (2009) points out applications can be settled even without an inquiry or after an inquiry but without a PO of any kind from the court even though it was expected that in all cases where the circumstances indicate that an act of domestic violence had either been or was expected to be committed, the court will issue a PO. She goes on to state that the practice that has developed in this regard is somewhat different to the expectations with which the law was formulated. Even while ‘settlements’ afford the best chance for parties to continue living together, where the history of abuse is serious, and it is in most cases, this approach should be adopted with extreme caution.

Lawyers also reported of judges getting actively involved in attempts to settle the issue. According to a lawyer from Anuradhapura all cases handled by her in one particular Magistrate’s Court were settled by the judge as he dislikes domestic violence cases and thinks it should be settled for the sake of the children.

7. Lack of Respect for IPO /POs by Perpetrators
The fundamental goal of Civil Protection Orders as provided for in the PDVA is protection of survivors, not punishment of perpetrators. Nevertheless, they are premised on ideas of social control and deterrence linked to shame and fear. Shame related to the fact of the perpetrator’s action becoming a matter of public discussion and fear that non-compliance with a PO can result in penal consequences. The law assumes that the direct confrontation with the judiciary will have a deterrent effect, especially if the judge’s words and attitude at the hearing reinforce the order’s message that intimate partner violence will not be tolerated. As Lewis et.al. point out deterrence is invoked both in specific terms – to prevent individual violent men from re/offending and thus protect individual women and in general terms – to prevent future offenders and to build a cultural ethos which prohibits domestic violence and thus protects women as a community. Both the actual and the

\textsuperscript{19} NP, Lawyer, Colombo, 24\textsuperscript{th} November 2010.

\textsuperscript{20} NH, Lawyer, Colombo, 10\textsuperscript{th} November 2010.
symbolic power of the law are considered important (Lewis, Dobash, Dobash and Cavanagh, 2000 and 2001). And indeed there is evidence that invoking these laws can catalyse behavioural changes. Yet it does not have the same effect on all perpetrators, and there is a real possibility of increased violence at least in some cases. As R, a lawyer from Kandy pointed out “You can walk out of court and walk into further violence”.21

R narrated the case of a couple with one child; the husband was a teacher and the wife a family health worker. The wife had first come to the institution over a land dispute and he had represented her in this case. While this case was going on she had confided in him about problems with her husband including domestic violence. He then called the husband, and according to him “had a very effective and productive session”. The violence stopped for a period. But after some time the husband started beating her again. He then advised her to file a case under the PDVA for a PO and she agreed. One day while the wife, child and her mother-in-law was in the kitchen the husband ignited the gas cylinder, exploding it. Although none of them sustained fatal injuries, the wife and child sustained burn injuries.

Indeed, narratives of lawyers recounted incidents where the response of some men to them being hauled before court is increased levels of violence.

Some husbands become very angry with the wife for taking him to court. They say our family has never been to court, but this woman has dragged me into court house. It’s not even enough to kill this woman.22

In one instance after the wife filed a case under PDVA, the husband had cut her hand. In another, he walked out of court and slashed her face with a sword.23

The propensity to be contemptuous of the IPO/PO may vary depending on the economic/social status and class of the offender. At one end of the spectrum, offenders who wield power within their communities, such as politicians, can use their power and influence to ignore the PO. At the other end of the spectrum, offenders who are poor may have equal contempt for the law. Different power dynamics are at play here. Thus even where public officials such as police officers and samurdhi officers are interested to monitor the IPO or the PO, the man himself may have no respect for the law. NP another lawyer took the view that some (poor) men can take a certain perverse pleasure in defying the law. She quoted one perpetrator as saying: “Go ahead and make a complaint. I am ready to go to prison. I am not afraid of you”.

R, reported that he was now more diffident and more careful about filing a case under the PDVA.

22 Counselor, Kandy.
23 WIN lawyers.
We started filing cases in 2007. In 2007 we filed about 40 cases, but by 2009 it has come down to 5-7 cases. The reason for this decline is that now we are more cautious particularly after the terrible backlash against one of the women that we supported. In fact it was attempted murder. We were really alarmed by this incident. We suddenly realised that you can walk out of the court house, and there can be further violence. We are dealing with the family unit. There is no room to do experiments with that.

