
(2013) 02 GUJ CK 0082
In the Gujarat High Court
Case No : Writ Petition (P.I.L.) No. 153 of 2012

Suo Motu

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 21

Penal Code, 1860 (IPC) — Section 498A

Protection of Women From Domestic Violence Act, 2005 — Section 10, 11, 12, 14, 15

Citation : (2013) 2 GLR 1047

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Shalin N. Mehta and Suo Motu, for the Appellant;

Judgement

J.B. Pardiwala, J.—This petition in the nature of a Public Interest Litigation arises from the suo-motu cognizance taken by the High Court on the basis of a news item published on 5-7-2012 in The Times of India (Ahmedabad Edition) captioned "Thrown out by violent husband? - Wait For Three Months To File A Domestic Violence Complaint ! and "Class no bar for Woman Battering", sub-captioned Protection Officers are exploited too." In the first news item by Ms. Radha Sharma and Mr. Parth Shastri appearing on the front page, it is reported that the ladies mentioned therein, who were desirous of filing complaints (Domestic Incident Report) under the Protection of Women from Domestic Violence Act, 2005 ("the Domestic Violence Act"), were told to wait for three months to do so, as there is a pendency of complaints and only one Protection Officer is appointed for the entire Ahmedabad District to handle the complaints.

2. The second news item by Mr. Parth Shastri on Page-2 of the Newspaper under the sub-caption "Protection Officers are exploited too" highlights the plight of Protection Officers, who are not provided with even the basic amenities and facilities or a decent environment in order to perform their duties and obligations under the Domestic Violence Act. It is also reported that they do not receive

salaries in time. The gravamen of the charge in the said news item was that there are not enough Protection Officers appointed by the State Government in each district and the Protection Officers appointed under the Protection of Women from Domestic Violence Act, 2005 are not being provided with basic amenities, facilities and a decent environment to perform their duties and obligations under the Act.

3. To put it briefly the deficiencies could be reduced to four things:

(a) First, only one Protection Officer was found to be functioning in Ahmedabad District. The situation in other districts was worse.

(b) Secondly, the basic amenities and facilities were not provided to the Protection Officers in order to perform their duties and obligations under the Act. Most of them do not have a proper place of work with minimal infrastructure and staff.

(c) Thirdly, the timely payment of salary was not being done to the Protection Officers.

(d) On account of dearth of Protection Officers, the complaints filed by women in several areas remained pending for a long time and without being attended.

4. Mr. Shalin Mehta, the learned Senior Advocate was appointed by this Court as amicus curiae to assist the Court on the issue in question. Mr. Mehta invited our attention to the various provisions of the Protection of Women from Domestic Violence Act, 2005. According to Mr. Mehta, Protection Officers are appointed by the State Government under Sec. 8(1) of the Act, 2005. At this stage, it would be profitable to consider few relevant provisions of the Act, 2005. The relevant provisions of the said Act are--

2(n) "Protection Officer" means an officer appointed by the State Government under sub-sec. (1) of Sec. 8.

3. Definition of domestic violence:-

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

4. Information to Protection Officer and exclusion of liability of informant:-

(1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-sec. (1).

8. Appointment of Protection Officers:-

(1) The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.

(2) The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.

(3) The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

9. Duties and functions of Protection Officers:-

(1) It shall be the duty of the Protection Officer-

(a) to assist the Magistrate in the discharge of his functions under this Act;

(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

(c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

(e) to maintain a list of all service providers providing legal aid or Counseling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

(f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the

area where the shelter home is situated;

(g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

(h) to ensure that the order for monetary relief under Sec. 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(i) to perform such other duties as may be prescribed.

(2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act

30. Protection Officers and members of service providers to be public servants:-

The Protection Officers and members of service providers, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made thereunder shall be deemed to be public servants within the meaning of Sec. 21 of the Indian Penal Code.

