Chapter - V

Role of functionaries in the implementation of the Act

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Prelude

In the previous chapter data obtained from the research area namely, Shimoga, Chickmagalore and Coorg have been analyzed. Eight parameters have been taken for analysis. However, before making inference of the analysis, it is essential to obtain first hand information from the authorities who are the functionaries under the Act. Any Act to be useful for the society is to be implemented properly. Unless it is implemented properly the object of the enactment cannot be achieved. The difficulties and practical problems come to fore only in its implementation. The researcher has attempted to collect opinions and suggestions of the functionaries namely, the Police Officers, Service Providers, Protection Officers, Judicial Officers and Advocates.

In exercise of the powers conferred by Section 37 of the Act, the Central Government has made 'Protection of Women from Domestic Violence Rules, 2006'. These rules provide the qualification, experience, duties and functions of protection officers, registration of Service Providers, appointment of Counsellors and other services.

The researcher is of the opinion that the views expressed by the officers practically dealing with domestic violence cases, will be useful in providing practical suggestions for implementation. Hence in

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1 Hereinafter called as Rules.
each research district following personnel have been interviewed individually and the excerpts of the interview have been recorded. The details of the persons contacted are provided in the table and the same is annexed in the appendix.

5.1 Police Officers

The primary function of every police officer is to address the needs of those who are affected by any crime. Generally the function of any police officer is to address any crime. However, whenever any aggrieved female member approaches the police station, the officer in charge’s duty is to find out the facts and if he is convinced will register a complaint for further action as per the Act. Prior to registration of a complaint, counseling is provided. Majority of cases are resolved by counseling. A separate register is maintained to show the cases resolved in Counseling. It is submitted that even the police personnel are providing counseling to the parties and try to resolve the disputes amicably without taking recourse under the law. This helps in sustaining the institution of marriage. Whenever, counseling is unsuccessful, the aggrieved person is referred to service providers mentioned under the Act for necessary action.

Remedies available under the Act are explained to the aggrieved person. It is submitted that the police officers are of the opinion that majority of the women who approach are unaware of the existing domestic violence Act. It is submitted that no specific programme is planned for creating awareness of the Act. But to create legal awareness among women ‘Samparka Sabhe’ is held in some public

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3 The Act imposes statutory duties on these functionaries for the effective implementation of the Act.
4 Appendix 17.
5 Section 5 of Protection of Women from Domestic Violence Act, 2005.
places, wherein the information about this Act is also given. But interestingly the officer finds the difficulty in conceptualizing the commencement of the Domestic Violence. The officer informed his felt difficulty in knowing the beginning domestic violence. It is submitted that it is difficult to pinpoint the borderline between normal domestic quarrels and domestic violence. This point was informed by the police by narrating the following incident. 'The Doctor couples having a Nursing Home in the Shimoga city, the wife approached the Police station stating that she is suffering from Domestic Violence, but not revealing what she actually suffered in her terms as Domestic Violence. She wanted to divorce her husband. At last the officer was successful in getting the answer. To his surprise, what she meant as Domestic Violence was a very trivial matter in the usual discourse.\(^6\) Once her husband while smoking had told her 'how it will be if she is burnt with that cigarette?' She was under the impression that if this behavior of him turns to reality in the subsequent days.

The officer felt that this Act is also being misused. Having no genuine reason, many lodge complaint only to harass the husband and relatives. Even after proper counseling and reconciliation complaints are lodged with the higher authority on the pretext of refusal to register the complaints by the subordinate officers. The officer also informed that it is not possible to dispose of the case under the Act within Sixty days.\(^7\) The police officers also informed that serving of notice outside the local area causes delay. As per their version, causes for the delay in serving summons are, their regular busy schedule and no proper allowances for causing the summons to serve. The Police officer opined that for the proper implementation of the Act, a separate wing

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\(^6\) But what one thinks as trivial or small may be grievous to other.

\(^7\) According to Section 12 of the Act, the statutory period for disposal of the case is 60 days.
consisting of all authorities in one roof under the Act is to be created; otherwise implementation in its true sense will not be possible.

5.2 Service Providers

The help lines are now recognized by the Government as Service Providers under the Act.\(^8\) They are the voluntary associations registered under the Societies Registration Act, 1860 and run by registered NGOs. Their services are extended upto taluka level. They are aided by the State Government for their maintenance.

The women help lines are recognized as Service Providers under the Protection of Women from Domestic Violence Act, 2005, based on their potentiality, service it is providing to the needy and other relevant details.\(^9\) The Government recognizes them as service provider based on the recommendation of The Deputy Director of the Women and Child Welfare Departments taking into consideration their audit report of the past 3-4 years. The primary functions discharged are, Legal aid to the aggrieved person, financial assistance, medical assistance, providing shelter home facilities and counseling. The service providers are conducting Special programmes on awareness on the Act in co-ordination with the police department, Self Help Groups, Anganawadi workers and Department of Women and Child Welfare.

