

Domestic Violence in Malaysia During Post-Covid-19 Era: Any Legal Solution?

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To Link this Article: <http://dx.doi.org/10.6007/IJARBSS/v14-i6/21968>

DOI:10.6007/IJARBSS/v14-i6/21968

Published Date: 28 June 2024

Abstract

Mounting economic, social and psychological pressure contributed to the spike in domestic violence cases during the Covid-19 Movement Control Order in Malaysia. Domestic violence was reported to have increased 3.4 times in May 2020 compared to the pre-Covid period. This study addresses the persisting issue of domestic violence in Malaysia after Covid-19 by examining the existing laws and proposing legal solutions. It employed doctrinal research with qualitative approach, utilizing primary sources like legislation and case law, along with secondary sources such as journals, newspapers, reports and other online resources. Among the identified laws are the Federal Constitution, Domestic Violence Act 1994 (Act 521), Penal Code (Act 574), Child Act 2001 (Act 611), and Married Woman Act 1957 (Act 450). The research discovered lacunae in the laws including gaps in addressing specific victim groups, insufficient penalties for perpetrators, and reporting barriers. Proposed solutions encompass providing legal aid to victims, establishing a Domestic Violence Court, implementing pre-marital courses, defining psychological and financial abuse explicitly, and assigning additional duties to medical practitioners. Collaboration between government, relevant authorities, and the community is necessary to address these gaps and combat domestic violence effectively. This research contributes in identifying gaps in the current legal framework and suggesting appropriate legal solutions for domestic violence.

Keywords: Domestic Violence, Malaysia, Covid-19, Lacunae, Legal Solutions

Introduction

Domestic violence can be defined as a type of violence used to maintain or control power over another within a domestic setting, which often refers to spouses, the elderly, children, or other family members (Ali et al., 2023). Although the world has become civilised with the advancement of technology, the issue is still not settled and has even become worse in this century.

A survey has shown that 9% of women in Malaysia do have experience being the victim of domestic violence (Shuib et al., 2013). Based on a statistic focus on the number of reported domestic violence cases in the country, the number was stable and had never exceeded 4,000 cases until 2013 ('Domestic Violence Statistics', 2021). Starting from that year, the number gradually increased and the number even reached its highest at 5,796 in 2016 (pre-Covid-19). How about the situation during the Covid-19 pandemic? The Covid-19 pandemic has unfolded in Malaysia since the year 2020 and lasted until the year 2022. Domestic violence had become more severe during that time (Piquero et al., 2021). Based on a submission in the United Nations Office of the High Commissioner for Human Rights prepared by the Women's Aid Organisation (2022), reports of domestic violence have risen steadily since the implementation of the Movement Control Order (the MCO) to combat the pandemic. Besides, the inquiries to the organisation about domestic violence increased 3.4 times in May 2020 compared to the pre-Covid stage.

To give a concise overview, the MCO imposed by the federal government throughout the nation has brought great adverse impacts on the economy. The impacts have affected almost every individual, especially the B40 groups, as they were struggling to survive during that period. This is supported by the programme director, Karen Lai Yu Lee of the Women's Centre for Change, as she stated that mounting economic, social and psychological pressure contributed to the spike in domestic violence cases during MCO.

Malaysia does have its specific law, the Domestic Violence Act 1994 (the DVA), as a mechanism to combat domestic violence. It sets out the definition of domestic violence and protects the victims from the perpetrators. However, the law was not very systematic when tackling domestic violence and it had been viewed with disfavour by many (Mahdzir et al., 2016). Moreover, the fact that domestic violence cases have sky-rocketed in recent years indirectly proves the lacunae in the law in fighting against the issue. Hence, the relevant authorities must acknowledge that there is a need to reform the law, and the researchers even need extra legal solutions to be implemented as a supplement to the existing law in the post-pandemic era. The research aims to raise awareness about the seriousness of domestic violence in Malaysia especially post-COVID-19 and highlight gaps in the existing laws. By proposing suitable legal solutions, it can foster a culture of zero tolerance and provide better support for victims.

Previous Studies

The issue of domestic violence has always been a significant and pressing concern to be discussed over the past ten years. This can be shown by a significant amount of the literature published directly or indirectly related to the issue.

There is some literature which the discussion only focuses on a specific group of domestic violence victims, for example, elderly (Bidin & Yusoff, 2015), women (Abdul-Ghani, 2014; Na'a'im et al., 2019; Ahmad & Yusoff, 2022) or intimate partner (Na'a'im et al., 2022). However, these discussions only specified a group of victims; they should include all categories of possible victims, namely the elderly, spouses regardless of marital status, and children. Plus, since this legal research is intended to view the issue from a legal perspective, a comprehensive discussion can only be achieved through the inclusion of all possible groups of victims.

Besides, there are several studies making comparisons on the laws governing domestic violence between Malaysia and other countries, for instance, a comparison of the definition of domestic violence between Malaysia, Australia and India (Randawar & Jayabalan, 2018) and a comparison of the women's right of protection against domestic violence between Malaysian law and international law (Ismail et al., 2023). However, these studies do not thoroughly concentrate on Malaysia, which makes it challenging to examine the adequacy of the law when the comparison needs to be done with other countries or from an international perspective.

Rahman et al (2017) highlight the challenges and issues faced in the implementation of the law. However, the content of the research issues is outdated as instead of the Domestic Violence (Amendment) Act 2017, the Domestic Violence (Amendment) Act 2012 was referred to and the statistics cited by the authors are outdated (2013 to 2015). Therefore, the researchers will do the research based on the latest version of DVA and examine it to bring the best result to address domestic violence efficiently during the post-Covid-19 era in Malaysia.

Randawar et al (2021); Ali et al (2023) emphasise strategies and challenges faced for assisting victims of domestic violence during the pandemic in Malaysia and the targeted readers for this research are mainly domestic violence victims during the pandemic. The recommendations made by the researchers were more focused on non-legal protection, such as setting up temporary shelters and providing counselling to the victims instead of legal solutions. Mulok et al (2022) also focus on domestic violence during the Covid-19 period by suggesting ways to assist the victims efficiently during MCO and only highlights a few existing initiatives and laws to protect the victims.

Meanwhile, Ayob et al (2021) limited their survey on knowledge of domestic violence to respondents on the East Coast of Malaysia and they only provided a few suggestions, such as the government should prioritise expediting the implementation of the Social Work Bill Profession. Therefore, the researchers think that it is insufficient and more legal solutions need to be suggested to tackle domestic violence in Malaysia.

To sum up, the research above has looked at different facets of domestic violence in Malaysia. However, there is a clear gap that our research seeks to address. Prior research has frequently concentrated on particular victim groups, such as women, the elderly, or intimate partners, leaving other potentially vulnerable categories, such as children, less examined. Furthermore, the comparisons of domestic violence laws made between Malaysia and other countries tend to be narrow in scope. In addition, some studies have mainly emphasised non-legal solutions

rather than delving into the legal measures required to safeguard the victims fully. Additionally, a more up-to-date analysis of the legal aspects of domestic violence in Malaysia is necessary, as some research makes reference to outdated legislative frameworks and statistics.

