

## COMBATING DOMESTIC VIOLENCE IN MALAYSIA: ISSUES AND CHALLENGES

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Domestic violence is not an uncommon phenomenon throughout the world. In Malaysia, domestic violence is considered one of the most serious social problems. It is reported that nine percent of women in Malaysia have experience some form of domestic violence by their intimate partner in their lifetime. This paper aims to examine the issues and challenges in combating domestic violence in Malaysia. Apart from the discussion on the Domestic Violence Act 1994, this paper also highlights the reports from non –government organizations which play an active role in assisting the domestic violence victims. It is submitted that domestic violence remains a problem in Malaysia. Although many strategies and plans have been implemented in attempting to combat this social problem, it remains unresolved. This is due to inefficient implementation of the law and few significant barriers that women are facing in seeking protection under the law. Therefore, effective collaboration between all stakeholders such as police, welfare, health and judicial services is critical in ensuring the victims get the assistance needed and more importantly, bring the perpetrators to justice. Indeed, domestic violence victim’s access to justice and protection is fundamental in combating the menace.

**Keywords:** Challenges, Domestic Violence, Law, Malaysia

### I. INTRODUCTION

Domestic violence may be defined as a pattern of abusive behaviour used by one partner to gain or maintain power and control over another intimate partner which could be physical, psychological, social and financial in nature. This behaviour includes destruction of property, threats, harassment and ridicule. The key element in all of these actions is controlled through the exercise of force or destructive verbal or emotional harassment (Abdulfatai and Abdulkadir, 2012).

Domestic violence is a global issue reaching across national boundaries as well as socio-economic, cultural, racial and religion differences. It also is considered as a violation of human rights and an offence under the law. According to World Health Organization, 35% of women worldwide have experienced some form of domestic violence by their intimate partner in their lifetime (World Health Organization, 2013), while in Malaysia a survey revealed that 9 percent of married women in Malaysia have experienced the same (Rashidah Shuib *et al.*, 2013). According to 2014 survey, 40% of domestic violence victims experienced domestic violence for more than five years; 41% of between one and five years and 19% less than one year. This means 81% could be classified as having faced sustained

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and prolonged violence at home. The victims suffered multiple forms of abuse where psychological abuse remains as the most common form of domestic violence (Women's Aid Organization, 2015).

As such, it can be said that domestic violence is one of the most serious social problems in Malaysia and combating the menace poses significant challenges. This paper mainly relies on statutes as its primary sources of information. As such, the relevant provisions of the Domestic Violence Act 1994 will be analyzed. Apart from the analysis of the law, this paper will also highlight the issues and challenges faced by the authorities in the implementation of the law.

## **II. DOMESTIC VIOLENCE LAW IN MALAYSIA**

Malaysia passed the Domestic Violence Act (Act 521) in 1994 (hereafter referred to as DVA 1994) and it was implemented two years later. The Act must be read together with the Penal Code (Act 574) or any other written law involving offences relating to domestic violence (section 3 DVA 1994).

Generally, the Domestic Violence Act 1994 provides protection to women and all family members against violence committed within the domestic sphere. It gives a wide interpretation of domestic violence which includes attempting to place fear of physical injury, causing physical injury, compelling by force or threat to engage in sexual conduct, confining or detaining the victim against her or his will and causing mischief or damage to the property of the victim with intent to cause distress or annoyance to her or him (section 2, DVA 1994). The victim can seek protection by making a complaint to the police or welfare officer and criminally charge the husband, or apply for a protection orders from the court. Besides these measures, the DVA 1994 also provides rights for compensation to the victim due to the injury sustained from the violence and for counselling sessions to enable reconciliation and rehabilitation in order to facilitate preservation of the family.

Apart from the remedies available under the DVA 1994, the victim may also find refuge in several other laws enacted prior to the said Act. The perpetrator may be charged under the Penal Code per se for causing personal injury to the wife under the provisions pertaining to offences against a person that apply to any person generally.

It must be noted that the DVA 1994 has been amended several times to further strengthen the law. The latest amendment was made in 2012. The 2012 amendment expands the definition of domestic violence to include mental, emotional, and psychological abuse. The amendment also expands the application of protection orders beyond the perpetrator to prevent third parties from physically abusing, or even communicating with victims of domestic violence and allows police to arrest a perpetrator when a protective order has been violated.

