



Breaking the Silence: Seeking Help and Justice for Domestic Violence Survivors

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Abstract. This research paper addresses the urgent issue of domestic violence, specifically focusing on the challenges faced by survivors who live under the same roof as their abusers. Domestic violence disproportionately affects women and girls, creating a cycle of oppression that leaves survivors feeling trapped and unable to seek help. By examining relevant laws and cases, this paper outlines the steps survivors can take to seek assistance from others and escape their abusive situations. It explores various help-seeking strategies, including accessing support networks, contacting helplines and shelters, involving law enforcement, and pursuing legal remedies. The paper highlights the importance of empowering survivors and breaking the cycle of domestic violence through comprehensive support, legal protection, and community collaboration.

Keywords: Domestic violence, protection, law enforcement, survivors.

1 INTRODUCTION

1.1 Introduction

Like many other nations, domestic violence is a serious problem in Malaysia. Any aggressive behaviour that takes place in the course of an intimate relationship, such as marriage or cohabitation, is referred to as domestic violence. It involves financial, emotional, sexual, and physical abuse. In Malaysia, domestic abuse affects people from all social,

economic, and cultural backgrounds. No matter a person's colour, religion, or socioeconomic standing, it affects them. Domestic violence is still a problem in the nation, nevertheless, because of a number of causes, including cultural norms, gender roles, and a lack of understanding.

It is important to know that, Malaysia is the first Asian country that recognized domestic violence as a critical issue of public concern because Malaysia is the first Asian country that enacted a law related to domestic violence which was the **Domestic Violence Act 1994** which includes the definition of domestic violence, protection to the victims of domestic violence, jurisdictions that allow the victims to file protection in the court of Malaysia and the penalties for the abuser who breach the protection orders that was provided in the **Domestic Violence Act 1994**.

Even though the government has taken several initiatives and existence of the **Domestic Violence Act 1994**, domestic abuse is still underreported in Malaysia. Many victims still encounter obstacles when trying to get assistance, such as fear, stigma, financial dependency, or ignorance of available options. The social and cultural expectations surrounding confidentiality and upholding family honour may prevent people from speaking up or asking for help.

The aim of this assignment is to explain in detail the steps that should be taken by the victims of domestic violence to seek help in Malaysia, examine the steps that had been done by the government of Malaysia, domestic abuse in the United Kingdom, and recommends some reforms that can be made by the government or the non-governmental organisations for the victims of domestic violence to seek help. In order

to deliver the information clearly, this paper will be further divided into: (i) Domestic Violence in Malaysia, (ii) Steps taken by the Government of Malaysia, (iii) Statistics of Domestic Violence in Malaysia, (iv) Domestic Abuse in the United Kingdom, (v) Comparison between both of the countries, (vi) Recommendations and Reforms Domestic Violence in Malaysia and (vii) Conclusion.

2 STATISTICS

Malaysia has seen an upsurge in the number of domestic abuse accusations during the COVID-19 epidemic. According to a report provided on September 23, 2021, by the Ministry of Women, Family, and Community Development (KPWKM), there have been 9,015 police reports regarding domestic violence made since the introduction of the movement control order (MCO) in 2020.¹ In early April 2020, Talian Kasih reported a 57 per cent increase in calls since the beginning of the MCO, most of which were said to be related to aid enquiries.² Talian Kasih received 2,286 complaints between March and December 2020, and 2,248 complaints between January and August 2021. According to Datuk Seri Rina Harun, Minister of KPWKM, 5,657 domestic abuse occurrences were recorded in 2019 and 5,260 in 2020. From January to October 2021, there were 4,905 complaints of domestic violence incidents. She noted that in 2021 the number of such instances was slightly lower than in prior years. Datuk Seri Rina Harun stated that the number

¹Arfa Yunus (Over 9,000 domestic violence cases since MCO 1.0 [NSTTV], 23 September 2021) accessed 2 June 2023

²Tharanya Arumugam (MCO-linked domestic violence rises | new straits times, 4 April 2020) accessed 2 June 2023

of domestic abuse cases reported in Malaysia grew by 42% between 2020 and 2021, from 5,260 to 7,468 during the Covid-19 outbreak in 2020. She later reported that from January to December 2021, 3,028 domestic violence cases including 974 complaints were received through the Talian Kasih 15999 hotline.³

The Social Welfare Department states that Domestic violence was reported in 1,047 incidents in 2020.⁴ This increased to 1,234 cases in 2021 but declined to 843 cases in 2022. According to Norazman Othman, Director-General of the Social Welfare Department, 1,708 incidents involving people aged 22 to 39 were documented between 2020 and 2022. Physical violence was the most prevalent complaint, accounting for 1,417 occurrences. With a total of 1,157 cases, people aged 40 to 59 were the second most affected age group. Complaints from this age range included mental torment as well as physical, financial, and emotional abuse. Children under the age of 18 were also victims of domestic abuse in certain circumstances. Although just three such occurrences were documented between 2020 and 2022, they provide cause for alarm.

The Women's Aid Organisation supported around 15000 women survivors of abuse and discrimination from the start of the COVID-19 epidemic in March 2020 through the end of 2021.⁵ Vaneezha Muniandi, case management head at the Women's Aid Organisation, stated that the

³ ByOva, 'Malaysia Domestic Violence Cases Rose 42% during Pandemic' (*Ova*, 21 March 2022) accessed 6 June 2023

⁴ Nair T, 'Alarming Domestic Violence Statistics' (*www.thesundaily.my*, 19 May 2023) accessed 2 June 2023

⁵ (Home - Women's Aid Organisation, 17 May 2022) accessed 2 June 2023

NGO registered a total of 2,815 domestic abuse instances between 2021 and this March. Between January and March 2023, the Women's Aid Organisation reported 195 instances via hotline, face-to-face, and through shelter occupants. She went on to say that the most prevalent types of abuse were physical and psychological. However, most survivors are subjected to many types of abuse, including physical, psychological, social, financial, and sexual assault. As a result, there is no definitive answer to the sorts of abuse experienced by a domestic violence victim because it is frequently a combination of multiple types of abuse.