Existing Laws on Domestic Violence in Malaysia

Domestic violence is a pervasive issue across nationalities. It constitutes a form of violence and ought to be prohibited within the human community. An abuser in domestic violence is not only morally wrong, but it is also an offence in the eyes of the law (Henning & Feder, 2005). Thus, the international society has introduced several international conventions to show a firm position against this issue.

One of the most significant international conventions is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). According to Article 5 of CEDAW, the state parties are obliged to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”. This article is relevant to addressing the cultural norms that perpetuate domestic violence.

Due to the existence of CEDAW, the signing members of the conventions, including Malaysia, have to amend their municipal law through their legislative bodies to align with the conventions' position. There are several laws in Malaysia that contain relevant provisions regarding the domestic violence issue. The provisions can be found in the supreme law, the Federal Constitution and other federal laws, namely Domestic Violence Act 1994 (Act 521), Penal Code (Act 574), Child Act 2001 (Act 611), as well as Married Woman Act 1957 (Act 450). Each of the existing laws will be further discussed below.

Federal Constitution

The Federal Constitution is the supreme law in Malaysia as stipulated in Article 4(1), which provides that any law passed after Merdeka Day must be consistent with the Constitution, or it shall be declared void. The Constitution does not contain specific provisions that directly address domestic violence. Nevertheless, it does contain provisions related to equality and non-discrimination, which are relevant to the issues of gender-based violence and women's rights.

Article 8 of the Federal Constitution is an essential provision that covers the principles of equality and non-discrimination. Article 8(1) provides that all persons must be equal before the law and have the same right to be protected under the law. This principle highlights that all individuals, regardless of their gender, should be treated equally and have equal access to be protected by the law. Besides, Article 8(2) reflects the constitutional commitment to ensure that no one can be the victim of discrimination under the law. The provisions are in line with Article 5 of CEDAW as it implies that domestic violence should not be tolerated on the basis of gender. Women in a family should not be discriminated against or become victims of domestic violence because of their gender. As the nation's supreme law, the Federal Constitution has served as a framework for the legal environment.

Domestic Violence Act 1994 (Act 521)

Malaysian government recognised domestic violence as a severe issue in 1994. It marked the beginning of the Domestic Violence Act 1994 (Act 521) (the DVA 1994) that serves as the primary legal framework which specifically deals with domestic violence cases in Malaysia (Laws in Malaysia: Laws Related to Domestic Violence, n.d.). The DVA 1994 is applicable to both citizens and non-citizens in Malaysia as stated by Section 1(2) of DVA 1994.

The definition or constitution of domestic violence is provided under **Section 2 of the DVA 1994**. "Domestic violence" encompasses a range of harmful actions, including intentionally or knowingly instilling or attempting to instil fear of physical injury, causing physical injuries knowingly or recklessly, coercing victims into unwanted actions through force or threats, unlawfully restraining them, damaging property to distress or annoy, misappropriating their property to cause financial distress, making threatening communications, insulting their modesty, inflicting psychological abuse, inducing delusions using any substances like intoxication substance without consent, and perpetrating these acts against his or her spouse or former spouse, a child, an incapacitated adult, or other family member.

The domestic violence victim who is affected by any acts under the definition "domestic violence" of **Section 2 of the DVA 1994** can be protected under the same Act, whereby there are three types of protection orders for them, which include Emergency Protection Order (EPO), Interim Protection Order (IPO) and Protection Order (PO). The Social Welfare Department (JKM) would issue EPO, and they can be granted promptly within two hours after the application as stated under Section 3A of DVA 1994. However, the order remains in effect for a maximum of 7 days from the date of issuance. The orders or prohibitions that can be included for EPO are provided under **Section 3A(7) of the DVA 1994**. They can be applied before receiving IPO and PO, or even the former and latter have been issued before. Unlike EPO, the IPO and Protection Order (PO) are issued by Magistrate Court under **Section 4(1) and 5(1) of the DVA 1994**. IPO required the victims to lodge a police report for the investigation purpose and it is valid throughout the police investigation before the case is charged in the court. Once the case has been charged in court, IPO would expire within seven days. Meanwhile, a Protection Order (PO) can be applied once the case has been charged in court. The PO remains in effect for one year and is eligible for renewal for an additional year, provided a trial is still in progress. The orders for IPO and PO may include a provision from prohibiting the suspected perpetrator using domestic violence and inciting any other person to commit domestic violence against any specified person in the order. Apart from that, the court can also provide any order specified in **paragraph 6(1)(a) to (f) of Section 4(3A) of the DVA 1994** for IPO and PO. The police shall arrest the person against whom the order is made when a protected person lodges a police report, police officers reasonably believe that person is in breach of the order or entering into any prohibited place according to **Section 7(2)(a) of the DVA 1994**.

Besides, through the DVA 1994, the victims may be protected by receiving compensation and rehabilitation programmes provided under Section 10 and Section 11, respectively in the DVA 1994. In *Chin Yoke Yin v Tan Theam Huat [2015] 11 MLJ 577*, the counsel representing the petitioner argued that the petitioner was entitled to damages for domestic violence while counsel for the respondent claimed that damages could not be awarded. The court held that

the facts and evidence show domestic violence often happened during the marriage and therefore, the petitioner is entitled to be compensated under Section 10 of the DVA 1994.

Penal Code (Act 574)

The **Penal Code** is also an existing law against domestic violence offenders. It can be proved by referring to **Section 3 of the DVA 1994** which provides that the DVA 1994 shall be read together with Penal Code Act 574.

Sections 323, 324, 325, 326, 334 and 335 of the Penal Code are the common examples of charges for domestic violence. The connection between the Penal Code and domestic violence is strengthened through **Section 326A of the Penal Code** which pertains to the punishment for causing hurt to certain individuals, including one's spouse or former spouse, a child, an incapacitated adult, or other family members, in which these individuals possess the same definition in **Section 2 of the DVA 1994**. Based on **Section 326A of the Penal Code**, if an individual is found guilty of committing an offence under Section 323, 324, 325, 326, 334, or 335, and the victim falls into one of the categories mentioned previously, he can be sentenced to imprisonment for a period that can be up to twice the maximum sentence they would have received for the offence under the relevant section. For instance, if an offender is convicted under Section 325 of the Penal Code for voluntarily causing grievous hurt to his wife, besides a fine, he will be imprisoned for up to 14 years instead of 7 years. This means that the offender may face a more severe punishment if the victim is one of the specified individuals compared to those committed against non-spouses.

Besides, according to **Section 352A of the Penal Code**, anyone who assaults or uses criminal force against their spouse when a lawful marriage is in place faces a maximum six-month prison sentence or a fine not exceeding RM 2,000 or both.