Counseling is the primary function of Service Providers. At first instance, it tries to conciliate and reconcile the spouses.\(^10\) On failure, either prepares Domestic Incident Report or directs them to approach Protection Officer or area police station as the case may be. Aggrieved person is referred to free legal aid if they are in distress. If the

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\(^8\) Section 10 of the Act.
\(^10\) Both joint and individual counseling.
aggrieved person wants to register a case, then they are directed to the area Mahila Police Station with necessary assistance. If the aggrieved persons are not aware of the Act, they are informed about their right to make an application for obtaining relieves under the Act. If the aggrieved person is a neglected wife, shelter home\textsuperscript{11} facility is also provided. It may be either temporary or permanent which depends on each case. If she requires medical examination, medical assistance is also provided free of cost. Complaints registered by all modes are accepted.\textsuperscript{12} The Service Providers represent the case on behalf of the aggrieved before the court because the protection officer having an additional responsibility as CDPO (Child Development Project Officer) is not able to appear on every hearing for the aggrieved.

It is found that the service provider finds the need for proper training to the implementing authorities under the Act as it is a special enactment, otherwise the very object of enacting this piece of legislation go futile. It is also found that the police officer shall direct the aggrieved to the proper channel under the Act, instead of registering a complaint immediately. If this is done then reconciliation becomes difficult, as she has lodged a complaint with the police. But the researcher found while interviewing the Additional Superintendent of Police that, there is a difficulty if the police officer refers them to the service provider and does not register a complaint when the party insists, the aggrieved person approaches the higher authority and registers a complaint, then the officer will be answerable to the higher authority. It is submitted that some Service providers are of the view that, always the aggrieved wants to go to court for getting more

\textsuperscript{11} Temporary shelter home facility is provided by institutions run by NGOs. If permanent shelter is needed, they are sent to state shelter homes.

\textsuperscript{12} Like letter written, telephone calls or individual applications.
compensation. On counseling, if the problem gets resolved, follow up action is also made like, home visit to get the first hand information after counseling and reconciliation.

Thus from the information gathered, it is evident that the Service Providers are rendering services to the aggrieved without any flaw. The suggestions made by the Service Providers are that the Government must conduct programmes to spread awareness about the Act and provide proper training to the functionaries under the Act for the effective implementation of the Act. The Government shall appoint a person as Counselor, inconsonance with the Rules strictly.

5.3 Protection Officers

The Child Development Project Officers (CDPO) of Women and Child Welfare Department are acting as Taluka Protection Officer under the Act. Deputy Director in Women and Child Welfare Department is acting as the District Protection Officer under the Act, in the absence of specific appointments of Protection Officers by the Government.

Protection Officers listen to the grievances of aggrieved persons and take necessary actions under the Act. The District Protection Officer sits only in those cases related to inter district and not in all cases. It is the Taluka Protection Officer who is in charge of Domestic Violence cases under the Act.

The researcher has gathered this information during the interview conducted. It is submitted that the Service Providers are to be strengthened by providing proper training. Infrastructure facilities are to be provided to the Protection Officers to deal with Domestic Violence cases. NGOs role is also to be strengthened in the
implementation of the Act. For providing counseling under the Act to
the aggrieved person and her relatives, counselors need proper
expertise in the subject. The panel of counselors should involve
Psychiatrists, doctors and Social Workers. A Law man is not the proper
person. As Domestic Violence is a social problem, while counseling
the counselors shall be from among Doctors, Social Workers and any
person who is having expertise in that field. Further, it is revealed that
awareness about the Act is high among the aggrieved persons. The
Hon'ble Court, while passing maintenance order under the Act, shall
order for payment of maintenance not more than two installments. 13 No
women counselors are appointed as required by the Rules. 14 A separate
Special Court can also be established to deal with Domestic Violence
cases. To start with, a separate cell at District headquarters is to be
established for proper implementation of the Act.

It is submitted that, at each stage of counseling, counselors have
to record the reports with authenticity and it should not become mere
formality. 15 Sitting of counselors only twice a week is not sufficient for
counseling. 16 Further it is submitted that for each taluk a separate
Protection Officer needs to be appointed. The payment fixed for the
messenger is not sufficient hence the Domestic Incident Reports are
sent to the Court by the group ‘D’ employees of the CDPO office. 17
Persons having minimum training in counseling need to be appointed
as counselors to achieve the purpose of the Act. 18 The CDPO as
Protection Officer is not having sufficient time to appear before the