7. Lawyers

The legal services provided by many of the institutions interviewed for this study are provided free of charge. Some organisations, however, do not have in-house lawyers and are compelled to hire a lawyer as and when cases arise. Securing legal representation which is competent as well as sensitive to the issue at hand is however not an easy task. One male lawyer interviewed for this study raised the issue of judicial bias against female lawyers. He stressed the need for strong lawyers who can argue the case in favour of women in these cases. He was of the view that the highly-gendered nature of the legal system and the fact that most women victims tend to be defended by female lawyers allows little space to amplify women’s voices within it.

Lawyers who work with organisations who assist battered women are mostly women. [. . .]. The legal practice is dominated by men. Female lawyers are generally teased and ridiculed even by judges. It is chauvinistic and unacceptable but that is the reality of the situation. Men are often the abusers in intimate partner violence and these men will be more open to listening to a man than to a woman. Right now they are viewed as women-based organisations who are against men in general and they are doing very little to change that. I have even witnessed a case where a victim who sought assistance from (a women’s organisation) was, during cross examination, made to look like someone who was merely trying to ‘create trouble’ by ‘canvassing women’s rights’ because of the fact that she had sought such assistance.24

He went on to stress that in order for the legal profession to treat the issue of intimate partner violence with the seriousness it requires “these organisations should make a serious effort to include more male lawyers in their work”.25

In interviews conducted with Legal Aid as well as police officers attached to Women and Children’s Bureau Desks of police stations, it was possible to discern a certain disapproval of women’s organisations filing cases under the PDVA. One lawyer attached to LAC, Batticaloa hinted at a perception held by judges that women’s organisations supporting PDVA cases do so for money. According to her “LAC has a good reputation. Judges know that cases are not filed for monetary gain (as LAC does not charge a fee for DV cases). But lawyers in the private bar face challenges as judges are sceptical about their motives”. Another felt that police cases are considered more legitimate than cases filed by

24 Interview with NH, Lawyer, Colombo, 10th November 2010.
25 Ibid.
organisations. Police officers themselves are of the view that their cases are more legitimate as they hold an inquiry prior to filing a PDVA case.

It is true that in addition to the system’s hostility towards women, judges, the vast majority who are male also discriminate and are hostile towards female lawyers as well as women’s organisations who represent women survivors of violence. This hostility is then exploited to the maximum by male lawyers who represent the perpetrators. Our response however, should not be to cave in, but to challenge these attitudes. Progressive male lawyers can play an important role educating judges about the law and facts involved in the case at hand, the more general legal or social milieu in which the cases arise as well as pointing out their biases.

The PO proceedings in Sri Lanka are therefore deeply gendered. Additionally dominant discourses around the family can manifest in different ways during court proceedings; through the trivialising and minimising of violence, the dismissal of violence as a private matter to be dealt within the family unit and not a matter to be resolved through a court of law, or as a matter to be endured for the sake of children and the family. It can also manifest in notions relating to the exceptionalism of domestic violence and the liability of women to make false claims and which therefore must be corroborated (Hunter 2006, 2008). However, as I will argue in the next section of the paper, familial ideology can also operate to the advantage of women.

**Maintenance Act**

In the course of interviews with lawyers for this study, I was frequently and casually told that many women survivors of violence prefer to file a case under the Maintenance Act and that the real issue behind maintenance is violence. While it barely registered when first mentioned, following a few similar remarks made by a number of different lawyers, I began to ask questions about maintenance. A lawyer from Colombo told me that:

> Almost all maintenance cases that we assist in there is domestic violence. The men drink and beat their wives and do not financially support them. We normally tell the women of the PDVA when we hear that they are victims of violence, but many are not interested to file a case under it. They see domestic violence as normal. What is of more concern to them is the lack of maintenance. Normally when the woman is being beaten up, and the men don’t pay maintenance, they leave the house and go elsewhere. These are mostly poor women with no assets. They rent a house and then file for maintenance. 26

A women’s rights activist in Batticaloa further observed that for many years she thought the bulk of their case load related to maintenance, and only later realised the under-current of violence behind every maintenance case. 27

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26 Interview with MC, Colombo, 12th November 2010.
27 Interview with ES, Batticaloa, 28th August 2014.
The Maintenance Act enacted in 1999 allows a spouse who is unable to maintain herself or himself to apply for maintenance from the other spouse provided such other spouse has sufficient means to do so, and has neglected or unreasonably refused to do so [Section 2(1)]. The Act also provides that where a parent with sufficient means neglects or refuses to maintain his or her child, then such child is entitled to make a claim for maintenance [Section 2(2)]. Once an application is received, and the evidence is considered, including the evidence given by the respondent, the court can order the respondent to make a monthly allowance as maintenance at a rate fixed by the Magistrate as he/she thinks fit. The amount is determined having regard to the income of such person and the means and circumstances of the spouse (Section 1). Before an order is made, the respondent is required to show cause, if any, why an order should not be made, and furnish to court, his/her salary particulars (Section 6).