Child Act 2001 (Act 611)

The enforcement of the Malaysian Child Act 2001 on 1st August 2002 is to ensure the well-being of every child as their care, protection and rehabilitation are safeguarded by the law (Abas, 2012). The Act highlights children's rights, which their guardians should comply with as the responsibility lies within them. The Act plays its role in introducing initiatives to protect children from domestic violence by imposing a duty on the society to report, providing temporary custody and medical treatment to the abused child. This Act differs from the DVA 1994 in terms of its scope and target population as it concentrates on the welfare of children. It helps provide a guide to society on the preliminary actions that should be taken before immediately filing for an application of protection order. The Child Act complements the DVA 1994 in allowing a thorough approach to address the complexities of issues relating to domestic violence among children.

The definition of a child is stated in **Section 2 of the Child Act**, which is a person under the age of eighteen years. **Section 17(2) of the Child Act** provides that domestic violence against children includes physical, sexual and psychological violence as well as neglect whereby a child endures pain and suffering in the hands of their perpetrator. Any type of injuries inflicted on a child's body that are substantial and observable were also described in this provision. Besides, **Section 17(1) of the Child Act** sets down the meaning of a child who is in need of

care and protection. It includes a child who has been physically and emotionally injured, sexually abused, neglected, abandoned, unsupervised, as well as allowed to beg or carry out illegal activities by their parent or guardian.

Sections 31 and 33 of the Child Act describe the types of offences associated with children's health and welfare. Section 31(1) of the Act states the ill-treatment given by a person having the care of a child, such as abuse, neglect, abandonment, or exposure of a child to injury. A punishment of a fine not exceeding RM 50,000 or imprisonment for a term not exceeding twenty years or both will be sentenced to the perpetrator. Section 33 of the Child Act provides that it is an offence for a parent or guardian to leave their child without reasonable supervision. Any offender who is guilty under this provision will be liable to a fine not exceeding RM 20,000 or to imprisonment for a term not exceeding five years or both upon conviction. The Court will also order the offender to perform community service of not less than thirty-six hours and not more than two hundred forty hours in aggregate.

The Child Act does contain provisions which highlight the duty of a medical officer or medical practitioner, member of the family and childcare provider to inform the Social Welfare Officer if violence against a child is detected. **Sections 27, 28 and 29** are the relevant provisions under this act that require such action. Failure to inform, as provided under **Sections 27(2), 28(2) and 29(2)**, is considered an offence which causes the offender to be liable to a fine not exceeding RM 5,000 or imprisonment for a term not exceeding two years or both if found guilty.

Children can also be taken into temporary custody by Protector, Assistant Protector or police officer who is satisfied that there are reasonable grounds that a child needs care and protection. **Section 18 of the Child Act** states that the authority must ensure that the victim does not remain under the same roof as the perpetrator if domestic violence is detected. However, there is an exception to the above provision, which is when the Protector, Assistant Protector or police officer finds that taking the child into temporary custody does not serve the best interests of the child. Not only that but **Section 20(1) of the Child Act** allows the child to be present before a medical officer if medical treatment is needed.

It is evident that the Child Act was introduced to protect the safety of children, which is in accordance with the United Nations Convention on the Rights of the Child that Malaysia ratified in 1995. This Act serves as one of the initiatives made by the social justice system in Malaysia in attempting to provide a safer environment for every child (Tengku Muda & Engku Alwi, 2011). This Act clearly imposes duties and responsibilities upon the society to ensure domestic violence against children is reported immediately.

Married Woman Act 1957 (Act 450)

The application of the Married Woman Act 1957 (Act 450) (the MWA 1957) in cases of domestic violence against women is remote. This is due to the fact that there are fewer provisions governing the protection of married women in MWA 1957. It is to be noted that Section 1(2) of MWA 1957 states that this act is only applicable to the States of Peninsular Malaysia only. The term "married woman" is defined under **Section 2(1) of MWA 1957** to include any woman who is married in accordance with her rites and ceremonies as required

by her religion. Therefore, all women in West Malaysia, regardless of their religion and race, are subjected to the provisions of the MWA 1957.

Although the MWA 1957 does not comprise relevant provisions that would aid a domestic violence victim, it does allow a husband or a wife to sue each other in tort in regard to any injuries sustained by him or her. This is stated in **Section 4A of MWA 1957**, whereby the aggrieved party is permitted to obtain damages if a claim is brought to the court. This provision was enacted after there were efforts initiated by a Joint Action Group to fill in the lacuna in the act itself due to the former provision of **Section 9(2)** which states that no husband or wife is entitled to sue one another for an offence under tort except for protection of their property (Mohd Yusoff, 2001). Therefore, Section 9(2) was amended while Section 4A was newly inserted into the MWA 1957. The inclusion of **Section 4A** into MWA 1957 enables an injured party to obtain remedies in tort and an injunction to restrain the wrongdoer's actions. This indicates that there is a slight protection for individuals who are suffering from domestic violence in their marriage.

Based on research performed on these laws, the researchers discovered that although there are various legislations governing domestic violence, they are taking different roles in eradicating the issue from our society. The Federal Constitution lays down a legal framework to be followed by other laws under it, whereas the Penal Code imposes various punishments on the abuser, and the DVA provides remedies and ways for the victims to lead them out of the shadow of domestic violence. Besides, we also have two other laws which aim to protect the rights of specific groups of people against domestic violence, which are the Child Act 2001 for children and the MWA for women.

Nevertheless, the fact that Malaysia does have a variety of existing laws to control the domestic violence issue does not mean that they are able to solve the problem perfectly. Conversely, the issue has escalated to even more concerning levels during the Covid-19 pandemic. Sometimes the provisions inside the written laws are merely theoretical on paper and often do not align with reality. This issue will be the next main discussion in this research, which is the lacuna inside the existing laws.

The Lacunae in The Law

This discussion delves into the lacunae in Malaysia's current domestic violence laws, highlighting significant shortcomings that obstruct thorough resolution. The lacunae that have been identified include the lack of domestic violence as a distinct crime, the insufficiency of penalties against the perpetrators, the exclusion of specific victim groups from the DVA 1994, the absence of a strict legal obligation placed on society to assist potential victims, and the reporting barriers in applying domestic violence protection orders. This part aims to shed light on the need for legal reforms that can open the door to a stronger and more functional framework for addressing domestic violence in Malaysia by carefully examining these flaws.

Domestic Violence is not an Independent Offence

Domestic violence is not explicitly identified as a standalone criminal act according to the DVA 1994 (See & Essau, 2012). The survivors of domestic violence would have to invoke the relevant provisions in the Penal Code to criminalise the act. However, these provisions may not fully capture the gravity, persistence, and frequently repetitive nature of domestic

violence (Rahman et al., 2017). This limitation may lead to less severe penalties and consequences for perpetrators compared to the gravity of the harm caused, which will be further discussed in the next sub-chapter as well.