5. In exercise of the powers conferred by Sec. 37 of the Act, the Central Government has made Protection of Women from Domestic Violence Rules, 2006. The relevant provisions are:

3. Qualifications and experience of Protection Officers:-

(1) The Protection Officers appointed by the State Government may be of the Government or members of non-Governmental organisations:

Provided that preference shall be given to women.

(2) Every person appointed as Protection Officer under the Act shall have at least three years experience in social sector.

(3) The tenure of a Protection Officer shall be a minimum period of three years.

(4) The State Government shall provide necessary office assistance to the Protection Officer for the efficient discharge of his or her functions under the Act and these Rules.

8. Duties and functions of Protection Officers:- (1) It shall be the duty of the Protection Officer-

(i) to assist the aggrieved person in making a complaint under the Act, if the aggrieved person so desires;

(ii) to provide her information on the rights of aggrieved persons under the Act as given in Form IV which shall be in English or in a vernacular local language;

(iii) to assist the person in making any application under Sec. 12, or sub-sec. (2) of Sec. 23 or any other provision of the Act or the Rules made thereunder;

(iv) to prepare a Safety Plan including measures to prevent further domestic violence to the aggrieved person, in consultation with the aggrieved person in Form V, after making an assessment of the dangers involved in the situation and on an application being moved under Sec. 12;

(v) to provide legal aid to the aggrieved person, through the State Legal Aid Services Authority;

(vi) to assist the aggrieved person and any child in obtaining medical aid at a medical facility including providing transportation to get the medical facility;

(vii) to assist in obtaining transportation for the aggrieved person and any child to the shelter;

(viii) to inform the service providers registered under the Act that their services may be required in the proceedings under the Act and to invite applications from service providers seeking particulars of their members to be appointed as Counselors in proceedings under the Act under sub-sec. (1) of Sec. 14 or Welfare Experts under Sec. 15;

(ix) to scrutinise the applications for appointment as Counselors and forward a list of available Counselors to the Magistrate;

(x) to revise once in three years the list of available Counselors by inviting fresh applications and forward a revised list of Counselors on the basis thereof to the concerned Magistrate;

(xi) to maintain a record and copies of the report and documents forwarded under Secs. 9, 12, 20, 21, 22, 23 or any other provisions of the Act or the Rules;

(xii) to provide all possible assistance to the aggrieved person and the children to ensure that the aggrieved person is not victimised or pressurised as a consequence of reporting the incidence of domestic violence;

(xiii) to liaise between the aggrieved person or persons, police and service provider in the manner provided under the Act and these Rules;

(xiv) to maintain proper records of the service providers, medical facility and shelter homes in the area of his jurisdiction.

(2) In addition to the duties and functions assigned to a Protection Officer under clauses (a) to (h) of sub-sec. (9), it shall be the duty of every Protection Officer-

(a) to protect the aggrieved persons from domestic violence, in accordance with the provisions of the Act and these Rules;

(b) to take all reasonable measures to prevent recurrence of domestic violence against the aggrieved person, in accordance with the provisions of the Act and

these Rules.

10. Certain other duties of the Protection Officers:- (1) The Protection Officer, if directed to do so in writing, by the Magistrate shall-

(a) conduct a home visit of the shared household premises and make preliminary enquiry if the Court requires clarification, in regard to granting ex-parte interim relief to the aggrieved person under the Act and pass an order for such home visit;

(b) after making appropriate inquiry, file a report on the emoluments, assets, bank accounts or any other documents as may be directed by the Court;

(c) restore the possession of the personal effects including gifts and jewellery of the aggrieved person and the shared household to the aggrieved person;

(d) assist the aggrieved person to regain custody of children and secure rights to visit them under his supervision as may be directed by the Court.

(e) assist the Court in enforcement of orders in the proceedings under the Act in the manner directed by the Magistrate, including orders under Sec. 12, Sec. 18, Sec. 19, Sec. 20, Sec. 21 or Sec. 23 in such manner as may be directed by the Court.

(f) take the assistance of the police, if required, in confiscating any weapon involved in the alleged domestic violence.