3 Steps To Be Taken By Survivors To Seek Help

3.1 DOMESTIC VIOLENCE ACT (DVA) 1994

Protection Order

In this section, we will be discussing the steps to be taken by survivors to seek help when they are suffering from domestic violence. The first legislation that was introduced by the government is **Domestic Violence Act(DVA) 1994**. The Act attempts to protect those who have experienced abuse. Anyone in Malaysia is protected by the Domestic Violence Act, which also covers de facto couples, ex-spouses, children under the age of 18, disabled persons who live with family members, and other adults the court may judge appropriate to be covered by the Act.

The victims of domestic abuse in Malaysia have the right to apply immediately for a Protection Order(PO), Emergency Protection Order(EPO) or Interim Protection Order(IPO). These protection orders are designed to safeguard the victim and stop the abuser from harming them.

When the police investigation is complete, the Magistrate Court will issue a Protection Order (PO) that will remain in effect until the conclusion of the court trial. The Protective Officer prevents the abuser from harming the victim further. According to **Section 5 of DVA 1994**, the court may issue a PO to prevent a defendant from engaging in domestic violence against the complaining victim, the child, or the incapacitated adult. A PO can prevent the guilty partner from doing things like returning to the marital residence. A clause barring the offender from encouraging others to conduct domestic violence against the survivor may also be imposed by the court. In the case of **Chan Ah Moi v Phang Wai Ann**⁶, when a spouse is arrested for an offence that meets the criteria for domestic violence, as in the current instance, a permanent protection order may be sought under Section 5 of the DVA. But unfortunately, when the Sessions Court at Kota Tinggi convicted and sentenced the respondent on 7 October 1992, the DVA had not been legislated and, consequently, the sessions court could not resort to the DVA. Now, if the DVA were applicable to the respondent when he was first produced before the sessions court, The respondent's accusation under **Section 326 of Penal Code** would fall within the definition of "domestic violence" in **Section 2 of the DVA**, making the protection order envisioned in **Section 13 of DVA 1994** relevant. If there is a continuing court case, the PO can be extended for up to an additional year, allowing you to send and receive mail and make phone calls.

Once charges have been filed in a domestic violence case, the

⁶Chan Ah Moi v Phang Wai Ann[1995] 3 MLJ 130

victims are eligible to apply for a Protection Order (PO). She will be accompanied to court by an official from the social welfare department/Jabatan Kebajikan Masyarakat (JKM). The JKM representative will bring a letter from the welfare department, a letter from the police saying that the case has been charged in court, a copy of the victim's IC, and (if applicable) copies of the children's birth certificates or ICs.

If any person who contravenes the PO issued by the court, they shall be liable for an offence as stated under **Section 8 of DVA 1994**. **Quay Chew Soon JC** in the case of **Kua Yoke Ching & Anor v Kua Hock Lai**⁷, states that depending on the specifics of the case, the offender may be prohibited from entering any location designated as a safe haven, shelter, primary home, shared dwelling, or alternative house. Contravention of an emergency protection order may result in a fine of up to RM2,000 or imprisonment for up to 6 months, or both as according to **Section 8(1) of DVA 1994**. Nextly, Anyone found guilty of employing violence towards a protected individual in violation of a protection order suffers the maximum penalty of RM4,000 in fines and/or a maximum of one year in jail under **Section 8(2) of DVA 1994**. Furthermore, If a person violates a protection order for a second or subsequent time, he is subject to punishments ranging from 72 hours to 2 years in jail, and a fine of up to RM5,000 which is stated under **Section 8(3) of DVA 1994**. Lastly, it is also notable that a temporary protection order is considered to be a "protection order" for the purposes of this particular section.

⁷ Kua Yoke Ching & Anor v Kua Hock Lai[2021] MLJU 1428

Emergency Protection Order

In most situations, the Emergency Protection Order (EPO) may be granted within two hours after applying to the social welfare department or known as Jabatan Kebajikan Masyarakat (JKM). The **Domestic Violence (Amendment) Act of 2017** makes this possible, expanding upon the provisions of **Part IA of the Domestic Violence Act of 1994**. An EPO may be issued by a social welfare officer under **Section 3A(1) of the DVA 2017** if the official has been given such authority in writing by the Director General of Social Welfare. Only the particular kinds of domestic abuse covered under paragraphs (a) and (b) of Section 2's definition of "domestic violence" are covered by this EPO. Intentionally or recklessly putting someone in fear of bodily harm injury; Intentionally causing bodily harm to another person when it is known or should have been known that doing so would cause such harm; **Section 3A(2) of the DVA 2017** says that an EPO application can be made at any time, whether or not there is a temporary protection order or a protection order is ongoing.

Under **Section 3A(3) of the DVA 2017**, the victim, victim's attorney or a social welfare officer on behalf of the victim, may make an application ex parte. The victim's guardian, family, or caretaker, or any social welfare official who is not an authorised social welfare officer, may apply on behalf of a minor or incapable adult victim also stated under **Section 15 of DVA 1994**. A domestic abuse victim should only file a complaint with the welfare officer in the district in which either the victim or the perpetrator lives, or in which the domestic violence event

took place. The victim may file a claim by calling or visiting the local welfare office. EPO applications are accepted around the clock through Talian Kasih (15999) or at any Jabatan Kebajikan Malaysia (JKM) office in Malaysia. It's also worth noting that applicants who bring children to JKM must also provide the child's birth certificate. Within 2 hours of receiving a complaint, a welfare officer will evaluate the situation and issue an EPO if necessary.

