
HANDLING DOMESTIC VIOLENCE PERPETRATOR FROM LEGAL PERSPECTIVEAbidah Abdul Ghafar¹, Nurfadhilah Che Amani¹ and Siti Nurleli Rusmiyati²¹Faculty of Syariah and Law, and²Faculty of Leadership & Management

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(Corresponding author) email: abidah@usim.edu.my**ABSTRACT**

In Malaysia, Domestic Violence Act 1984 is a piece of legislation that can provide civil protection in a domestic setting. When a case of abuse is committed by a perpetrator to one of the family members, this law may apply. This paper discusses the extent to which the Domestic Violence Act can provide protection to the victim as well as prevent the perpetrator from further harassing or abusing the victim. It also elaborates on the insight relating to the law on handling the perpetrator of domestic violence. It discusses the protection orders available for victims in order to safeguard themselves from further abuse and violence of the perpetrator. The recently developed Domestic Violence (Amendment) Act 2017 is referred for this purpose.

Keywords: domestic violence, perpetrator, vulnerable, protection.

Introduction

Domestic violence is the behaviour of intentionally hurting or abusing a spouse, partner, former spouse, child, or other family members with the intent to vent anger or to gain absolute power in marriage. Domestic violence is not only done physically, but includes violence emotionally, psychologically, socially, and even financially. The number of cases of domestic violence continues to increase in many countries, including Malaysia.

According to the data released by the National Intimate Partner and Sexual Violence Survey (NISVS), 47% of men and women were victims of psychological aggression. Meanwhile, 32% of women were victims of physical violence by their partners. 16% of women were victims of sexual violence. Meanwhile, 7% of men were victims of sexual violence. (NISVS, 2008). Other data also shows that a total of 22% of individuals experienced violence by their partners at least once in their lifetime (23% women and 19.3% men). Meanwhile, the perpetration rate shows that overall, 25.3% of individuals have committed domestic violence against their partners. The proportion of female perpetrators is more than male as in the percentage of 28.3% for females and 21.6% for males. (Domestic Violence Research, 2016). Based on these data, it shows that people can become victims regardless of gender. Women and men can be either victims or perpetrators, nonetheless the statistical data still shows that the number of female victims is higher than men. Domestic violence research indicates that women are the prevalent victims and simultaneously the prevalent perpetrators according to the data.

Meanwhile, in Malaysia, the statistics for domestic violence issued by the Women's Aid Organization indicate the total of 5,421 cases of domestic violence. From 2013-2017 there were 1,956 victims of domestic violence aged 26-35 years. And in 2016, there were 2,546 perpetrators of domestic violence, aged 26-35 years. Meanwhile, the state with the highest number of domestic violence cases in Malaysia

is Selangor with 775 or 14.1% of cases. (PDRM, 2018). Reports from the Women's Aid Organization and PDRM show that the trend of domestic violence cases is increasing. Various attempts have been made by the government to enforce the law on perpetrators of domestic violence. On the other hand, the government puts effort to protect victims of domestic violence. Various NGOs also work together to reduce the trend of domestic violence. However, despite the efforts of the government and NGOs to eradicate domestic violence, the victims are often reluctant to report; resulting in the perpetrators do not get sanctions and continue to commit violence. The reason behind it varies. However, what is common is because they feel that domestic violence is a natural thing that happens in marriage or feel that domestic violence is private matter as of that they thought they could solve it themselves. Especially if the victim is a man, psychologically, the man feels more embarrassed to report if he is a victim.

In this situation, every individual and member of the society should generally understand on how to deal with perpetrators of domestic violence from a legal perspective. The aim is to raise awareness that domestic violence is an offence and a crime. Thus, this paper aims to discuss the insight relating to the law on perpetrators of domestic violence.

Law and Domestic Violence

In Malaysia, Domestic Violence Act 1994 (Act 521) is a piece of legislation that can provide civil protection in a domestic setting. The Domestic Violence Act [DVA] is an Act to provide for legal protection in situations of domestic violence and matters incidental thereto. When a case of abuse is committed by a perpetrator to one of the family members, this law may apply. This Act has gone through major amendments twice, in 2012 and 2017. The Domestic Violence (Amendment) Act 2012 and 2017 provides more protections to abused victims, regardless of age and gender. This Act functions as a containment of the perpetrator's tendency to use violence as a means of solving problems in the family and as a medium for victims to seek refuge when violence occurs against him/her and his/her family members. In situations where physical injury and intimidation is involved, the perpetrator will be investigated and charged under relevant provisions in the Penal Code.