The Act gives the Magistrate the power to compel the attendance of the respondent against whom the application is made as well as any other person to give evidence in accordance with Chapter V and VI of the Code of Criminal Procedure (CCP) Act, No. 15 of 1979 [Section 12(1)]. Also under the terms of the CCP, the court has the power to order the production of any document that is considered necessary for the inquiry where the respondent neglects to comply with a maintenance order, the court can sentence such person for the whole or any part of each month’s allowance in default, to simple or rigorous imprisonment for a term which may extend to one month [Section 5(1)]. In terms of the Act, either spouse can initiate maintenance proceedings while living in the matrimonial home, or even if she/he has abandoned the matrimonial home.

The 1999 legislation on maintenance introduced the concept of joint and shared responsibility, moving away from the concept of a male breadwinner/head of household and dependent wife (in conformity with an earlier statutory policy that introduced this concept into the law on maintenance after divorce) (See Goonesekere 2006: 20). Under these new provisions, a wife is no longer entitled to maintenance simply by virtue of marriage, and no longer automatically considered to be economically dependent on her husband. Similarly, the duty of support of children is no longer exclusively on the father, but on both parents.

Yet the overwhelming number of maintenance cases filed is by women. It is a fact that in contrast to the number of women seeking a remedy under the PDVA, thousands of women are filing cases under the Maintenance Act of 1999. Consider the following statistics: The Legal Aid Commission in 2009 filed 6,391 maintenance cases as opposed to 128 cases under the PDVA.28 One of the women’s organisations interviewed for this study had handled a total of 213 maintenance cases in 2012-13 alone as compared to a total of 25 PDVA cases filed during a period of eight years from 2006 to 2014.29

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28 Official communication from the Legal Aid Commission.
29 Interview with SD, Lawyer, Anuradhapura, 21st February 2014.
Lawyers did report a number of challenges in claiming maintenance such as proving the monthly income of respondent husbands, the low payments ordered by the court, and non-compliance with court orders by respondent husbands. Yet getting a court order for child maintenance appears to be relatively easy. It seems that judges still operate from the assumption that the primary duty of support of children lies with the father and even wives who are no longer sharing the matrimonial home are entitled to child support. The focus of the maintenance inquiry is on the fact of non-maintenance and whether the father is failing in his duty of care, and if he is, the need for court intervention to rectify this situation and not so much on the mother’s duty of care. It appears that women who have left the matrimonial home are not required to explain or justify their reasons for leaving the matrimonial home. As one lawyer stated: “child maintenance is often granted on the first date of calling in court even without an inquiry. Even though in practice maintenance cases are sanctioning de facto separations between husband and wife, courts are much less concerned with the fact of separation or the reasons underlying the separation”.

Feminist scholarship tells us that non-maintenance is often part of the violence perpetrated by a husband to exert power and control over an intimate partner. It also tells us that economic dependency is one reason why women are unable to leave an abusive relationship (although economic independence is no guarantee that women will leave an abusive relationship or take action to end violence). Does the Maintenance Act allow women to leave an abusive relationship because it allows them to claim maintenance for their children (even if not for themselves). It appears so and it is doing that without the censure and stigma attached to invoking the PDVA. This is because in the context of maintenance, the dominant discourse around the family appears to operate rather differently. Following reforms to the maintenance law in 1999, although a wife is no longer assumed to be economically dependent on her husband merely by virtue of marriage, and shares the duty of supporting children with the father, courts continue to place the primary burden of child care on the father.

Thus judicial attitudes toward women who claim maintenance still operate within the discursive framework of familial ideology, and indeed reinforce assumptions about vulnerable and dependent women and male breadwinners. Even though it is patriarchal and patronising, this more supportive encounter with the judiciary under the Maintenance Act has become a critical resource for women survivors of IPV. In fact, separated wives refer to a sense of satisfaction gained by forcing their husbands to appear before the law, and power gained from having a hold on them via the law.