The emergency protection order hearing must be held as soon as possible after the authorised social welfare official receives the application⁸. EPO should be provided as soon as possible, ideally within 2 hours. Within 10 hours of its issuance, the EPO must be sent to the officer in charge of the police district where the offender resides⁹, and within 12 hours of that, the officer must personally serve the order on the offender¹⁰. The police district commander has 12 hours to affirm service on the criminal to the authorised welfare worker.

An authorised social welfare officer may issue an emergency protection order¹¹ for one or more of the following: A ban on the perpetrator's use of 'domestic violence' against a current or former partner, child, parent, sibling, or other family member is called for. Next, the abuser must be prevented from encouraging others to perpetrate "domestic violence" against his or her current or former partner, child, incapacitated adult, or any other family member. As refer to the case of **Kua Yoke**

⁸ Section 3A(5) of the DVA 2017

⁹ Section 3B(1) of the DVA 2017

¹⁰ Section 3B(2) of the DVA 2017

¹¹Section 3A(7) of the DVA 2017

Ching & Anor v Kua Hock Lai¹², the plaintiff applied for an EPO due to the fact that she claimed that the defendant had threatened them and that they feared for their own safety as well as the safety of P1's daughter. They, along with P1's daughter, have experienced distress, considerable anxiety, and emotional harm. The victim may be subjected to "psychological abuse" or "emotional injury" as a result.

Apart from that, a protection order may keep an abuser out of a victim's home, shared house, or any other area where the protected person feels secure. It is important to note that the duration of an emergency protection order can be up to seven days from the day it was issued. The issuance of a protection order or an interim protection order will not have any impact on EPO.

Interim Protection Order

Interim Protection Order was defined under **Section 6(1) of DVA 1994** which is a restraining order against an offender that lasts for one year and can be extended for another year if necessary. The Magistrate Court can grant an Interim Protection Order (IPO) for temporary protection that will last until the police investigation is complete and formal charges are filed. Beside that, for the victim's protection, the court can issue a restraining order, a protection order, a no-contact order, an order a ban on entering the victim's place of study or work, or any other order it deems appropriate as stated under **Section 6(1) of DVA 1994**. According to **Section 4 of DVA 1994**, the court may issue a Protection Order

¹²Kua Yoke Ching & Anor v Kua Hock Lai [2021] MLJU 1428

(PO) to safeguard the victim's spouse, former spouse, child, or incapacitated adult. This temporary restraining order has been issued pending the outcome of an investigation into alleged domestic abuse. The IPO prevents the offender from further committing domestic abuse against the victim. The court may also order the offender to refrain from encouraging others to engage in domestic violence against the victim. As refer to the case of **Mangaleswary A/P Ponnampalam v Giritharan A/L E Rajaratnam**¹³, while the appellant/wife and respondent/husband were in the process of a divorce, the appellant had applied for an interim protection order ('IPO') against the respondent, a medical doctor, under the **Domestic Violence Act 1994**. The appellant had alleged that she had been assaulted by the respondent on two separate occasions. The appellant was granted the IPO to prevent the respondent from using domestic violence against her.

There are few steps when applying for an IPO, first and foremost, when filing a police complaint, the victim might ask the officer to begin the application for an Interim Protection Order (IPO). Next, the victim was required to declare their desire for an IPO in the police report. Other family members, such as the victim's children, may also be covered by the IPO. After that, the victim will obtain a referral letter from the police stating that the case is being investigated. Upon completion of the procedure above, the victim shall bring the police report, referral letter, and IC to the nearest social welfare department (JKM) office. It is important to note that the victim must notify the welfare officer that they wish to

¹³ Mangaleswary A/P Ponnampalam v Giritharan A/L E Rajaratnam [2015] 5 MLJ 305

get an IPO. Lastly, the victim will be accompanied to court by the welfare officer to request for an IPO.

Section 19 of DVA 1994 had outlined the duties of the enforcement officer, i.e. police officer and Social Welfare Officer in assisting the victim of domestic violence. The enforcement officer shall assist a victim in obtaining medical attention and filing a police report (if one has not already been filed); apply to the Magistrates Court for an Interim Protection Order; initiate investigations into the abuse and meet with the parties at counselling sessions; provide temporary shelter to the victim who has nowhere else to go; make new arrangements for the children's school, housing, and so on. It is also important to note that the enforcement office also has a duty to educate the victim about her legal options in cases of domestic abuse; going with the victim back to her home or former place to get her stuff. An enforcement officer's duties include making arrests as necessary under the terms of this Act or any other written legislation, as well as physically removing or overseeing the physical removal of a person barred from a shared house in accordance with a court order under **paragraph 6(1)(a) of DVA 1994**.

3.2 LAW REFORM (MARRIAGE AND DIVORCE) ACT (LRA) 1976

Other than **DVA**, the legislations that are available in Malaysia regarding domestic violence are **Law Reform (Marriage and Divorce) Act 1976 (LRA 1976)**, **Married Woman Act 1957 (MWA Act)**, **Child Act 2001 (CA 2001)**, and **Penal Code (PC)**.

According to **section 54(1)(b) of LRA 1976**, it states that divorce can be made between the parties if the respondent has acted in such a way that the petitioner is unlikely to continue living with the respondent.