Definition of Domestic Violence

Domestic violence occurs when an individual systematically commits violence or abuse to others so as to increase the power to take control of the household or in an intimate relationship. (New-hope, 2020). According to Shannan, domestic violence is committing violence against someone such as a spouse/partner, ex-spouse/ex-partner, family members' family friends, and other relatives; where the victims of violence are in the same circle. Domestic violence is a term used to describe the closer relationship between victims and perpetrators. Violence can be in the form of sexual, physical, or psychological. (Shannan, 2015).

In section 2 of DVA 1994, "domestic violence" means the commission of any of the following acts:

- (a) wilfully or knowingly placing, or attempting to place, the victim in fear of physical injury;
- (b) causing physical injury to the victim;
- (c) compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain;
- (d) confining or detaining the victims against the victims' will;
- (e) causing mischief or destruction or damage to property with intent to cause distress or annoyance to the victim.

Emotional and psychological abuse have negative implications for victims. Domestic violence also occurs through an act of the third party. Therefore, the Ministry has taken the initiative by expanding the interpretation of domestic violence to include emotional, mental and psychological abuse and the

element of third-party incitement. Therefore, in 2012, the definition in the provision was extended to include:

- (a) causing psychological abuse which includes emotional injury to the victim;
- (b) causing the victim to suffer delusions by using any intoxicating substance or any other substance without the victim's consent or if the consent is given, the consent was unlawfully obtained; or
- (c) in the case where the victim is a child, causing the victim to suffer delusions by using any intoxicating substance or any other substance.

In 2017, section 2 was amended by inserting the following paragraphs in order to give a more comprehensive definition of domestic violence:

- “(ea) dishonestly misappropriating the victim's property which causes the victim to suffer distress due to financial loss;
- (eb) threatening the victim with intent to cause the victim to fear for his safety or the safety of his property, to fear for the safety of a third person, or to suffer distress;
- (ec) communicating with the victim, or communicating about the victim to a third person, with intent to insult the modesty of the victim through any means, electronic or otherwise.”

Why Do People Become Perpetrators of Domestic Violence?

In cases of domestic violence, the perpetrator can be anyone, regardless of age, gender, socio-economic level, race, occupation, education background, and religion. Perpetrators of domestic violence are not always angry or hostile. Sometimes they are people who look calm and kind (Help, 2020). Many people think that perpetrators of domestic violence have mental disorders. However, research shows that perpetrators do not share a set of personality traits or a psychological condition that separates them from non-abusive persons. There are some of the offenders that have psychological problem, such as depression, post-traumatic stress disorder, or psychopathology. However, most victims do not have psychological disorders, and caution is urged to attribute mental illness as a root cause of domestic abuse. The American Psychological Association (DSM-IV) Diagnostic and Statistical Manual does not have a specific category for offenders, but mental illness should be a factor that may affect the magnitude and nature of the violence.

The reasons for someone to become a perpetrator of domestic violence are due to various factors. According to Huecker and Smock (2020), people commit domestic violence for a few reasons including anger management issues, jealousy, low self-esteem, feeling inferior, cultural beliefs that they have the right to control their partner, personality and psychological problems, traumatic perpetrators with abusive upbringing experience growing up in a family where domestic violence was accepted, alcohol and drugs, and as an impaired individual who may be less likely to control violent impulses. (Huecker & Smock, 2020). These factors indicate an issue in categorizing perpetrators of domestic violence; but many of them share the same traits, personalities and attitude.

Who Can Apply for Protection?

The protection is available for or can be applied by–

- (i) a spouse (a husband or wife);
- (ii) former spouse (former husband or former wife);
- (iii) a child below the age of 18, living as a member of the family;
- (iv) an incapacitated adult i.e. person who is wholly or partially incapacitated or infirm, by reason of permanent or temporary physical or mental disability or ill-health or old age, who is living as a member of the family of the person alleged to have committed the domestic violence, and includes any person who was confined or detained by that person, and

- (v) any other member of the family such as an adult son or daughter, a father or mother, a brother or sister, or any other relative.

This means that the elderly who are the spouse or former spouse of the perpetrator may apply for such protections. They may also fall into the category of incapacitated adult for old age, if the perpetrator is not a spouse or former spouse but is other family member in the household.