It could be argued that the use of the Maintenance Act by women demonstrates how women navigate patriarchal values underlying the legal system to their own advantage in this case even without naming the violence that they are subject to. This is not inconsistent with the experiences of women in other spheres where women manipulate situations without overt confrontation to achieve outcomes that are favourable to them. However,

30 GB, Lawyer, Colombo, 8th December 2010.
31 Focus Group Discussion with survivors of violence, Anuradhapura, 19th March 2014.
such manipulation is not on their own terms and stands at odds with a rights based framework. This is not a subject position that will work for all women. Firstly, the woman needs to have a place to go to. She also has to be reconciled to the fact of separation.

**Conclusion**

Laws which recognise civil protection orders for IPVW provide a new way of thinking about a victim-survivor’s experience of battering and a new subjectivity as a rights bearing citizen. As Merry points out

“[t]aking on this new identity requires a shift in the way a survivor thinks of herself. Instead of seeing herself defined by family, kin, she is invited to take on a more autonomous self, protected by the state. At the same time her actions allow the law to define her husband/partner as someone who has violated the law under the surveillance and control of the state. The ability of women to take on this identity as a rights bearing subject is however contingent on the extent to which the law resonates with local cultures, the role of intermediaries such as women’s organisations who can assist women to reframe their day to day problems in terms of rights and the response of law enforcement agencies”. (2006)

The way state officials treat domestic violence in turn impacts on the willingness of victim-survivors to see the harms and injuries suffered by them as a violation of a right, and the willingness to go before the law. She states:

...Thus an individual’s willingness to take on rights depends on her experience in trying to assert them. The more state institutions reflect back serious attention to her as a person with rights not to be battered, the more willing she will be to take on this identity. On the other hand, if these rights are treated as insignificant, she may give up and no longer think about her grievance in terms of rights. (Merry 2006: 215)

As she goes on to explain, even as local activists can encourage survivors of violence to see their injuries as a violations of their rights that the state is obliged to protect, they may be slow to do so, because it requires adopting a new sense of self that incorporates rights or a shift in subjectivity.

Following from this analysis, it is the contention of this paper, that there is little support for women to take on a rights defined identity as a battered wife under the PDVA. Those that do are seen by the judiciary as challenging cultural norms, breaking up the family, bringing shame on the family or spiteful and vengeful women who are trying to grab the property of their husbands or deprive them of their children. This is at least one reason why so few women are having recourse to the remedy available under the PDVA. Yet these same women are able to abandon the marital relationship because of spousal violence and claim maintenance for their children (even if not for themselves) without the same censure either from the community or the judiciary. The Maintenance Act allows women survivors of violence to retain the identity of good wife and good mother even as she challenges the power and control exerted by her husband. Women who go before the law
not as battered women but as dependent mothers have a very different encounter with those implementing the law. Judges who frequently refuse to grant protection orders which prohibit a perpetrator from entering the marital home, frequently sanction de facto separations by ordering maintenance for children under the Maintenance Act.

The problem raised by this paper reveals the different ways in which familial ideology operate within legal arenas. It also reveals the ways in which women negotiate these differences and the different subject positions offered by different laws. But what are the broader implications of this analysis?

Feminist engagement with the law resulted from the understanding that law is a particularly authoritative discourse. As Lucinda Finley argues:

Law can pronounce definitely what something is or is not and how a situation or event is to be understood. The concepts, categories and terms that law uses, and the reasoning structure which it expresses itself, organizes its practices, and constructs its meaning, has a particularly potent ability to shape popular and authoritative understandings of situations. (cited in Kapur and Cossman 1996:40)

Feminist demands for law reform relating to intimate partner violence including the demand for CPOs is part of a strategy to force the state to take such violence seriously. The intention is to make it a public problem, and to convey the message that the state will not tolerate such violence. It is part of the strategy to break the silence surrounding such violence. Yet ten years after its enactment the PDVA remains a remedy of last resort for women victims of IPV. Even when women do invoke the provisions of PDVA it can be a risky proposition. The Maintenance Act on the other hand allows some women to address the problem of IPVW by seeking de facto separations. Thus this paper finds that women survivors of violence navigate the judicial system to their own advantage, but it is of course not on their own terms. The preference to address violence through the Maintenance Act in fact renders it invisible and perpetuates the silence surrounding it. How do we then assess the promise of the PDVA in Sri Lanka?

References


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