According to **section 103 of LRA 1976**, the court has the authority to order anyone to stop forcing their society on their spouse or former spouse and from engaging in other sexual abuse during the course of any matrimonial proceedings as well as on or after the decree of divorce, judicial separation, or annulment is granted.

In the case of **Chan Ah Moi v Phang Wai Ann**¹⁴, seven children were born into the marriage between the petitioner and the respondent. The respondent then began acting irrationally, and they made the decision to live apart. Despite the separation, the respondent kept abusing the petitioner, including the petitioner being knifed with a long knife on one occasion. The attack left the petitioner with serious injuries, for which the respondent was arrested and found guilty of intentionally causing great bodily harm by dangerous weapons or means under **section 326 of the Penal Code**, and sentenced to four and a half years imprisonment. The petitioner asked the High Court to issue a non-molestation order against the respondent while the appeal was still pending and to order him to stay away from their matrimonial home, where she was living, as well as a certain area surrounding the matrimonial home. The petitioner filed a request for the divorce in the meantime. The court held that a non-molestation injunction required by **section 103 of the LRA 1976** may be

¹⁴Chan Ah Moi v Phang Wai Ann [1995] 3 MLJ 130

granted as the petitioner had requested the dissolution of her marriage.

However, in **Jennifer Patricia Thomas v Calvin Martin Victor David**¹⁵, the defendant, the husband in this case bought the residence which was registered in his name. The couple married legally on 19 December 1995. The couple married in a religious ceremony. They lived with the plaintiff's parents. Two children were born into the marriage between them. Later, the couples' marriage had issues, and as a result, the husband had forbidden the wife from entering their matrimonial home. However, the wife moved into the home on 5 March 2004, when the husband was away performing his duties as a MAS air steward on long-haul flights. This was the plaintiff's request for the following orders: (a) that the plaintiff be granted short-term custody, control, and guardianship of their two children; (b) that the defendant be prohibited from removing the children from the plaintiff's custody without her consent and from bringing them outside of Malaysia; and (c) that the defendant be prohibited from beating, verbally or physically assaulting, interfering with, or otherwise harming the children. The court held that **section 103 of LRA 1976** can be applied during matrimonial proceedings and does not imply that it needed to be a pending divorce proceedings.

3.3 MARRIED WOMEN ACT 1957

Furthermore, the Malaysian government has introduced legislation such as the **Married Women Act (MWA) 1957** in order to protect the rights of women who have been physically or emotionally abused by their husband.

¹⁵Jennifer Patricia a/p Thomas v. Calvin Martin a/l Victor David [2005] 6 MLJ 728

According to **Section 4A of the MWA 1957**¹⁶, it states that in the same way that any other two independent people may do, a husband and wife may each bring a tort claim against the other for damages related to harm to the other's person, as the case may be. In other words, the injured party can sue the other party who committed domestic violence against him or her.

In the case of **Yeo Bee Lin v Lee Eng Chee**¹⁷, as a result of an alleged act of adultery perpetrated by the defendant, the plaintiff wife filed a lawsuit against the defendant husband under **section 4A of MWA 1957** seeking damages for loss of reputation and mental anguish. The plaintiff claimed that the defendant severely harmed her by forcing her to listen to details of his sexual activities with another woman. The court held that the plaintiff has the right to sue the defendant in court for the harm she had sustained. Despite the fact that the injury was caused by an adulterous act, the remedy under **section 4A of MWA 1957** did not overlap with the remedies under **section 58 and section 59 of MWA 1957**. **Section 58 and section 59 of MWA 1957** were against a third party for effecting the dissolution of the marriage, whereas **section 4A of MWA 1957** dealt with damages against one's own spouse for personal injury.

3.4 CHILD ACT 2001

Section 17(1) of the **Child Act (CA) 2001**¹⁸ provides that (a)if a child has experienced abuse or there is a significant likelihood that they

¹⁶Act 450

¹⁷Yeo Bee Lin v Lee Eng Chee [2004] 1 CLJ 691

¹⁸Act 106

may experience abuse from a parent, guardian, or a member of their extended family, they need attention and protection; (b) his parent, guardian, or family member has failed to safeguard the child from such harm, violence, or risk; or (c) the child's parent or guardian has neglected the child, or is unable to take care of or exercise authority over the child; d) the parent or guardian of the child has neglected or is refusing to give him sufficient attention, food, clothing, and shelter. In other words, this section has provided care and protection to the child who is experiencing domestic violence such as sexually abused, emotionally abused, physically abused by the victim's parent or guardian or any family members.

Section 31(1) of CA 2001 states that any individual who, while caring for children, (a) abuses, neglects, abandons, or puts the child to exposure that abuses the child physically or emotionally, or causes or permits that abuse, neglect, abandonment, or exposure; or b) physically or sexually abuses the child, or leads to or allows that abuse, is guilty of an offence, and upon conviction is subject to a fine of not more than 20,000 ringgit, a term of imprisonment of not more than ten years, or both.