Even though amendments in favour of domestic violence victims have been made to the Penal Code in which Section 326A of the Penal Code has doubled the maximum term of imprisonment and expressly protects the domestic violence victim, the stricter punishment is only applicable to Sections 323, 324, 325, 326, 334 and 335 of the Penal Code. There may be an offence under the Penal Code which often occurs in domestic violence and has not been taken seriously in terms of focusing on domestic violence victims. For instance, in *PP v Muhammad Azzan Talderi [2022] 1 LNS 62*, the appellant pleaded guilty under Section 506 Penal Code, which is regarding criminal intimidation against his wife. The court held that words said by the appellant to his wife, "*Kamu memang babi laa, memang kamu kena ajar ni, kamu ingat aku takut ke, sikit je lagi aku nak hapuskan kamu semua ini.*" lead to criminal intimidation as it is a serious threat that can lead to murder. Therefore, the current sentence imposed on him by the Magistrate Court, which is a fine of RM 2,500 and failure to pay will be punished with one month of imprisonment, is not commensurate at all. The researchers are of the view that Section 506 of the Penal Code, which includes threatening the victims to cause death to them and having the element of causing fear, falls under the definition of domestic violence under Section 2 of the DVA 1994. However, it does not focus on punishing the domestic violence perpetrators; instead, the punishment is applicable to any person who commits such an offence, therefore leading to domestic violence perpetrators facing less severe penalties and consequences compared to the severity of the harm they cause.

Besides, when domestic violence is not a crime per se under Malaysian law, the coverage for the categories of protection of victims would not be guaranteed to be sufficient under the Penal Code. For instance, the offence of criminal force under Section 352A of the Penal Code specifies that the punishment of a maximum six-month prison sentence or a fine not exceeding RM 2,000, or both is imposed on any person who assaults or uses criminal force on his spouse only. However, there is no specific provision expressly protecting other potential victims of domestic violence such as former spouses, children, incapacitated adults or any other family members, as stated in Section 2 of DVA 1994, when anyone imposed criminal force against them, they could only invoke provisions applicable to any person regardless of the types of the victims, which thereby resulting the victim cannot get sufficient and reasonable legal remedies. For instance, they may invoke Section 352 of the Penal Code, which provides a punishment of a maximum of three months' imprisonment, or a fine up to RM 1,000, or both for using criminal force on any person without a grave and sudden provocation given by that person to criminalise the perpetrator's act. However, when comparing the severity of penalties under Section 352 and 352A of the Penal Code, it becomes apparent that the maximum term of imprisonment and fine in the latter, specifically designed to safeguard spouses, is twice that of the former, which, if without grave and sudden provocation, is applicable to anyone as long as he or she was the victim of criminal force. This emphasises the pressing need for comprehensive legal provisions recognising domestic violence as a distinct and independently punishable offence by providing appropriate punishment commensurate with the severity of the harm which the perpetrators caused.

Furthermore, the cases of *Chan Ah Moi v Phang Wai Ann [1995] 3 MLJ 130* and *Ngieng Shiat Yen v Ten Jit Hing [2001] 1 MLJ 289* highlight a weakness in existing domestic violence laws. In the former case, Judge Abdul Malik Ishak emphasised that domestic violence is not recognised as a specific crime under the DVA 1994 but instead, the provisions of the Penal Code must be read in conjunction with Section 3 of the DVA. The latter case, as presented by Judge Sulaiman Daud, reinforces the importance of not overlooking Section 3 of the DVA, which mandates the integration of the DVA with the Penal Code. These cases collectively reveal a limitation in the legal framework, indicating that domestic violence is not treated as an independent offence within the specific provisions of the DVA.

Penalties against the Perpetrators are Insufficient

While the existing laws explained previously are intended to address domestic violence, a significant lacuna arises concerning the adequacy of punishments for perpetrators. Among the various existing laws, the Penal Code is the sole legislation that imposes penalties on perpetrators of domestic violence. The other laws, such as the DVA itself and the Child Act 2001, focus more on protecting the victims. Unfortunately, the researchers viewed the penalties provided in the Penal Code as insufficient, and it will be further explained in the following paragraphs.

In fact, there are only very few independent sections that can be found in the Penal Code which are related to domestic violence, as stated in the previous sub-chapter. The provision that is designed for domestic violence is Section 352A, which punishes the perpetrator who assaults or uses criminal force against his spouse. However, the punishment is considered very lenient, as only a maximum of 6 months imprisonment or RM 2,000 or both will be granted under this Section. Another provision namely Section 326A(1), can be counted as one kind of aggravated offence of causing hurt. The provision is triggered when the victim is a spouse or a former spouse, a child, an incapacitated adult or other members of the family where the imprisonment can be extended to twice the maximum term of the offence of causing hurt. However, the provision sometimes brings zero effect on increasing the punishment. This can be shown in the case of *Ahmad Azhar bin Othman v Rozana bt Misbun [2021] 9 MLJ 82*. In this case, the defendant, who was the husband, pledged guilty to the charge of voluntarily causing hurt against his wife under Section 323 reading together with Section 326A. The punishment for voluntarily causing hurt under Section 323 is imprisonment for a term extending to one year or with a fine extending to RM 2,000 or both. In this case, the Kuala Lumpur Magistrate's Court only granted a fine punishment of RM 2,000 under Section 323. The Court later did consider the aggravated factor under Section 326A. However, due to there being no imprisonment punishment against the offender, the aggravated factor brought no effect on the increase in penalty. Finally, the accused was only fined RM 2,000 as if Section 326A had not appeared. In another case of *Mohd Shahkereen bin Azammudeen v PP [2021] MLJU 2484*, the accused hit his elderly mother with a helmet until the latter was admitted to hospital. Subsequently, he was held guilty under Section 324 which is voluntarily causing hurt by dangerous weapons or means reading together with Section 326A. The penalties under Section 324 are imprisonment for a term which may extend to 10 years or with a fine or with whipping or with any 2 of such punishments. However, the accused was finally only granted a four-year imprisonment punishment and one stroke whipping. It is worth noting that the four-year imprisonment was given after considering Section 326A as an aggravated factor, but the term did not even reach half of the maximum term of imprisonment punishment in Section 324 which is 10 years. Based on these two cases, the

domestic violence provision is not effective in giving sufficient punishment to the perpetrator, as Section 326A was not utilised to provide a significant impact against the abuser in terms of punishment.

Besides, the domestic violence provision does not emphasise too much on the harm inflicted by the perpetrator on the victim other than causing physical injury. Apart from physical injury, there are other forms of abuse that victims may endure, such as psychological, emotional or even financial abuse. Many research consistently show that psychological abuse is also a paramount aspect of domestic violence, which will lead to a loss of self-esteem and dignity in victims (Mega et al., 2000). The domestic violence in psychological form is recognised in Section 2 of the DVA 1994. Acts of psychological abuse, such as verbal abuse and humiliation, are also causing some serious effects on the victims (Karakurt & Silver, 2013). It is proven that low self-esteem has a direct relationship with verbal abuse in a domestic relationship (Cañete-Lairla & Gil-Lacruz, 2017).