Enhancement of Protection to Victims

DVA 1994 should be read together with the Penal Code. DVA 1994 provides protection for victims; whilst the provisions on criminal offences committed by the perpetrator and the penalties for them are provided in the Penal Code. The Enforcement Officer responsible for cases involving domestic violence are the police and the social welfare officers. Section 19(1) of DVA 1994 provides that the duties of an enforcement officer shall include–

- (a) assisting a victim of domestic violence to file an application for IPO;
- (b) providing/ arranging transportation for the victim to an alternative residence/ a safe place/ shelter if required;
- (c) providing/ arranging transportation for the victim to the nearest hospital/ medical facility for treatment of injuries if needed;
- (d) explaining to the victim the rights to protection against domestic violence;
- (e) accompanying the victim to the victim's residence/ previous residence to collect personal belongings.

Section 19(2) further provides for additional duties that shall include–

- (a) exercising the powers of arrest under DVA 1994/ any other written law;
- (b) removing/ supervising the removal of a person excluded from a shared residence under a court order;
- (c) informing victim on the status of investigations relating to domestic violence; and (via 2017 amendment)
- (d) informing the victim on status of application for PO/IPO, including the service of order and court dates. (via 2017 amendment)

Amendments to DVA 1994 aims to expedite safety measure and victims can get instant and comprehensive protection with the new Emergency Protection Order (EPO). The 2017 amendment witnessed the improvement by way of –

1. extending the interpretation of 'domestic violence' to become more comprehensive to cover the needs of victims and current household issues;
2. enhanced protection for victims through an Emergency Protection Order (EPO);
3. granting the right of Exclusive Occupation to victims;
4. improving the mechanism for the Interim Protection Order (IPO) and Protection Order (PO); and
5. introducing the Rehabilitation Program.

What Protection Does DVA Provide?

There are three types of protection that are available for victims of domestic violence, according to needs and time – Emergency Protection Order (EPO), Interim Protection Order (IPO) and Protection Order (PO).

Emergency Protection Order (EPO)

The 2017 amendment introduces EPO as a kind of protection for victims of domestic violence. As the name implies, the EPO acts as the fastest method of protection that can be applied within the shortest period of time for protection within a limited time. The application can be made at any time to a social welfare officer duly authorized in writing by the Director General of the Department of Social Welfare (JKM). The officer will issue an order:

- Preventing perpetrators from hurting victims;
- Preventing perpetrators from inciting others to commit domestic violence against victims; or
- Prohibiting perpetrators from entering a safe place, shelter, residence, shared residence or alternative residence.

On the other hand, the application for IPO and PO is made in Court. Upon application, the Court will issue an order:

- Preventing perpetrators from using domestic violence against victims.
- Prohibiting perpetrators from inciting others to commit domestic violence against victims.

A safe place is any home or institution maintained or managed by the Ministry or Department responsible for welfare services, or by any other agency or voluntary organization approved by the Minister legal protection in situations of domestic violence. At the moment, there are 43 safe places approved by the Ministry of Women, Family and Community Development around the country. While shelter is any home, institution or any other suitable place of which the occupier or owner is willing to receive a victim temporarily.

Section 3A of DVA 1994 provides for the authority of Social Welfare Officer to issue an EPO. EPO may be applied at any time, whether or not an IPO or PO has been previously made or an application for an IPO or PO is still pending. It is applied to a victim of domestic violence under section 2(a) for wilfully or knowingly placing, or attempting to place, the victim in fear of physical injury and 2(b) for causing physical injury to the victim.

An EPO is prohibiting the perpetrator from using domestic violence against the victim; prohibiting the perpetrator from inciting any other person to commit domestic violence against the victim; or prohibiting the perpetrator from entering any protected person's safe place, shelter, place of residence, shared residence or alternative residence.

An application for an EPO application shall be made *ex-parte* by—

- (a) the victim;
- (b) the victim's counsel; or
- (c) where the victim is a child or an incapacitated adult, the guardian, relative or person responsible for the care of a child or incapacitated adult, or a social welfare officer other than the social welfare officer authorized by the Director General (section 3A(3) of DVA 1994).

An application for an EPO may be made in any district where—

- (a) the victim resides;
- (b) the perpetrator resides;
- (c) the alleged domestic violence occurred; or
- (d) the victim is placed temporarily (section 3A (4) of DVA 1994).