(2) The Protection Officer shall also perform such other duties as may be assigned to him by the State Government or the Magistrate in giving effect to the provisions of the Act and these Rules from time to time.

(3) The Magistrate may, in addition to the orders for effective relief in any case, also issue directions relating general practice for better handling of the cases, to the Protection Officers within his jurisdiction and the Protection Officers shall be bound to carry out the same.

6. In response to the notice issued upon the respondents, an affidavit-in-reply was filed by the State of Gujarat, through the Deputy Secretary, Women and Child Development Department. The stance of the State-respondent, as reflected from the affidavit-in-reply, is as under:

6.1. According to the State-respondent, the Protection of Women from Domestic Violence Act, 2005 is a central piece of legislation and has come into effect from 13th September, 2005. The aim and object of the Act is to provide effective protection of rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family.

6.2. The Act provides for obligations on the State Government and its machinery for proper implementation and a detailed procedure is prescribed in the Act itself in terms of lodging a Domestic Incident Report before the appropriate authority to obtain orders for various kinds of relief against the accused from the

Magistrate under the relevant provisions of the Act, 2005.

6.3. The term Domestic Violence has been defined under Sec. 3 of the Act. For registering a complaint by victim the appropriate authority which a State is obliged to provide under the Act, is termed as a Protection Officer.

6.4. Section 8 of the Act provides for appointment of Protection Officer. According to Sec. 8 of the Act, the State Government shall by Notification appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area within which a Protection Officer shall exercise his/her power and perform the duty conferred on it by or under the Act.

6.5. In accordance with Sec. 8 of the Act, a State Government through Women and Child Development Department has designated District Social Defence Officers of each district in the State as the Protection Officer. A Notification to that effect was issued on 21-2-2007.

6.6. Duties and functions of the Protection Officer are prescribed under Sec. 9 of the Act. The role of the Protection Officer is two-fold:

1. To assist the Magistrate in discharge of his/her function under this Act.
2. To make a Domestic Incident Report (D.I.R.) to the Magistrate, in the method and manner prescribed under the provisions of the Act and upon receipt of the complaint of domestic violence to forward copy thereof to the Police Officer in charge of the Police Station in whose jurisdiction the act of Domestic Violence is alleged to have been committed.

6.7. In the affidavit-in-reply, the State-respondent has furnished certain data as regards the number of applications received in the year 2012 and the number of Domestic Incident Reports filed before the concerned Magistrate so far as the district of Ahmedabad is concerned. The details are as under:

Note: Out of 100 pending cases;

- In 12 cases compromise has been arrived at on mutual understanding.
- In 12 cases letters to the applicants are written.
- In 30 cases D.I.R. Forms of applicants are filled in. However, because the applicant-women did not turn up to file D.I.R. in the Court and hence pending.
- In 46 cases though the letters are written and reminders are sent to the applicants, they have so far not responded and hence pending.

6.8. Considering the number of District Incident Reports, which were pending in June, 2012 within the district of Ahmedabad, a special drive was launched by the State Government through the Director, Social Defence. During the aforesaid drive, a large number of pending applications were attended to and Domestic Incidents Reports were filed before the Magistrate.

6.9. In the district of Ahmedabad over and above the District Social Defence Officer, who is designated as the Protection Officer, there are two other Protection Officers, who are appointed on contractual basis considering the large in-flow of receiving applications. Out of three Protection Officers in the district of Ahmedabad one Protection Officer, who was appointed on contractual basis, has resigned on 9-3-2012 and the services of one Protection Officer had to be terminated on the ground of alleged irregularity/corruption. Thus, as on today, there is one Protection Officer on contractual basis besides Social Defence Officer designated as the Protection Officer in the district of Ahmedabad.

6.10. According to the State-respondent, with a view to finding a permanent solution to the problem of backlog of applications under the Act, the Government has undertaken the process to fill up the posts of Protection Officer on regular basis in all the districts and the requisition for recruitment of Protection Officers has been submitted to the Gujarat State Public Service Commission. In the meanwhile, to ensure that there is no disruption of services in the interregnum period, the posts are being filled on contractual basis so that the adequate numbers of Protection Officers are available in every district.