However, this form of domestic violence is not reflected in the Penal Code. This may result in public misunderstanding that psychological abuse is the least harmful form of abuse compared to physical harm (Gadit, 2011). Our society still perceives the issue of psychological abuse as solely morally wrong but not legally wrong. However, in reality, the psychological form of domestic violence is also a serious issue as it is a precursor to other forms of domestic violence, and it even brings a greater impact on victims than physical abuse (O'Leary, 1999).

With insufficient penalties, there is less effect of retribution and deterrence against the perpetrators and the society. This problem will weaken the power of the legal system to tackle the domestic violence issue. The perpetrators may be encouraged to continue their illegal behaviours as they understand that the justice system has the least function against them. On the other hand, the victims will start to lose their faith in the justice system and be discouraged from seeking legal resources to overcome the challenges. Moreover, society witnesses a failure of the legal system to effectively deter domestic violence, potentially normalising such behaviour and contributing to a culture of silence.

The Domestic Violence Act 1994 Does Not Specifically Include Certain Groups of Victims

The DVA ensures the protection of victims from both genders, be it male or female. The categories of victims expressly stated in **Section 2** of the DVA include a spouse as in a husband or wife, a former spouse, a child, an incapacitated adult, or any other member of the family. The term "spouse" is also mentioned to include *de facto* spouse, which means two individuals who have gone through a traditional marriage ceremony in accordance with their religion or custom, but such ceremony is not registered or incapable of being registered under the law. It can be seen that the victims stated under Section 2 are under the scope of family relationships. However, the DVA 1994 does not specifically include a certain group of victims, namely cohabiting partners (Ding, 2022). Cohabiting partners are also known as unmarried couples who live together and have intimate relationships. This indicates that there is a lacuna present in the existing law to tackle the rise in domestic violence cases in Malaysia.

However, Dato' Seri Rohani binti Karim, the former Minister of Women, Family and Community Development of Malaysia (KPWKM), had stated in the Dewan Rakyat that the act would not cover cohabiting partners who suffer abuse as it would disrupt the effectiveness of

the act if the definition of households became too wide (Lim, 2017). Besides that, such relationships are not acknowledged by the religion of Islam which is professed by the majority of the citizens in Malaysia. It does not conform to the religious values and sensitivities of the Muslims in the country. Nevertheless, she mentioned that unmarried couples could seek protection under the Penal Code. Although police reports can be lodged by the victims against their perpetrators under **Sections 323 and 325 of the Penal Code** which focus on the offences of voluntarily causing hurt and voluntarily causing grievous hurt to an individual, it should be noted that voluntarily causing hurt under Section 323 is considered a bailable offence as stated under **Schedule 1 of the Criminal Procedure Code**. For instance, if a woman is being abused by her cohabiting partner and a charge under **Section 323** is made, the accused can be let out on bail while awaiting trial. Referring to the case of *Mohd Jalil bin Abdullah & Anor v PP [1996] 5 MLJ 564*, the court held that **Section 387(1) of the Criminal Procedure Code** provides no discretion in granting bail due to the term “shall be released on bail”, which makes it mandatory for an accused to be given bail if a bailable offence is committed. Hence, this causes the victim to have a lower level of protection, which makes it unsafe for her.

Suppose a domestic violence case is brought under **Section 325 of the Penal Code**, which is a non-bailable offence. In that case, Section 388 of the Criminal Procedure Code states that the court has the discretion to grant bail for the accused if the defence council has successfully managed to provide specific justifications. Nonetheless, the public prosecutor is allowed to apply for conditions to be placed on such bail in order to safeguard the victim’s interests. Although such a right is given, the offender could easily disobey the conditions set and cause even more harm towards their cohabiting partners. This indicates that the victim’s safety is not guaranteed as the victim could endure more injuries and suffering at the hands of their perpetrator.

It is evident that the DVA 1994 should include cohabiting partners under the definition of victims to protect them further from being harmed. The amendment to the definition will allow all individuals, including these certain groups to seek recourse and benefit from complete legal protection under the DVA 1994. However, this amendment should be done with due consideration as it recognises cohabiting relationships which is inconsistent with the values of Muslims as well as violates the state enactments and the Syariah Criminal Offences (Federal Territories) Act 1997 (Na’aim et al., 2022).

Therefore, the researchers believe that the term “cohabiting partners” could be limited to only non-Muslim citizens. Since the Law Reform (Marriage and Divorce) Act 1976 is silent on the acknowledgement of cohabiting partners, such inclusion does not violate any law in Malaysia (Na’aim et al., 2022). The researchers hope that the government is able to see the importance of including cohabiting partners in the provisions of the DVA 1994 as a safety measure to enable these victims to obtain protection and not as a way of encouraging citizens to remain cohabiting partners. The researchers are also of the opinion that the definition of cohabiting partners should be restricted to only include relationships between a male and a female since the term “relationship” is comprehensive.

Absence of Law Imposing Strict Legal Duty on Society

All potential victims of domestic violence should be given help by the society members, which includes the public, medical practitioners and enforcement officers. The term “potential

victims” brings the meaning of most vulnerable individuals, such as women, children and the elderly (‘Domestic Abuse: How to Respond’, n.d.). Meanwhile, enforcement officers bring the meaning of police officers or social welfare officers as interpreted in Section 2 of the DVA 1994. According to **Section 18(1) of the DVA 1994**, it is stated that, “any person who has reason to believe that an offence involving domestic violence is being or has been committed may give information in respect thereof to an enforcement officer”. The term “may” indicate that it is not compulsory for an individual to provide such information. Therefore, this shows that the DVA 1994 itself imposes no strict legal duty on society to help potential victims from suffering domestic violence. Such a lacuna prevents the number of domestic violence victims from being reduced.

Section 19 of the DVA 1994 states the duties and responsibilities of enforcement officers including assisting domestic violence victims. However, it does not specify the officers' duties towards potential victims of domestic violence. Thus, individuals who might be potential victims of such abuse do not receive any legal aid during the earlier stage of such violence. Therefore, the initiative to curb the rise in domestic violence cases is ineffective.

Besides that, the three types of protection orders specified in the DVA 1994 are only granted to victims who have suffered domestic violence and not potential victims of such an act. This includes Sections 3A, 4 and 5 of the DVA 1994, which are on the EPO, IPO and PO, respectively. Thus, there is no definite obligation that is imposed on police officers to help detect such violence that is being inflicted upon these victims.