The application for an EPO shall be heard by the authorized social welfare officer immediately. The issuance of the EPO, if any, shall be made, where practicable, within 2 hours after the application is made. A police report relating to the domestic violence is not required for this application. The social welfare officer shall forward a copy of the order officer in charge of the police district within 10 hours of the issuance of the EPO. The police officer shall serve a copy of the EPO personally on the perpetrator

within 12 hours upon receiving the order. If a service to the person is unable, a substituted service of the EPO shall be effected—

- (a) by leaving a copy of the order at the last known address of the perpetrator; or
- (b) by any other manner as the authorized social welfare officer may direct.

The EPO shall be valid for 7 days from the date of issuance and enforceable when a copy is served on the perpetrator. The EPO shall not be renewed.

Interim Protection Order (IPO)

An IPO may be sought in Court pending investigations of domestic violence by the police following an information relating to the commission of an offence involving domestic violence. The court may issue an IPO prohibiting the person against whom the order is made from using domestic violence against his or her spouse or former spouse or a child or an incapacitated adult or any other member of the family as specified in the order (section 4(1)). According to section 12A, an IPO application shall be made *ex parte* by:

- (a) the applicant;
- (b) the applicant's counsel; or
- (c) a social welfare officer on behalf of the applicant.

An IPO issued by the Court may provide for any one or more of the orders specified in section 6(1)(a) to (f) – paragraphs specifying orders available for a PO itself (section 4(3A)). Protection in an IPO may include a provision prohibiting the perpetrator from inciting any other person to commit domestic violence against family member (section 4(3)).

An IPO shall cease to have effect (section 4(4) of 2017 amendment for DVA 1994) –

- (a) upon protected person being informed in writing by a police officer about the completion of the investigations and that there is no further action to be taken against the perpetrator; or
- (b) if after being informed in writing by a police officer that a criminal proceeding will be instituted against the perpetrator, no application for PO is made by the protected person within 7 days after being so informed; or
- (c) the application for PO is made by the protected person within 7 days after being so informed.

The person against whom an IPO is made may apply to set aside the order within 14 days from the date the order is served, under Section 12B, via the 2012 amendment.

Protection Order (PO)

Protection Order for victims of domestic violence can be applied under section 5 of DVA 1994. A PO is issued by the Court in a proceeding involving a complaint of domestic violence. This order shall restrain the perpetrator from using domestic violence against the complainant or victim. The Court may also include a provision prohibiting the perpetrator from inciting any other person to commit domestic violence against the protected person/s. The PO shall have effect for such a period, nor exceeding 12 months from the date of commencement of such order.

The PO may be sought within 7 days after the victim has been informed in writing by a police officer that a criminal proceeding relating to domestic violence will be instituted against the perpetrator. (Section 13(1)(a) via 2017 amendment); or at any stage of criminal proceedings under the Penal Code or any other written law where the accused is charged with an offence involving domestic violence whether or not an IPO has been issued against the accused. (Section 13(1)(b) via 2017 amendment)

A PO under Section 13(1) may be sought as a condition of the accused's release on bail (section 13(2)(a) via 2017 amendment) and upon the compounding of the offence referred to in section 13(1) under Section 260 of Criminal Procedure Code [Act 593] (section 13(2)(b) via 2017 amendment). An application for a PO shall be made by:

- (a) the victim;
- (b) the victim's counsel;
- (c) a social welfare officer on behalf of the victim; or
- (d) a police officer on behalf of the victim.

Section 6 of DVA 1994 and its amendment in 2017 provides for orders that may be included in a PO and an IPO to include any one or more of the following:

- (a) Granting of right of exclusive occupation to any protected person of a shared residence by excluding the person against whom the order is made.
- (b) Prohibiting/ restraining the person against whom the order is made from entering safe place, shelter, place of residence, shared residence, alternative residence, place of employment, school
- (c) Protected person is permitted to enter a shared residence accompanied by any enforcement officer for the purpose of collecting belongings
- (d) Avoiding/ limiting the perpetrator from making communication by any means with any protected person.
- (e) Permitting protected person to have continued use of vehicle
- (f) Giving any court direction as is necessary & incidental for the carrying out of such orders.

Penalties for Violating Interim Protection Orders and Protection Orders

Any person who wilfully contravenes an IPO or a PO or any provision thereof shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM2000 or to imprisonment for a term not exceeding 6 months or to both. If the person wilfully contravenes the IPO or PO by using violence on a protected person, he shall be liable to a fine not exceeding RM4000 or to imprisonment for a term not exceeding one year or to both, upon conviction

For second or subsequent violation of an IPO or a PO, a person who is convicted shall be punished with a minimum of 72 hours imprisonment and up to a maximum of 2 years, and shall also be liable to a fine not exceeding RM5000.