6.11. In the affidavit-in-reply, a chart has been provided showing the number of applications received and Domestic Incident Reports filed before the learned Magistrate all over the State. The details are as under:

6.12. According to the State-respondent, the provisions relating to shelter homes are prescribed under Sec. 6 of the Act. There are in all 21 shelter homes notified in the State of Gujarat vide Notification dated 15-10-2007. Section 7 of the Act relates to the medical facility, which is to be provided to the complainant. The State Government through Health and Family Department has notified all 59 Government Hospitals throughout the State of Gujarat for providing medical facilities as contemplated under Sec. 7 of the Act. A Notification to that effect was issued by the Health and Family Department dated 12-8-2010.

6.13. Section 2(r) of the Act defines "service provider". Service providers are to be registered in accordance with Sec. 10 of the Act. According to the State-respondent, they have registered 249 N.G.Os./voluntary organisations to undertake the function of service provider as contemplated under Sec. 10 of the Act. As on today, 247 service providers are in operation throughout the State of Gujarat, out of which 30 service providers are operational in the district of Ahmedabad alone.

6.14. Section 11 of the Act lays an obligation on the State Government as well as the Central Government to take all necessary measures to ensure that the provisions of the Act are given wide publicity and the Officers of the State Government and Central Government are made aware through various training programme on the issue relating to proper implementation of the Act.

6.15. It is the stance of the State-respondent that it is committed to create public awareness on provisions of this Act. The Gender Resource Centre, headed

by the Senior Deputy Secretary Level Officer and functioning under the Women and Child Development Department has organised various awareness camps and training programmes for Government Officers, members of judicial service, medical officers, and service providers. Between May, 2007 and July, 2012, in all, 161 Police Officers, 255 Government Officers, including Protection Officers, 94 Members of Judicial Service, 60 Medical Officer and 502 Non-Government stake holder such as service providers and N.G.Os. were made aware about the provisions and proper implementation of the Act, by organising various training programme by Women and Child Development Department of the State Government.

6.16. So far as the aspect of adequate staff and requisite furniture is concerned, the Director, Social Defence had addressed a communication to all the District Social Defence Officer dated 20-7-2007, whereby the provision for adequate furniture has been made. According to the State-respondent, it has provided all adequate and necessary infrastructure to the Protection Officer so that the provisions of the Act are complied with in letter and spirit.

6.17. The State-respondent has fairly conceded that due to various practical difficulties, large number of applications were pending and were attended during the special drive.

6.18. According to the State-respondent, the Government is committed to implement the Act in its true spirit and has assured this Hon"ble Court that all necessary steps shall be taken in accordance with the Act to see that aim and the object with which the Act has been enacted, is fulfilled.

7. Mr. Mehta, the learned Amicus curiae submitted that the attention of the State Government is required to be drawn to Sec. 8 of the Act and Rule 3 of the 2006 Rules framed under the Act. According to Mr. Mehta, the Government has been appointing Protection Officer on contractual basis. Section 8(2) provides that the Protection Officer shall as far as possible be women and shall possess such qualifications and experience as may be prescribed. Rule 3(2) provides that every person appointed as Protection Officer under the Act shall have at least three years experience in the social sector. Rule 3(3) provides that the tenure of a Protection Officer shall be a minimum period of three years. According to Mr. Mehta, the Protection Officers do not have even the basic amenities and facilities to work in a decent environment as evident from the averments made in Paragraph 22 of the affidavit-in-reply.

8. Mr. Mehta has also submitted that as regards the grievance that timely payment of salary is not made to the Protection Officers, the attention of the State Government needs to be drawn to Sec. 8(3) of the Act which says that the terms and conditions of service of the Protection Officers and the other officers subordinate to him shall be such as may be prescribed. The State Government has not disclosed before the Court the manner and method of making payment to the Protection Officer in the State.