Furthermore, as stated in **Sections 27(1), 28(1) and 29(1) of the Child Act 2001**, a medical practitioner, a member of the family and a childcare provider are required to inform the Social Welfare Officer if there are signs indicating that a child is subjected to domestic violence. According to Section 2 of the Act, the Social Welfare Officer refers to any Social Welfare Officer in the Ministry or Department responsible for welfare services, including any Assistant Social Welfare Officer. Referring to the case of *Muhammad Khairuanuar Baharuddin v PP [2023] 1 LNS 1018*, it was adduced that the parents of the child noticed the presence of bruises on the body of the deceased but did not take any action in reporting the injuries sustained by the deceased to higher authorities. The mother took no action even after being informed by her former husband about the injuries. This eventually led the perpetrator to cause the death of the child since the child was under his care. It can be seen that although there is a law which establishes such responsibility, the law is not strict since the punishment of the offence under **Section 28(2) of the Child Act 2001** includes a fine not exceeding RM 5,000 or imprisonment for a term not exceeding two years or both. The punishment is not heavy given the fact that domestic violence especially among children, is a serious issue.

Moreover, the same duty is imposed on a medical practitioner to ensure that any suspected case of domestic violence against children is detected earlier. Nevertheless, medical practitioners tend to overlook the probability of a child actually being abused as they lack the knowledge to determine the early warning signs of abuse. This is proven by research conducted Jamaludin et al (2019) whereby healthcare professionals who have been interviewed stated that inadequate training on child protection is one of the main reasons for the gap present in screening children who are potentially at risk of domestic violence. In addition, the term “believes” in **Section 27 of the Child Act 2001** indicates that the medical

officer should be convinced in his eyes that a child is being abused. This explains that if a medical officer overlooks the signs and believes that the child is not being subjected to violence, the medical officer is deemed to be not liable as he truly did believe as such. Hence, it is vital for a higher duty of care, which includes a degree of prudence and caution, to be imposed upon the medical officers. In the case of *PP v Siti Bainun Ahd Razali [2023] 7 CLJ 957*, the doctors who examined and treated the child confirmed that the injuries and scars present on the body were caused by abuse and not by an accident. This highlights the importance for medical officers to understand and relate the degree of injuries sustained by a child to the scope of domestic violence.

Reporting Barriers in Applying Domestic Violence Protection Orders

One of the remedies that can be sought by domestic violence victims is applying for protection orders. The protection orders are legal documents to help the victims, usually by preventing the abusers or potential abusers from contacting the victims. It is undeniable that the protection order is effective in restraining the perpetrators from causing any further damage against the victims as long as the perpetrators respect the orders and are under the supervision of the police and other relevant departments. However, there is a factor that will make the victims feel reluctant to apply for protection orders.

There is a similarity between the three different protection orders: a police report will be lodged before or after applying a protection order. For the emergency protection order, Section 3B(1) DVA 1994 requires the social welfare officer to inform the issued emergency protection order to the police district in the area where the perpetrator lives. For an interim protection order, according to Section 4(1) reading together with Section 19(1)(a), it implies that the victims must first lodge a police report and apply before the court with the assistance of the police for the period during the police investigation of the domestic violence. The last one is a Protection Order, which the court will grant during trial. Of course, a police report must be lodged first for the accused to be arrested and tried before the court before the Protection Order is granted. Therefore, a very close link exists between lodging a police report and applying for a protection order.

However, the researchers opined that putting a requirement that a police report must be lodged in order to be granted a protection order will become a barrier to the application as there are victims who are reluctant to inform the police or even anybody outside the family of the domestic violence issue they are facing. This can be proven by the statement given by the PDRM that encouraged the victim to be brave enough to lodge a police report when encountering the domestic violence issue (Ramli, 2020).

According to a global research conducted Birdsey & Snowball (2013) among 300 domestic violence victims, 48.2% of the victims did not report their cases to the police. Malaysia is also facing the same problem. S Sasikala Devi, the Deputy Inspector-General of Police Selangor explained that some of the domestic victims did not inform their situation to the police (Nawawi, 2023). There are several reasons to explain why some of the victims do not lodge police reports. The most common one is that the victims are afraid of being revenged or further violence by the perpetrators (Birdsey & Snowball, 2013). Some victims are warned to keep quiet and not disclose the incident to others. The perpetrators will usually become mad when they know what they did has already been known by others. So, they may vent their

anger onto the victims again, creating a vicious cycle. Because of this concern, many victims would choose to be quiet, hoping that it is the last time and will not happen again in the future.

Besides feeling afraid of further violence by the perpetrators, the reluctance to lodge a police report may be raised from the feeling of empathy toward the perpetrators by the victims. Some victims would develop the desire to protect the perpetrators from being arrested by the authorities, although they are the ones who suffered in the relationship (Felson et al., 2002). This is a psychological condition called Stockholm syndrome. The research has shown that the victims who experienced domestic violence from their partners, such as frequent beatings, had higher Stockholm syndrome scores (Obeid & Hallit, 2018). When they are under the influence of the emotion to protect the perpetrators, they will feel very reluctant to make a police report as they would not want the perpetrators to be arrested or punished by the authorities.

Due to these reasons, the victims sometimes choose to be silent from letting others know about their sufferings in domestic violence cases. When they do not wish to lodge a police report or inform the police of their cases, they are not able to apply for the two protection orders stated. The protection order would not have any effect on helping the victims if the relevant authority did not grant it.

Malaysia confronts persistent challenges in addressing domestic violence despite the existing strategies due to the existence of lacunae which include domestic violence is not recognised as a specific crime caused the abusers' act has to be criminalised by relying on Penal Code provisions, the penalties provided in the Penal Code are insufficient which sometimes fail to give a significant impact against the abuser in reality, the victims in cohabiting relationships are not included as victims under Section 2 of DVA 1994 which caused this group of victims not entitled to domestic violence protections in Malaysia, there is also absence of law imposing a strict legal duty on society involving the public, medical practitioners, and enforcement officers to assist in solving the domestic violence problems, and lastly, the need to lodge a police report for application of IPO would be a disadvantage to the victims.

Legal Solutions for Domestic Violence in Malaysia

It is undeniable that domestic violence is still prevalent in Malaysia. Thus, there are some legal solutions that are aimed at changing the current situation, which encompasses a range of initiatives, such as offering legal aid to victims of domestic violence, establishing Domestic Violence Courts, integrating pre-marital courses into the Law Reform (Marriage and Divorce) Act 1976, creating a Domestic Violence Investigation Unit under the KPWK, explicitly defining psychological and financial abuse in the DVA 1994, and imposing additional legal responsibilities on police officers.

Providing Legal Aid for Domestic Violence Victims

Domestic violence cases are often brought to court under criminal proceedings, as the JKM provides aid to these victims through the direct issuance of an EPO. However, these victims are also entitled to compensation for personal injuries, damage to property and financial loss as stated under Section 10 of the DVA 1994. In order for a victim to obtain monetary compensation, a separate petition for civil proceedings is required to be filed at the court

(*Fighting Domestic Violence: Prosecutorial Considerations*, n.d.). This indicates that a victim is expected to appoint a lawyer who would represent them in their case. It should be noted that legal services are costly, which makes some victims unable to afford such services. Despite the existence of various legal aid organisations in Malaysia, such as the Legal Aid Department, National Legal Aid Foundation and Bar Council Legal Aid Centre, none of them caters to assisting all domestic violence victims in claiming compensation.