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13 The rationale is to avoid delay in receiving maintenance.
15 This is actually what is happening when parties directed or personally approach the Protection
   Officer.
16 This is practiced now as a rule of convenience.
17 The Protection Officers opined that, since the stipulated allowance to the messenger is meager,
   the same shall be made payable to the group ‘D’ employees, who are actually doing this work.
18 One among the advocates of the Court is appointed as the Counselor by the Legal Services
   (Contd.) Authority, where regular appointment is not made under Section 13 of the Act.
court for the cause of aggrieved person. It is an additional duty performed by them which they feel is becoming more of a burden and they are not in a position to do complete justice to his additional responsibility. Instead of Protection Officer the counselors themselves are appearing before the Court for the aggrieved person. It is also doubtful whether the Counselor acts with zeal as a Protection Officer, in upholding the Cause of the aggrieved person. Some Protection Officers have not understood the provisions of the Act in its proper sense. Functionaries under the Act need to be trained together for the better understanding of the practical problems in implementing the Act. It is submitted that the measures taken for the implementation of the Act by the State Government is not satisfactory. As assured by the Government, workshops in its true spirit are yet to be conducted for the Protection Officers.

It is also submitted that a separate cell to deal with domestic violence cases is the necessary action to be taken by the State. Practically it is not possible for Protection Officer to wait in the court till the case is called. Statement of Protection officer needs to be recorded in the Court before evidence. It is not the practical case, since there is no regular appointment of protection officers. In the absence of regular appointment of the protection officers, serving of summons by the CDPO in addition to his regular work is rather burden than responsibility. It is a challenge when summons need to be served outside their local limits.
5.4 Judicial Officers

The honourable Judges of all the three districts of the research area, opine that the instant Act is a good piece of legislation that provides needed reliefs to the women. It is submitted that at the same time registration of complaints have not increased after this enactment. Generally, the reliefs are claimed for maintenance. It is submitted that though the Hon’ble Court orders for maintenance, no recovery procedure is provided under the Act. Hence, the orders become ineffective. Further, Judges opined that the period provided under the Act for the disposal of the case is sufficient, provided the respondent is brought before the Court within two days. Serving of notice within two days is a practical problem. It is recommended that a separate agency for this purpose needs to be created.

The Protection Officer has vital role under the Act. Since there is regular appointment and CDPOs are forced to act as protection officers, it is submitted that his subordinate officer is to be given equivalent power under the Act to proceed. The expression ‘any other person’ used in the Act needs proper explanation. Whenever an application is filed on behalf of the aggrieved person, Court admits it only along with an affidavit, stating the reasons for non appearance of the aggrieved person. But it is submitted that the aggrieved is to be examined before accepting the application. The honorable court is also of the same opinion that a separate cell is to be created with officers

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19 Sixty days, according to the Act under Section 12 of the Act.
20 Time stipulated under the Act according to Section 13 of the Act.
21 This is because the C.D.P.O acting as protection officer under the Act, finds it difficult to attend the court on behalf of the aggrieved person.
22 Section 12 of the Act.
23 The genuinity of the affidavit filed by the person for the aggrieved person cannot be made out prima-facie. Only when the aggrieved person is examined, the fact comes to light. Under this situation the word ‘any other person’ needs to be explained properly.
having the powers under the Act for better implementation. This is because it is not practically possible for the Protection Officer in his busy schedule to appear before the court for the aggrieved persons cause. In Taluka level the situation is even worse. Thus, from the interview following points may be inferred.

1. Speedy disposal and relief can be provided only when notice is served properly to the respondent through protection officer.

2. Delay due to complainant’s side in filing necessary details is also acting as a hindrance in providing remedy.

3. Court is not insisting protection officers to be present on every hearing and has also permitted serving of notice by any staff of CDPO.

4. In the implementation of the Act, procedure to recover maintenance is not stated. Violation of maintenance order is not made as cognizable offence and hence no obligation can be imposed on respondent.

5. 5 Advocates

Advocates who deal with domestic violence cases do appreciate the enactment. However, they are of the opinion that the term ‘any other person’ under Section 12 (1) of the Act includes advocates, who appear voluntarily on behalf of the affected persons in Domestic violence cases. Further, advocates are of the opinion that the application filed under section 12 is not going against the object of the Act. Whenever the aggrieved person approaches an advocate, they appear before the Court on behalf of the aggrieved not like any other advocate in the usual legal issues, but by filing the application they are
only assisting the aggrieved to get the reliefs under the Act through proper channel.

Under the expression ‘any other person’, the advocates are not barred to represent the cause on behalf of the aggrieved person. It is submitted that the duty of the Advocates under section 12 (1) is to assist the aggrieved who is already emotionally, economically distressed and the intension should not be to exploit her. During the research a paradox was observed by the researcher. In the absence of protection officers, victims generally insist the help of advocates to represent them.

It is submitted that the interview with functionaries reveals the true situation prevailing in implementing the Act. Government’s inaction in appointment of concerned official as per the Rule cannot be treated lightly. Duty of the State is not just making an Act but also has responsibility to provide necessary amenities for proper implementation of the Act. This is evident for the time taken to frame the Rules. Domestic violence, a multi-dimensional problem can not be reduced by the Act alone. There must be a political will to provide needed amenities. Only then, the intention of the Legislature will be accomplished.