The 2012 amendment further elevates the categorization of domestic violence to a seizable offence (crimes for which the perpetrator can be arrested without a

warrant). Under the Criminal Procedure Code, the police must first determine the nature of the offence, i.e. whether it is seizable or non- seizable. The police are only required to conduct immediate investigations in cases of seizable offences. Prior to the amendment, victims of domestic violence would have to file a private summons in a Magistrate Court themselves to prosecute the perpetrator as domestic offence is categorized as non- seizable offence. This rule posed significant problem to the victims and only very few would go through this process as it is time-consuming and costly. As such, the amendment is most welcomed and has solved one of the biggest hurdles faced by the victims and law enforcement authorities.

The DVA 1994 also provides for interim and long-term protection orders. The orders aim to protect the victim's safety. Interim protection order can be applied by the victim during the investigation of domestic violence case (section 4 DVA1994). Whilst in the past both interim and long term protection orders only prohibited the perpetrator from further domestic violence, the 2012 amendment now allows for a protection order to constitute an order to maintain a specified distance from the victim including restraining the perpetrator from entering a shelter (section 6 DVA 1994). Anyone who willfully contravenes a protection order by using violence against a protected person may be punished by imprisonment of up to one year and a maximum fine of RM4,000 (section 8(2) DVA 1994).

Besides these measures, the DVA 1994 also provides rights for compensation to the victim due to the injury or damage to the property sustained from the violence (section 10 DVA 1994). Before allowing the compensation, the court may consider the following;

- the pain and injuries of the victim;
- the cost of medical treatment;
- any loss of earning;
- the amount of value of property destroyed or damaged;
- any other relevant expenses.

In addition to this, the Court may refer the victims to the Department of Social Welfare or in the case the victims are Muslims, the Islamic Religious Affairs Department for counselling services. It must be noted, apart from the remedies available under the DVA 1994, the victims may also find remedies in several other written laws. For example, the perpetrator may be charged under any offences against a person under the Penal Code. This may include causing hurt or grievous hurt, criminal force, assault and even murder. Although marital rape is not legally recognized in Malaysian law, victims may invoke section 375A of the Penal Code which provides an offence for husband causing fear of death or hurt to his wife in order to have sex. If found guilty, he can be punished with imprisonment for term which may extend to five years. This is a really excellent development which provides more protection against domestic violence victims.

### III. ISSUES AND CHALLENGES

It is submitted that domestic violence remains a problem in Malaysia. Although many strategies and plans have been implemented in attempting to combat this social problem, it remains unresolved. This paper highlights two significant reasons namely the weaknesses of the law and barriers faced by the victims.

#### (A) Weaknesses of the Law

While the amendments to the DVA 1994 are welcomed, it can be said that certain weaknesses of the law still exist. Firstly, domestic violence is not recognized as a specific crime, but is defined as consisting of a number of abuses such as threatening to injure, causing injury, force, detention, etc., against a spouse, a former spouse, a child, an incapacitated adult or other members of the family. In order for the abuse to be categorized as a crime under the DVA 1994, the victims have to invoke the current provisions for offences affecting the human body under the Penal Code. These offences however, do not reflect the serious, persistent and often repetitive nature of domestic violence. Therefore, domestic violence must be addressed as a specific crime punishable by new penalties under the Penal Code so that it can be read harmoniously with the DVA 1994. In addition to this, the definition of domestic violence is still lacking. Stalking and intimidation are common forms of domestic violence and should be included into the definition of what constitutes domestic violence in the DVA 1994 (The Joint Action Group for Gender Equality, 2013).

Secondly, the legal enforcement of the DVA 1994 still focuses more on physical injury rather than non-physical form of violence. Furthermore, despite the Act includes sexual and psychological abuse in its definition, the power of arrest by police officials is still based on any physical injury caused by the perpetrator. Section 7(1) of the Act states: "Where the court is satisfied that the person against whom a protection order or interim protection order is made is likely to cause actual physical injury to the protected person or persons, the court may attach a power of arrest to such protection order, as the case may be." For this reason, victims who suffer non-physical form of abuse will face difficulties to prove their case since only physical evidence is considered by the court.

Thirdly, domestic violence which occurs between non-married couples or those in a dating relationship is not recognized by the DVA 1994. This happens since Malaysia did not recognize any intimate relationship outside the institution of marriage. Therefore, if there are any domestic violence cases being reported by non-married couples, they will be handled under Chapter XV of the Penal Code, for offences affecting the human body such as criminal force, assault and causing injury. As a matter of fact, this loophole should be overcome since in reality there are many unmarried couples living together in Malaysia and that most people are involved in a relationship. Women are individuals in their own right and not merely constituent elements of a family unit. Indeed, the rights and safety of the woman

should prevail over the sanctity of the family unit (Kumaralingam Amirthalingam, 2003).