The researchers believe that a new legal aid organisation which provides lawyers who have expertise in representing domestic violence victims in civil proceedings should be established. A victim has already endured enough suffering at the hands of their perpetrator; hence, a legal aid organisation seeking to reduce the victim's burden is necessary. This enables the victim to acquire fair and just compensation as a lawyer possesses professional skills in determining the extent of the victim's losses due to the offender in a domestic violence case. This solution is vital and should be considered by the government to ensure the victim's best interest. According to a report made by the Women's Aid Organisation in 2015, it was highlighted that the Bar Council Legal Aid Centres only offer support to a person who earns less than RM650. This excludes women who earn slightly more than that amount but who cannot afford the payment for legal representation, which is expensive. Thus, the researchers are optimistic that providing legal aid services to all victims of domestic abuse will help to fill the gap present in the current organisations.

The legal aid offered by the National Legal Aid Foundation is limited to criminal cases only. Despite the fact that domestic violence cases fall under criminal law, the remedy that is available to the victims can only be asserted through civil actions. As a result, domestic violence victims are unable to obtain assistance or advice from them in terms of monetary damages. For example, the United Kingdom National Centre for Domestic Violence offers victims advice and referral to a solicitor to obtain a range of remedies. This is due to the fact that most victims have no experience with the civil courts and may be afraid of them. Nevertheless, similar to Malaysia, the means test is applied in this organisation whereby the victim's qualifications, such as income, property and investments, are taken into consideration before they are eligible for a free legal aid representation service.

The researchers hope that forming the previously stated new legal aid organisation will help all domestic violence victims without strictly looking at their qualifications, as they have the right to seek damages in the first place. This allows victims of domestic abuse to come forward and make complaints if they are subjected to such violence, as their quality of life is unaffected due to their entitlement to financial relief. Although the JKM provides assistance in applying for an IPO and PO from the court (*Social Welfare Department: Domestic Violence Act, 2023*), they do not possess the role of aiding the victims on matters relating to the damages. Hence, the researchers believe that JKM can assist this new legal aid organisation in determining the number of domestic violence victims who require the services of a lawyer's representation during court proceedings.

To sum up, the researchers are of the opinion that this solution is one of the best ways to reduce the number of domestic violence cases, as it will be easier for victims to be compensated by their perpetrators. This causes hardships to the perpetrators as they are not only required to pay a fine under a criminal proceeding but also to compensate the victim

under a civil proceeding. This serves as a lesson to them as well as curb the rise in domestic violence cases.

Establishing Domestic Violence Court

What is a Domestic Violence Court? A Domestic Violence Court is a specialised court specially established to handle domestic violence cases. Generally, the court would hear both civil and criminal matters: civil matters are for the remedies and compensation entitled by the victims, while criminal matters are to punish the perpetrators. Domestic Violence Courts emerged in the 1990s in the United States as a response to the rise of intimate partner violence cases (Gover et al., 2021). European countries followed and implemented the approach in their legal system, and it is time for Malaysia to adopt its own Domestic Violence Court.

A Domestic Violence Court would become a great barrier against the increasing number of domestic violence cases in society. The research has demonstrated that the establishment will increase domestic violence arrests (Hester et al., 2008). While it is proven that the defendants who were brought before the Domestic Violence Court would have a lower recidivism rate compared to the defendants who were brought before the ordinary civil court (Gover et al., 2003). It is supported by another article, showing that the perpetrators who had been punished before the Domestic Violence Court were less likely to recommit the same offence and even other similar violence offences (Pitts et al., 2009). Hence, it is clear that the positive outcomes associated with the implementation of the Domestic Violence Court underscore its potential as an effective tool in addressing domestic violence.

In addition, a Domestic Violence Court is more timesaving than an ordinary civil court (Gover et al., 2007). A Domestic Violence Court can be designed as a 'One-Stop-Center' to tackle the legal procedures regarding domestic violence cases (Mahdzir et al., 2016). For example, the court will be vested with powers to review the application for protection orders and the warrant to arrest the perpetrators. Then, the court will also hold the duty for the prosecution and the remedies and compensation for the victims. When victims realise that they can more conveniently address their issues, they tend to lean towards handing the problem over to the police and following legal procedures to attain justice.

When setting up a Domestic Violence Court, the selection of judges who lead the Domestic Violence Court should also be carefully conducted. The judges should be equipped with relevant experience and expertise so that they are capable of making more fair and consistent decisions to uphold justice in domestic violence cases (Cissner et al., 2013). Apart from having relevant experience and expertise, views are claiming that the board of judges must also consist of at least one female judge (Budd, 2014). The study shows that the absence of female judges is the leading cause of the ineffectiveness of the Domestic Violence Court (Gillis et al., 2006). This argument is based on the ground that a victim of domestic violence is usually a female, so a female judge may bring a deeper understanding of the experiences and challenges faced by victims.

In summary, the implementation of Domestic Violence Courts proves crucial in addressing the surge in domestic violence cases in Malaysia in the post Covid-19 era. Supported by research showing increased arrests and lower recommit rates, the court offers a specialised and time-saving approach to tackle the domestic violence issue. The researchers believe that the

Careful selection of judges and ongoing staff training will surely ensure a more empathetic and effective response to the challenges faced by victims. Malaysia, as a country which respects human rights, must adopt the court in its legal system as a powerful tool against domestic violence, promoting justice and fostering a safer society.

Implementing Pre-Marital Course in Law Reform (Marriage and Divorce) Act 1976

In Malaysia, it is compulsory for Muslim couples to attend a pre-marital course as it is one of the significant conditions that have to be fulfilled for the application of marriage (Saidon et al., 2016). Although there is no such requirement made towards non-Muslims, in March 2023, there was news regarding a proposed paper to establish a committee to evaluate the viability of requiring pre-marriage for non-Muslim couples, which is presently being worked on by the Ministry of Women, Family, and Community Development. The benefit of offering this course is to combat the rising divorce rate (Karim, 2018). However, until now, there have been no updates regarding the outcome of the evaluation.

However, it is believed that the pre-marital education program currently offered to Muslim couples is insufficient to address the issue of rising divorce rates. According to Dr. Azmawaty Mohamad Nor, a counsellor at the Department of Educational Psychology and Counselling at University of Malaya, the course must be improved to help couples cope with contemporary challenges effectively. Dr. Azmawaty recommends adding mental and emotional management components to improve the course. This addition is essential for preventing emotional abuse as well as physical abuse. When people are able to manage their mental and emotional health, they are more likely to demonstrate positive emotion and behave more rationally during heated arguments, and thus prevent the occurrence of domestic abuse (Bernama, 2023).