In the case of **Liau Oi Choo v Johny Tanujaya Tjioeng**¹⁹, the petitioner, a Malaysian, and the respondent, an Indonesian, were married in Singapore in 2007 and had lived in a number of nations before settling in Malaysia. They had previously lived in Singapore, Hong Kong, and other places. Their first son was born in 2007, and their second son was born in 2010. The marriage had, however, fallen apart over the course of

¹⁹Liau Oi Choo v Johny Tanujaya Tjioeng [2022] 1 LNS 2974

about eight years, leading to abuse, neglect, police investigations, a change in the custody of the children, and the respondent's escaping to Indonesia out of fear of being detained in Malaysia on criminal charges. The petitioner filed a divorce petition in August 2015, and the respondent filed a cross-petition in September 2015. The respondent submitted an application in November 2015 asking for joint guardianship and custody of their children. In the absence of the petitioner, a decree nisi was given in April 2016 and made final. The petitioner then requested to have the order nisi set aside as a result. In May 2017, the application to put it aside was approved. The respondent had updated his cross-petition in April 2019 in opposition to the petitioner's request to alter the divorce petition, which was approved in January 2019. In the meanwhile, the respondent filed an ex parte application in February 2016 and was given temporary custody of the children. However, the respondent was the subject of many police investigations alleging child abuse in 2016, 2017, and 2018, and in June 2017 he was charged under **section 31 of the CA 2001**.

3.5 PENAL CODE

According to **section 319 of the Penal Code(PC)**²⁰, hurt is defined as causing physical discomfort, sickness, or infirmity to another person. Since domestic violence is a voluntary action, the abuser is considered to have voluntarily causing hurt under **section 321 of the PC** and under **section 323 of PC**, the person who voluntarily harms another person, he or she may be penalised with up to a year in prison or a fine up to 2,000 ringgit, or with both.

²⁰Act 574

If an abuser commits domestic violence by forcing sexual conduct on his partner, he is liable under **section 375 of PC** which states that unless specifically stated otherwise, A guy is considered to have committed "rape" if he engages in sexual activity with a woman in any of the following situations such as against her desire; without her permission; and with her consent, but only if she gave it after being threatened with death, injury to herself or another person, or obtained under false pretenses, and the man has or is aware of reason to believe that her rights were violated when the consent was obtained.

Section 375A of PC states that a man can be held liable by up to five years of imprisonment if a man intentionally causes harm to his wife or another person with the goal of engaging in sexual activity with his wife while a lawful marriage is still in effect. Under **section 376(1) of PC**, anyone who found guilty of rape is subject to whipping in addition to a sentence of imprisonment that may reach twenty years.

4 STEPS TAKEN BY GOVERNMENT

The Malaysian Ministry of Justice enacted the **Domestic Violence Act** in 1994 to reduce the prevalence of domestic violence. The **Domestic Violence Act 1994** is broken down into three sections. The first option is for survivors of domestic abuse to apply to the court for an Interim Protection Order. This protective order will curb additional domestic violence. The protection order is only temporary, pending the outcome of a police investigation, but it forbids the abuser from abusing anybody else.

Second, survivors of domestic abuse can seek a Protection Order from the court. The interim protective order will be lifted after the police have concluded their investigation. If the abuser is charged with domestic violence, the survivor will be granted a protection order by the judge. Survivors must request additional provisions to the protective order from the investigating officer and deputy prosecutor. The police can be notified if an abuser breaches a protective order.

Third, survivors of domestic abuse can apply to the Social Welfare Department (JKM) for an Emergency Protection Order if they require immediate protection and have not yet made a police report. Before seeking an emergency protection order, an authorised welfare officer will interview the victim and fill out documents. This protective order does not need a police report. Furthermore, like any other protection order, this one is only effective for seven days.

Domestic abuse survivors can also seek assistance at Jabatan Kebajikan Masyarakat (JKM). Survivors can get therapy from the JKM. If necessary, JKM can also seek medical aid for survivors, give temporary housing, and provide emergency support. JKM can also help survivors get protection orders and urge them to file police reports.²¹

The **Domestic Violence Act of 1994** was amended in 2017 because domestic violence is on the increase and has fast become a social

²¹ 'Getting Help for Domestic Violence in Malaysia' (Women's Aid Organisation, 25 May 2023) accessed 2 June 2023

epidemic. This Act requires a Social Welfare Officer to perform the following tasks as an Enforcement Officer. First, help the victim file a domestic abuse report. Second, arrange transportation for the victim to a temporary housing, safe place, or shelter. If required, arrange for the victim's relocation to the nearest hospital or medical institution for medical assistance and treatment. Finally, explain to the victim that he or she has the right to seek protection and accompany him or her to his or her present or former house to get his or her stuff.²²

Furthermore, Kementerian Kesihatan Malaysia (KKM) had set up a "One Stop Crisis Centre" at Government Hospitals.²³ One-Stop Crisis Centres (OSCC) are established in government hospital emergency departments. This centre is open 24 hours a day and caters to all cases pertaining to abuse, violence and exploitation of adults and children. Doctors at the OSCC give medical care for any injuries as well as collect medical evidence that can be used in court. Through the Medical Social Worker or Social Welfare Officer, the OSCC can also assist victims in obtaining police protection, shelter, legal assistance, and counselling

Other than that, in 2007, the government established a dedicated hotline (Talian Kasih 15999) for members of the public to report any actions or suspicions of acts of domestic violence, human trafficking, and child abuse in order to enable early intervention and rapid action on reported instances. The Talian Kasih 15999 is available 24 hours a day

²² (Mygov - the government of Malaysia's Official Portal) accessed 3 June 2023

²³ Farhana, 'One Stop Crisis Centre (OSCC)' (PORTAL MyHEALTH, 1 April 2016) accessed 3 June 2023

and may also be reached via fixed-line and Whatsapp Instant Messaging services. Talian Kasih 15999 is a centralised communication centre that connects the general people with government entities that provide emergency help. Tele-counselling had also been added to Talian Kasih 15999.²⁴