Rehabilitation Programme under the DVA

An improvement to the Act in 2017 has also witnessed the amendment of section 11 on Rehabilitation Programme. Rehabilitation programme means the programme provided by the Ministry responsible for welfare services for the purposes of family and community development. Under this provision, the court may, in an application for a PO, and in addition to issuing a PO, make an order that one/ more parties to the dispute be referred to a rehabilitation programme. An order to refer the victim to a rehabilitation programme shall be made only with the consent of the victim. When considering any question relating to the making of an order for reference to a rehabilitation programme, the court may, whenever it is practicable, take the advice of a social welfare officer or some other trained or experienced person.

What We Should Do?

Disseminate the information about Domestic Violence Act to the public

The existence of DVA in giving protection for victims of abuse may not be within the knowledge of certain people. Not to mention the information on the protection it provides to the elderly. The first thing to do is to convey to the public the existence of this Act and the types of protection it provides. Further, is to inform about the means of obtaining such protections and the party/ parties entitled to the protection orders. Parties and authorized person who can assist in the quest for protection should also be disseminated to the public's knowledge.

Empower the application of Domestic Violence Act

DVA 1994 gives special protection to victim of domestic abuse and gives protection orders by the officer in any situation where there is abuse in the domestic setting. Though the Act is intended to protect the women and family, older person may be covered by this act in terms of legal remedy (Yusoff, 2009). The Act defines domestic violence as causing or attempt to cause physical injury or wrongful restraint of a person, forced sexual act and causing damage to property that may cause annoyance to the victim. One of the limitations of the Act is that in its preamble, the Act clearly states that in any offences related to domestic violence, this Act shall be read together with the Penal Code. If we look in depth of the Hansard, the intention of the Parliament in drafting this Act was to give protection to women and children in domestic abuse cases (Yusoff, 2009). The question is whether this Act may give ample protection to older person in Malaysia to eradicate elder abuse cases. According to (Yusoff, 2009) the remedies available may not be suitable to cater the needs for older person.

Enhance the Enforcement of DVA for the Protection of Victims Particularly Elder Family Members

Past researchers concur that there seems to be a gap between policy and legislation in safeguarding interest and welfare of older person in Malaysia. The absence of mandatory reporting and high filial piety (Chai Sen Tyng and Tengku Aizan Hamid, 2015; Choo et al., 2016) among society increases the chance to obtain accurate data on challenges faced by older person. Local literatures suggested for specific law to be legislated dedicated to older persons as one way to overcome issue of abuse and neglect among older persons. Policy alone is not effective as it need to be coherent with the law to force legal obligation in the society. (Zaharah et al., 2015; Samad, Awang, & Mansor, n.d.; Tey et al., 2016; Yusoff, 2009).

Streamlining protection laws for the elderly

Currently older Malaysian are protected under generic provisions scattered around in various statutes. There is no specific law design to safeguard legal protections for older Malaysian. The conditions of an old person may be similarly attributed to those with disabilities. Relying on various general provisions serves adequate legal protection for older person is unclear. The state should develop effective social framework and adequate legal measures in addressing the need of older person in Malaysia.

CONCLUSION

Domestic violence does not only happen to women, but also men. Domestic violence can happen to anyone regardless of gender and age. Nevertheless, the perpetrators of domestic violence must be given a fair punishment. Meanwhile, the victims of domestic violence must receive support and protection from various parties – legal officials, family members, community and society.

What is unfortunate is when some victims and members of the society occasionally do not understand the law for perpetrators of domestic violence. Thus, the information on the law that regulates domestic violence should be disseminated widely. With an understanding of the law regarding domestic violence, the perpetrator will feel afraid to continue committing crime, and realize that the law can help stop the crime and help rehabilitating them through psychological help and support of authorized parties. The victims, on the other hand, will have courage to lodge reports of the crime. Usually, many victims are reluctant to report the case because they do not understand the procedures for reporting. The victim is confused about what to do when he/she becomes a victim. For the perpetrators, when they do not understand the law, they used to argue that what they are doing to the members of the family is something that they feel entitled to do upon the victim. Therefore, there is an importance of legal awareness in the society relating to domestic violence.

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