Fourthly, section 11(1) of DVA 1994 need to be amended. The section empowers the court to make an order to refer the victim and perpetrator concerned to a conciliatory body. It can be argued that the court should not be able to order any form of reconciliation between the parties. Requiring a victim to attempt to participate in reconciliatory efforts with a perpetrator places her in danger. The safety of the victim must always be the priority. In fact, it is an international best practice to prohibit mediation in domestic violence cases. The United Nations Expert Group Meeting on Global Good Practices on Domestic Violence Legislation recommend that mediation in all cases of violence against women should be explicitly prohibited both before and during legal proceedings (Women's Aid Organization, 2015).

Finally, the provision relating to protection order under the DVA 1994 should be reviewed. Currently, a protection order can only be obtained when victims lodge a police report so that the investigation and prosecution can invoked against the perpetrators. However, it must be said that domestic violence normally involve a very complex circumstances. There are cases where the victims do not wish their abusive partners to be prosecuted for certain reasons. In this scenario, the protection order cannot be issued against the victims and therefore may jeopardize their safety. For this reason, it is critical to provide a specific remedy for this kind of victims so that their abusive partners can be prohibited from committing further violence on the victims.

These weaknesses of the law need to be addressed seriously by the law enforcement agencies so that the victims are well protected under the law and the perpetrators will be successfully prosecuted and thereby reduce the problems of domestic violence in Malaysia.

### **(B) Barriers Faced by the Women**

Apart from weaknesses of the law, combating domestic violence in Malaysia poses significant challenges due to some barriers facing by women in bringing their abuse partners to justice. The main barrier strongly related to the victim's cultural values and beliefs. These beliefs have affected their decision to hide their abuse from others. At the same time, the feelings of shame and self-blame combined with financial dependency on the abuser make the problem worse (Sajaratulnisah Othman, 2013).

Normally, the victims were convinced that their husband will change his behavior in time if he is given opportunity and time. Not only that, the religious understanding of the victims influenced help-seeking behaviors. For example, Muslim women talked about submission to fate while Buddhists mentioned about *karma*. These belief have led them to their acceptance of abuse. A Muslim victim

was threatened to be *nusyuz* by her husband and his family (Sayed Sikandar Shah Haneef, 2012). Therefore, her fear had stopped her from making any effort to ask for help.

Another barrier is the perception that domestic violence is a marital problem that needs to be solved between the couple and is best to overcome without involving third parties. Marriage-the notion that husband and wife were one and that one was the husband-made domestic violence permissible and acceptable (Elizabeth M, 2008). Indeed, this perception should be avoided as domestic violence may result in numerous social ills. Apart from the wives, children can be victims directly and indirectly of the violence occurring between their parents. The effects on children of witnessing and experiencing violence within the family are physically, psychologically, emotionally and cognitively damaging (Abu Bakar Munir & Nor Aini Abdullah, 1995).

In the meantime, lack of knowledge about the victim's rights under the law can be another significant barrier. To make matters worse, court proceeding which are too formal and costly hinder the victims to bring their case to the court of law (Joint Action Group for Gender Equality, 2013). It was suggested that the introduction of Family Court can overcome this problem. The Family Court could be structured in accordance with the juvenile court model, where there is almost a complete absence of adversary procedure. Domestic disputes should be resolved in accordance to more helpful, non- competitive and therapeutic concept that motivated the involvement of the victims (Abu Bakar Munir & Nor Aini Abdullah, 1995). It is proved that the establishment of family court can resolve domestic violence cases more efficiently (Federal Circuit Court of Australia, 2012). It is in line with the current trend towards a comprehensive approach which change the way the criminal justice system approaches against domestic violence cases (Nazli Mahdzir et. al. 2016). Usually, the cases resolved through mediation and counseling methods (Archi Agnihotri & Medha Srivastava, 2009).

The following table illustrates the scenario of domestic violence cases in Malaysia.