The government also worked with the Federal Territories Islamic Religious Department (JAWI) to build transit facilities for domestic abuse victims at chosen mosques. Two mosques in Kuala Lumpur have been confirmed to be designated as shelters which are the Federal Territory Mosque in Kuala Lumpur and the Al-Ghufran Mosque in Taman Pinggir Tun Dr Ismail, Kuala Lumpur. This institution is solely for victims of domestic abuse who have nowhere else to go and want quick assistance. The victim will be protected by the mosque if a police complaint on the domestic violence case has been filed and, if necessary, an Emergency Protection Order has been granted by JKM (Department of Social Welfare). During the victim's stay at the transit centre, he or she would get spiritual direction from mosque authorities and counselling from JKM to assist them make sensible decisions and plan their next steps. In addition to functioning as a transportation hub, it would also serve as a therapy clinic and a location where complaints about domestic abuse may be filed, as well as host activities to promote public awareness about domestic violence.²⁵

²⁴ (Response from the Government of Malaysia the letter to submitted by the ..., 6 December 2021) accessed 2 June 2023

²⁵ 'FT Mosques Offer Temporary Refuge for Domestic Violence Victims' (*www.the-sundaily.my*, 8 September 2021) accessed 3 June 2023

5 COMPARISON OF UK LAW WITH MALAYSIAN LAW

5.1 LEGAL REMEDIES OF THE UK

Domestic violence is a worldwide issue that ought to be tackled responsively. Domestic abuse is also a prevalent issue faced in the UK. According to the **Crime Survey for England and Wales (CSEW) year ending March 2022**, approximately 1.7 million women and 699 thousand men had been victims of domestic abuse from October of 2021 to March of 2022. In other words, in the 6 months long period, suffrage from domestic abuse is found to be experienced by an estimated 7 in 100 women and 3 in 100 men²⁶. Though belatedly, the UK Government had drafted and published a Domestic Abuse Bill in January 2019, and the **Domestic Abuse Act 2021 (DAA)** was passed by Parliament subsequently.

As the first official legislation that specifically governs domestic abuse in the UK, the DAA has provided more and strengthened the remedies granted to victims of domestic abuse. First, the DAA had **defined what falls under “domestic abuse”** throughout S1 to S3. Certain behaviours may fall under “domestic abuse” if both parties are aged 16 and above, both parties are personally connected to each other, and the behaviour is considered “abusive” under **S1(3) of the DAA**. Children can also be victims of domestic abuse so long as the victim is still a child, who is not over the age of 18. The child must have seen, heard or experienced the effects of the abuse and is related to the perpetrator. With the

²⁶ Elkin M, ‘Domestic Abuse Victim Characteristics, England and Wales: Year Ending March 2022’ (*Domestic abuse victim characteristics, England and Wales - Office for National Statistics*, 25 November 2022) accessed 4 June 2023

definition fixed, courts will be able to give fair judgements more consistently for the victims.

Next, the **Domestic Abuse Commissioner** has been established and the **DAA** also provides the functions of the Commissioner to remedy domestic abuse. The Commissioner is appointed as an independent authority under **S4 of the DAA** to oversee the response to domestic abuse cases. If requested by the Commissioner of a specified public authority under **S15(3) of the DAA**, the authority must reasonably comply with his request for the purpose of exercising his functions. An Advisory Board is also established under **S12 of the DAA** with members that each represent the interests of parties such as the victims of domestic abuse, charities and organisations that work with victims of domestic abuse in England etc. The Advisory Board was established for the purpose of advising the Commissioner in exercising his functions.

In addition, if any senior police officer reasonably suspects that someone is being abusive to another person who is 16 years old and above and is personally connected to the alleged abuser, and it is issuance of notice is necessary to shield the person from actual or threat of domestic abuse, he is granted to power to issue a **domestic abuse protection notice (DAPN)** under **S22 of the DAA**. The DAPN will provide immediate protection to victims of domestic abuse from their abusers. A DAPN may last up to 48 hours until a domestic abuse protection order has been applied. If there are reasonable grounds to suspect that the person who the notice is issued against has breached the notice, a constable may arrest the person without a warrant and keep him in custody for not

more than 24 hours.

While the DAPN is in effect, an application for a **domestic abuse protection order (DAPO)** may be made. The courts may impose any requirements that are deemed necessary to prevent any further domestic abuse suffered by the victim. A DAPO provides long-term protection to the victim. Furthermore, the courts may even, by DAPO, require the abuser to be subject to monitoring using an electronic monitor device under **S35(6) of the DAA**. A DAPO may be made either on application under **S28 of the DAA** or in certain proceedings under **S31 of the DAA**. Even without an application, the courts may at its discretion make a DAPO against a person in the specified cases as stated under **S31 of the DAA**. The breach of a DAPO is an offence and if guilty, the person is liable to either imprisonment of not more than 12 months, a fine or both on summary conviction, or imprisonment of not more than 5 years, a fine or both on conviction of indictment.

Furthermore, **S66 of the DAA** also amended **S33 of the Criminal Justice and Courts Act 2015 (CJCA)**, which only made disclosing private and sexual imageries to cause distress an offence pre-amendment, to insert “or threatening to disclose” within the section. In virtue of **S33(9) of the CJCA**, a person is liable to either imprisonment of not more than 2 years, a fine or both if convicted on indictment, or imprisonment of not more than 12 months, fine or both on summary conviction.

After amendment from **S68 of the DAA**, “personally connected” under **S76(1)(b) of the Serious Crime Act 2015 (SCA)** are defined as followed under **S2(1) and S2(2) of the DAA**. **S76 of the SCA** provides

that coercive behaviour in a familial or intimate relationship is an offence and if found guilty, such person will be liable under **S76(11) of the SCA** to imprisonment of not more than 5 years, fine or both on conviction of indictment, or imprisonment of not more than 12 months, fine or both on summary conviction.