9. According to Mr. Mehta, the office of the Protection Officer is a statutory post. The Protection Officers under Sec. 30 of the Act are deemed to be public servants. Therefore, just like any other Government servant, they would be entitled to pay-scale of appropriate rank with other allowances and service benefits admissible to the Government Servants.

10. Analysis

The Protection of Women from Domestic Violence Act, 2005 is an Act to provide for more effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

11. Statement of Objects and Reasons:

1. Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Sec. 498A of the Indian Penal Code. The Civil law does not, however, address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Arts. 14, 15 and 21 of the Constitution to provide for a remedy under the Civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, inter alia, seeks to provide for the following:

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner;

(ii) It defines the expression domestic violence to include actual abuse or threat

or abuse that is physical, sexual, verbal, emotional or economic harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition;

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate;

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or other who provide her assistance from the domestic violence;

(v) It provides for appointment of Protection Officers and registration of non-Governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.

5. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill.

12. Thus, the Domestic Violence Act has been enacted with the object and intention of providing effective protection of the rights of women, who are victims of any kind of violence occurring within the shared household and family. It seeks to uphold the rights of women as guaranteed under the Constitution of India. The very purpose of enactment of the Domestic Violence Act would be rendered nugatory if it is not implemented properly or effectively, especially for lack of adequate number of Protection Officers and proper environment and facilities being provided to them.

13. For centuries past, women all over the world have not only been denied full justice, social, economic and political, but as a weaker sex, they have been used, abused, exploited, and then, discarded to lead immoral, street vagrant and destitute life till their death. Although they constitute about half the total population and have contributed and sacrificed not less than men in the national freedom struggles at any point of time but they have been deprived of their due shares in various areas of activities and have been subjected to inhuman and humiliating wrongs from birth to death for no sin. Nowadays, however, women have broken their ill-social shackles and are ready to face the contemporary challenges without any help and hesitation and, consequently, March 8, is formally observed and celebrated in several countries, including India, as a mark of integrated achievements towards the equality of rights, status and dignity of women and their equal participation in economic, social and cultural development in contemporary world scenario.

14. Women constitute about one-half of the global population, but they are placed at various disadvantageous positions due to gender difference and bias. They have been the victims of violence and exploitation by the male-dominated society all over the world. Ours is a tradition-bound society where women have been socially, economically, physically, psychologically and sexually exploited from time immemorial, sometimes in the name of religion, sometimes on the pretext of writings in the scriptures and sometimes by the social sanctions. The concept of equality between male and female was almost unknown to us before the enactment of the Constitution of India. Of course, the Preamble of the Constitution, which is the supreme law of the land, seeks to secure to its citizens including women fold, justice - social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and opportunity, and promote fraternity assuring the dignity of the individual.

15. There is one universal truth, applicable to all countries, cultures and communities : violence against woman is never acceptable, never excusable, never tolerable. Violence against woman must be prioritised at all levels. It has not yet received the priority required to enable significant change. The most effective way to fight violence against woman is a clear demonstration of political commitment by States, backed by action and resources. Increasing awareness to change attitudes and influence behaviour amongst people from all walks of life is essential to preventing and ending violence against woman.

16. The passing of a domestic violence law has reinforced the norm that violence against woman is unacceptable and more importantly, this norm has been backed by State sanctions.

17. In our opinion, a significant achievement in the efforts to end violence against woman in India would be ensuring that woman have effective access to justice, to enable them to obtain remedies as envisaged under the Act.

18. The State should set up mechanisms for monitoring and evaluating existing laws, programmes and policies for women so as to ascertain how the law is functioning and take corrective measures as soon as the need arises. It is crucial that the State also takes special measures to put in place zero tolerance policies on Domestic Violence, thereby, ensuring that there is no impunity for perpetrators of violence. Furthermore, the State needs to introduce and enforce substantive equalities standards in all spheres, particularly with regard to equal entitlements within the family as this will go a long way in reducing vulnerability to violence. Finally, there is a need to implement the existing legislation properly and to ensure Government accountability for the implementation of laws dealing with women.