TABLE I: STATISTICS OF DOMESTIC VIOLENCE CASES (REPORTED/ CHARGED/ CONVICTED) FROM 2013 TO 2015

<i>Year</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>Total</i>
Total Reports Lodged	4123	4807	5014	13944
Charged	1746	1462	1404	4612
Percentage of Total Cases Charged	42%	30%	28%	33%
Convicted	155	358	145	658
Percentage of Total Cases Convicted	9%	24%	10%	14%

<sup>a</sup> (Women's Aid Organization, 2015)

Between the years of 2013 to 2015, a total number of 13944 domestic violence cases were reported. The total of which 4612 (33%) were charged in court. Out of these, only 658 (14%) resulted in conviction. This shows the total number of domestic violence cases reported increased tremendously. It may be presumed that women are more aware of their rights under the law. Although the number of the reports increased, the charge involved the perpetrators still not satisfying. This is due to some underlying reasons such as lack of evidence and failure of the women to proceed with the prosecution of their husband. Furthermore, the statistic reveals that the total number of conviction is far less than the number of prosecution. This phenomenon may downfall the purpose of the law when the intended protection against domestic violence to the women cannot be materialized.

#### IV. CONCLUSION

It is submitted that combating domestic violence in Malaysia poses significant challenges mainly due to the inefficient implementation of the laws and barriers faced by the women. Furthermore, the influence of many factors such as the patriarchal society, religious matters and the cultural dimension need to be considered while dealing with this problem. As such, effective collaboration between all stakeholders such as police, welfare, health and judicial services is critical in ensuring the victims get the assistance needed and more importantly, bring the perpetrators to justice. Indeed, domestic violence victim's access to justice and protection is fundamental in combating the menace.

#### *References*

- Abdulfatai O. Sambo & Abdulkadir B. Abdulkadir. (2012). Legal Approach to Domestic Violence in Malaysia and Nigeria: An Expository Study of The Experience In Selected Jurisdictions. *LNS (A)*, xv.
- Abu Bakar Munir & Nor Aini Abdullah. (1995). Domestic Violence and the Need for a Family Court. *Current Law Journal*, 4, ix xv.
- Archi Agnihotri & Medha Srivastava. (2009). *Family Courts in India: An Overview*. Retrieved from <http://www.legalserviceindia.com/article/1356-Family-Courts-in-India.html>
- Domestic Violence Act 1994 (Act 521).
- Domestic Violence (Amendment) Act 2012 (Act A1414).
- false Elizabeth, M. (2008). Domestic Violence Law Reform in the Twenty-First Century: Looking Back and Looking Forward. *Press the Escape key to close Family Law Quarterly*, 42, 353-363.
- Federal Circuit Court of Australia. (2012). *Family Violence Best Practices Principles*. Retrieved from <http://www.federalcircuitcourt.gov.au>.
- Joint Action Group for Gender Equality (2013). *Preliminary comments on the proposed amendments to laws relating to domestic violence and sexual crimes in the Penal Code and Criminal Procedure Code*.

- Retrieved from <http://wao.org.my/file/JAG%20Preliminary%20Comments%20on%20the%20Proposed%20Amendments%20to%20Laws%20Relating%20to%20Domestic%20Violence%20and%20Sexual%20Crimes%20v2.pdf>
- Kumaralingan Amirthalingam. (2003). *A Feminist Critique of Domestic Violence Laws in Singapore and Malaysia*. Asia Research Institute- Working Paper Series No. 6.
- Nazli Mahdzir *et al.* (2016). Domestic violence court: A new model to combat domestic violence against women in Malaysia. *UUM Journal of Legal Studies*, 7, 92-102.
- Penal Code (Act 574).
- Rashidah Shuib *et al.* (2013). Domestic violence and women's well-being in Malaysia: Issues and challenges in conducting a national study using the WHO multi-country questionnaire on women's health and domestic violence against women. *Social and Behavioral Sciences*, 91, 475-488.
- Sayed Sikandar Shah Haneef. (2012). The Problem of Harmonising Nusyuz Law with Domestic Violence Legislation: A Purposive Interpretation Framework. *Malayan Law Journal*, 6, clxv.
- Sajaratulnisah Othman, Goddard, C. & Piterman, L. (2013). Victims' Barriers to Discussing Domestic Violence in Clinical Consultations: A Qualitative Enquiry. *Journal of Interpersonal Violence*, 1, 1-17.
- Women's Aid Organisation. (2015). *Case Studies in Domestic Violence Response*.
- World Health Organization. (2013). *Responding to Intimate Partner Violence and Sexual Violence against Women*.
- Retrieved from <http://apps.who.int/rhl/guidelines/9789248595/en/>