Aside from criminal remedies, there are also civil remedies for the victims which can be found under the **Family Law Act 1996 (FLA)**. First, the FLA grants the courts the power to issue **occupational orders** under **S33**. **S33(7) of the FLA** provides that if the court finds that the applicant of the occupational order or any material child is likely to suffer serious harm as a result of the behaviour of the respondent if the order or a provision is not made, the court may make the order to protect them. In virtue of **S33(3) of the FLA**, an occupational order may entitle the applicant or the victim to continue occupying the dwelling-house and require the respondent or the abuser to leave the premises.

Furthermore, **S42 of the FLA** allows application to the court to make a **non-molestation order**. According to **S42(1) of the FLA**, a non-molestation order prohibits the respondent from molesting another person who is associated with the respondent. However, the statutory definition of “molestation” is not provided. In the case of *C v C (non-molestation order: jurisdiction)*, Sir Stephen Brown P. found that what falls under “molestation” has to be considered to the particular facts of a particular case. “Molestation” implies the deliberate conduct with such in-

tent to harass the other party that the intervention of the court is justifiable²⁷. Moreover, in the case of *Davis v Johnson*, Viscount Dilhorne stated that violence is a form of molestation but molestation may still occur without the threat of violence or actual violence²⁸. As a consequence of the non-molestation order, in virtue of **S42A of the FLA**, a breach of the non-molestation order without reasonable cause amounts to an offence. According to **S42A (5) of the FLA**, such a person is liable to imprisonment of not more than 5 years, a fine or both on conviction on indictment, or a term of imprisonment not more than the general limit in a magistrates' court, a fine or both on summary conviction.

The other legal remedy of the UK is **Protection from Harassment Act (PHA) 1997** which is a criminal remedy. According to **section 3A of PHA 1997**, if a person feels intimidated by a behaviour but it does not violate the **FLA 1996**, they may seek an injunction. The applicant must demonstrate that a breach under **Section 1 of the PHA 1997** is expected in order to obtain the injunctions. The harassment of one person is covered by **Section 1(1) of the PHA 1997**, while harassment of two or more people is covered by **Section 1(1A) of PHA 1997**. Pursuing a course of activity in violation of **Section 1 of the PHA 1997** is illegal, as stated in **Section 2 of the PHA 1997**. The maximum term for violating **Section 1 of the PHA of 1997** is six months. According to **section 4 of PHA 1997**, it states that a person commits an offence if their actions make someone believe that violence will be committed against them on at least two separate occasions, and they know or should know that this

²⁷ C v C (non-molestation order: jurisdiction) [1998] 2 WLR 599

²⁸ Davis v Johnson [1978] 1 All ER 1132

will happen on each occasion will have indictment for 10 years or 6 months in summary or fine, or both.

5.2 COMPARISON BETWEEN THE DOMESTIC ABUSE ACT 2021 AND THE DOMESTIC VIOLENCE ACT 1994

Both the UK and Malaysia, especially the UK, have shown admirable dedication in mitigating domestic abuse or violence in recent years. However, if a comparison between the **Domestic Abuse Act 2021 (DAA)** and the **Domestic Violence Act 1994 (DVA)** was to be made, the DAA would be a more comprehensive option out of the two statutes.

First, the definition of “domestic abuse” under **S1(3) of the DAA** has been shown to include **economic abuse**. **S1(4) of the DAA** provided the definition of economic abuse as any behaviour that would substantially affect the victim’s ability to make and use money or other property, or to obtain goods or services. However, nowhere in the **DVA** expressly mentions economic abuse as falling within “domestic violence”.

Moreover, under the **DAA**, the victim and the abuser must be “personally connected” as provided under **S1(2)**. The two parties are considered to be “personally connected” to each other if they are or have been civil partners of each other under **S2(b) of the DAA**. According to the **Cambridge Dictionary**, the civil partnership is defined as the legal relationship between two homosexuals in the UK. The partnership is as valid as a marriage²⁹. However, the **DVA** does not take into considera-

²⁹ ‘Civil Partnership’ (*Cambridge Dictionary*) accessed 4 June 2023

tion civil partnerships. Hence, victims of abuse from their significant others of the same sex will not be given the same remedy as under domestic violence in Malaysia.

Next is the establishment of the office of the **Domestic Abuse Commissioner (DAC)**. In virtue of **S4 of the DAA**, a Domestic Abuse Commissioner is appointed for the general purpose of preventing domestic abuse as given under **S7(1) of the DAA**. The Commissioner is tasked to not only prevent domestic abuse but also to identify the victims, the perpetrators, children who are affected and strengthen the protections for victims of domestic abuse. In comparison, the **DVA** does not include any provisions on the appointment of a DAC, let alone the functions. As provided under **S4(3) of the DAA**, the Commissioner is an independent authority. Hence, the Commissioner can be an effective authority to protect the interests of the victims of domestic abuse and hold domestic abuse services accountable by publishing a report under **S16 of the DAA**.

In conclusion, the Malaysian Parliament may take note of these differences and amend accordingly. These amendments include including economic abuse under domestic violence, allowing victims in civil partnerships to apply to be protected under the **DVA** and establishing an office of a DAC to represent and protect the victims of domestic violence.

6 RECOMMENDATIONS ON HOW TO END DOMESTIC VIOLENCE

In order to solve the issue of domestic violence in Malaysia,

not just the government, but the law enforcement agencies, Non-Governmental Organisations(NGOs), the community, and even the healthcare experts are needed to get involved.