19. In our opinion, the problem in this country is the effective execution and implementation of the laws. It is not that we do not have the laws to combat with the menace of violence against women, but unfortunately, there is no proper and effective implementation of the same so as to ensure that the object

with which the piece of legislation has been enacted, is subverted.

20. This petition is a fine example of poor implementation of the Domestic Violence Law.

21. We have noticed having gone through the provisions of the Act that the Protection Officer plays a important role in proper implementation of the Act. Neither the Protection of Women from Domestic Violence Act, 2005 nor the Protection of Women from Domestic Violence Rules, 2006 permit the State Government to make any contractual appointments of Protection Officers for 11 months. In fact, Rule 3(3) says that the tenure of a Protection Officer shall be for a minimum period of three years. In our opinion, the contractual appointments of 11 months and less could be termed as contrary to the provisions of the Act. It is, therefore, imperative that the State Government completes the process of regular selection of Protection Officers for all districts in the State as early as possible. A Protection Officer has to be of a particular level and caliber. Having regard to the duties and functions of the Protection Officers, as provided in the provisions of the Act as well as the Rules, preference as provided in Rule 3 of Rules, 2006 should be given to the women and such person appointed as Protection Officer is expected to have at least three years experience in the social sector. In our opinion, it is only when a person is appointed as a Protection Officer on regular basis with regular salary that he would work with all sincerity and dedication.

22. We are also of the opinion that the State Government should have in place a proper system of man power planning to assess the needs of each district. For example, the materials on record indicate that districts like Ahmedabad, Jamnagar, Vadodara, Sabarkantha, Surat, Rajkot, Bhavnagar and Junagadh are the ones, where more than 100 applications in seven months have been received starting from January, 2011 till July, 2012. Conversely, districts like Navsari, Patan, Narmada, Surendranagar, Porbandar have received less than 25 applications in the period referred to above. Thus, in busy districts, one Protection Officer is simply not enough. To have one Protection Officer in a district like Ahmedabad, where more than 800 applications have been received in last 7 months, is nothing but a mockery of the Act. Therefore, the need of the hour is that the Government assess the needs of each district and accordingly, appoint adequate number of Protection Officers in each district to receive and attend the complaints in time.

23. We are also of the opinion that the State Government must ensure that the office of the District Social Defence Officer is provided with necessary staff and infrastructural facilities like furniture, computers, etc. This would only be in consonance with Rule 3(4) which provides that the State Government shall provide necessary office assistance to the Protection Officer for the efficient discharge of his or her functions and duties under the Act and the Rules.

24. The office of the Protection Officer is a statutory post. The Protection Officers

under Sec. 30 of the Act are deemed to be Public servants. Therefore, like any other Government Servants, they should be entitled to pay-scale of appropriate rank with other allowances and service benefits as admissible to Government servants. The Act of 2005 being a benevolent piece of legislation and the Rules requiring preference to be given to women for appointments as Protection Officers, the State Government should ensure that labour turnover is not high in this area. One of the ways to ensure this, is to pay adequately to the Protection Officer.

25. Considering all the relevant aspects of the matter, we propose to dispose of the petition by issuing the following directions to the State Government:

(1) The State Government is directed to complete the process of regular selection of Protection Officers for all districts in the State as early as possible and in any case, within eight weeks from today.

(2) The appointments shall be in consonance with Rules 3(1), (2) and (3) of the Rules, 2006.

(3) The State Government is directed to set up in place a proper mechanism of man power planning to assess the needs of each district periodically.

(4) The State Government is also directed to ensure that the office of the District Social Defence Officer is provided with necessary staff and infrastructural facilities like furniture, computers, cabinets, etc. as provided in Rule 3(4) of the Rules, 2006.

With the above observations and directions, this petition stands disposed of. In the facts and circumstances of the case, however, there shall be no order as to costs. Registry shall notify the matter after two months to report compliance of the directions issued by this Court.