The first suggestion is to strengthen the current law. Parliament needs to examine and revise the current statute which is the **Domestic Violence Act 1994** in order to make sure that the victims of domestic violence are given complete protection. Parliament in Malaysia can consider making some amendments that can manage the new type of abuse including online harassment or cyberstalking and increase the punishment towards the abuser³⁰. For instance, if the abuser keeps on disturbing the victim by the time he or she is under protection, the court can issue a detention order to the abuser. In addition, the legal procedure for expediting justice for the victims of domestic violence should be faster.

The second suggestion for solving the issue of domestic violence in Malaysia is to improve the law enforcement response. The Government needs to provide specialised training to the related civil servants such as police officers and the social welfare officer on how to handle domestic violence situations effectively and carefully³¹. For instance, the police department can create a special domestic violence unit in dealing with cases relating to domestic violence. Through the establishment of this special domestic unit in the Force, the police officers can make sure

³⁰ Ames, 'Anti-Stalking Law Must Be Passed in next Parliament Session to Address Rise in Gender-Based Cyberviolence during COVID-19 Pandemic' (Women's Aid Organisation, 11 June 2020) accessed 1 June 2023

³¹ 'MANAGING FAMILY INSTITUTION, Getting Abuse Protection, Application for Protection, Domestic Violence' (Mygov - the government of Malaysia's Official Portal) accessed 1 June 2023

that the protection orders are well enforced as timely and thorough investigations.

The third suggestion for solving the issue regarding domestic violence in Malaysia is through improving the victim support service³². NGOs and related agencies such as the Women's Aid Organisation need to add the availability of shelters and safe spaces for the victims of domestic violence, particularly in those rural areas³³. Furthermore, there should also be improvements regarding access to medical, psychological, and legal services. The government of Malaysia can refer to the French government's scheme in the problem of domestic violence where the survivors can seek aid discreetly in any supermarket or pharmacy and ensure the survivors were placed at the centre of any reform. The government of Malaysia should give sufficient funding to NGOs or any related agencies to provide comprehensive help to the victims of domestic violence. This can be seen in France, during the COVID-19 pandemic, the French government arranged for the victims of domestic violence to stay in the hotel by paying all the expenses and setting up pop-up counselling centres in the shopping areas³⁴. The agencies participating in domestic violence organisations need to understand the needs of the victims.

³² 'Coronavirus Disease (COVID-19): Violence against Women' (World Health Organization) accessed 1 June 2023

³³ 'Getting Help for Domestic Violence in Malaysia' (Women's Aid Organisation, 25 May 2023) accessed 1 June 2023

³⁴ Berton E, 'France to Put Domestic Abuse Victims in Hotels after Jump in Numbers' (Reuters, 30 March 2020) accessed 1 June 2023

The fourth recommendation for the issue regarding domestic violence in Malaysia would be raising awareness and education among the new generation³⁵. The relevant agencies or organisations conduct national public awareness campaigns regarding domestic violence including its consequences and the sources that were available for the victims of domestic violence. The campaigns can be conducted in schools, colleges, and universities and provide comprehensive educational programs that promote healthy relationships, gender equality, and nonviolent dispute resolution³⁶. Furthermore, the campaigns held also need to target those communities or a specific group that includes religious leaders challenging detrimental cultural norms and attitudes.

The fifth recommendation for the issue regarding domestic violence in Malaysia is regarding data collection and research. The government of Malaysia should form a department to create a comprehensive domestic violence database accurately and the statistics need to be up-to-date. Such a department could conduct studies in order to study more about the underlying causes, risk factors, and prevalence of domestic violence in various communities. These data can inform policy development, resource allocation, and targeted interventions.

Last but not least, the recommendation for the issue regarding domestic violence in Malaysia is to collaborate with those international organisations such as the United Nations Women (UN Women) and the United Nations Children's Fund (UNICEF). The Malaysian government

³⁵ Akhtar DR, 'What We Can Do about Rise in Gender-Based Violence' (www.the-sundaily.my) accessed 1 June 2023

³⁶ (DAC Gender Equality Policy Marker - OECD) accessed 1 June 2023

can learn from the global practice of combating domestic violence. The members from other nations of these international organisations would share experiences and knowledge with each other that was facing the similar issue as Malaysia. Malaysia can participate actively in either regional or international forums in order to contribute to the development of effective strategies and policies regarding the issue of domestic violence all over the nation.

7 CONCLUSION

In a nutshell, domestic violence is a serious problem in Malaysia. Domestic violence often takes place in the course of an intimate relationship and it involves financial, emotional, sexual, and physical abuse. This abuse affects people from all social, economic, and cultural backgrounds. Nowadays, there was also online harassment and cyberstalking that would affect the emotions of the survivors. The legislations that are available in Malaysia regarding domestic violence are **Domestic Violence Act 1994, Law Reform (Marriage and Divorce) Act 1976, Married Woman Act 1957, Child Act 2001, and Penal Code.**

In the United Kingdom, the legislation provided regarding domestic violence are **Serious Crime Act 2015, Family Law Act 1996, Protection from Harassment Act 1997, and Domestic Abuse Act 2021.** This can be seen that the UK Parliament enacts statutes up to date to solve the issue of domestic violence which basically means that the government is active in solving this issue. The order that the court of the UK granted for the victim's domestic violence are the non-molestation order and occupation order.

In Malaysia today, this issue has not been solved yet and the statistics show that the number of victims of domestic violence had been increasing during the COVID-19 pandemic. Thus, domestic violence is still a problem in the nation, nevertheless, because of a number of causes, including cultural norms, gender roles, and a lack of understanding. The government of Malaysia needs to take action in solving the issue of domestic violence and law enforcement agencies, NGOs, the community, and healthcare experts are needed to get involved.

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