There are many programs about pre-marital counselling or courses organised for non-Muslim couples in Malaysia. However, it did not have a positive result as it is not mandatory for them to attend. For example, according to The Sun News, pre-marriage workshops are held by non-governmental organisations with the support of the National Population and Family Development Board, but attendance is not satisfactory (Nair, 2023).

Therefore, the researchers suggest the creation of a provision in the Law Reform (Marriage and Divorce) Act 1976 (the Act governs marriage and divorce of non-Muslims) regarding the compulsory of attending pre-marital courses by the non-Muslims in the National Registration Office or their respective religious council. In addition, legal consequences should be imposed on them as well by adding a provision on punishment if they fail to attend, such as payment of a fine of RM 5,000. In addition, the government needs to streamline the content and guidelines that will be used in the course. An effective pre-marital course must prominently include elements recommended by Dr. Azmawaty above, focusing on managing mental and emotional well-being. This involves providing couples with tools to navigate emotional challenges and fostering a supportive environment. Additionally, the course should address the recognition of reasons and signs of domestic violence, besides the marriage laws, all the potential challenges, and ways to make the relationship with the spouse closer.

Nevertheless, the researchers hope the government will play their role to hasten the progress of the evaluation of the viability of premarital courses for non-Muslims. It is not guaranteed that the legal obligation given to non-Muslim couples will play an important role in efficiently reducing the occurrence of domestic violence, but at least this legal solution will probably improve the current situation.

Establishing Domestic Violence Investigation Unit under the Ministry of Women, Family and Community Development (KPWKM)

The surge in the number of domestic cases during the post-COVID-19 pandemic indicates that more assistance is needed by the Royal Malaysian Police under the Sexual, Women and Children Crime Investigation Division (D11). Therefore, the researchers believe that the establishment of an investigation unit that focuses on dealing with domestic violence cases under the KPWKM is required. This enhances the ability to resolve pending cases as both investigation units are able to work side by side to ensure every perpetrator is punished under the law. Besides that, the primary responsibility of officers in this division is to help victims lodge a police report, offer counselling sessions, intervene during crisis situations at the victims' home or in the hospital and take up the role of Victim Care Officer. It has been reported by the D11 division that there are issues relating to the lack of manpower to handle the investigation of these cases (Ames, 2022).

Considering that this division mainly handles cases pertaining to sexual offences among women and children in general, there is a lack of attention given to domestic violence cases. Thus, the researchers strongly believe that this solution will help the current D11 division to supply aid to all domestic violence victims. Furthermore, the existing WAJA Squad under the Women Development Department consists of volunteers who help raise awareness among the communities and provide support to domestic violence victims (Bernama, 2022). Their duties do not include assisting the D11 division investigation unit to gather evidence against the perpetrator.

Moreover, according to the former minister of KPWKM, Datuk Seri Rina Harun, there are issues with police officers rejecting reports lodged by domestic violence victims as they deemed it to be a family matter (Bernama, 2022). On that account, the researchers are convinced that the formation of a domestic violence investigation unit under KPWKM will prevent such issues from arising, as reports can be made by victims to this investigation unit as well. This enables the investigation unit to help monitor the police officers from time to time to make sure that all reports made by domestic violence victims are taken seriously.

Defining Explicitly the Psychological and Financial Abuse in Domestic Violence Act 1994

As discussed above, the form of domestic violence is not only limited to physical form, but it also extends to psychological form or even financial abuse. The DVA also includes these kinds of abuse in the interpretation section. The relevant phrases are mentioned in Item (e) and Item (f) under the interpretation of the phrase "domestic violence" in Section 2. However, the relevant provisions only acknowledge them as types of domestic violence but do not make any explanations or elaboration on what constitutes these types of domestic violence. An explicit definition of a term in written law is fundamental especially in criminal law so that the public prosecutor can refer to it when considering which section to charge. Hence, giving a

clear interpretation and elaboration on the psychological abuse and financial abuse in the DVA is a must.

For psychological or emotional abuse, there is a need to list a clear definition. Unlike physical abuse, the existence of psychological abuse is very hard to evaluate in a hospital, and things become worse when there is no fine definition in the DVA 1994. Therefore, the researchers suggest that legal experts must cooperate with medical professionals in drafting the definition of psychological abuse by setting the dividing line and degree of psychological abuse as well as the respective punishments. Illustrations showing real examples can also be given below the definition to facilitate a better understanding. Providing a clear definition followed by elaborations will assist mental health and legal professionals in explaining the situation of psychological abuse in a more precise way so that the judges can make a detailed judgement based on the provisions (O'Leary, 1999).

Financial abuse is slightly different from psychological abuse. Financial abuse, in the eye of the DVA 1994, is more of a means to achieve domestic violence instead of a type of domestic violence per se. Taking Item (e) under the interpretation of 'domestic violence' in the Act as an example, the actual act of domestic violence is causing distress or annoyance to the victim while causing mischief or destruction or damage to property (which is the financial abuse) is merely a mean to achieve the act mentioned earlier. Hence, the researchers suggest that financial abuse has to be separated from the section and form its own section with unambiguous interpretations and examples like what has been suggested for psychological abuse. Another benefit of separating financial abuse as independent abuse is that it will encourage the victims to evaluate the financial loss suffered due to the abuse and demand compensation in court. The research shows that 99% of the abusive relationships contain financial abuse and the perpetrators will dominate the family finances to trap the victims from escaping from such relationships (Adams, 2011). Thus, Malaysia should perceive financial abuse as another severe type of violence other than physical abuse, as the victims suffered a huge amount of monetary loss due to such abusive acts.

To conclude, these two types of domestic violence are also fatal to the victims and should be taken attention by the government and the public. The most effective solution is to grant them a clear definition and elaboration instead of merely mentioning them in one or two sentences. Of course, the relevant authority should also raise public awareness of these types of domestic violence through comprehensive public awareness campaigns to foster a society that recognises, condemns and actively opposes all forms of domestic violence, ultimately contributing to a safer and more supportive environment for survivors.

Imposing Additional Legal Duty on the Medical Practitioners and Relevant Authorities.

The legal duty of police officers can be improved to tackle the issue of domestic violence efficiently. It is important as they are the persons who play an important role in helping the victims.

The victims can apply for IPO pending police investigations. However, those for whom an interim protection order is issued have the opportunity to set aside the order within fourteen days of its service date according to Section 12B of the DVA 1994. In other words, the application could be made immediately upon service of the IPO. It clearly shows that the

issuance of an IPO under Section 12A is not absolute and incompleteness of police investigation could be the ground for setting aside the IPO (Na'aim et al., 2022). In the case of *Mangaleswary Ponnampalam v Giritharan E Rajaratnam [2015] 6 CLJ 561*, the Court of Appeal held that keeping the respondent (the person whom the IPO was made) waiting until the completion of the police investigation is unjust. Consequently, to guarantee that domestic abuse investigations are carried out promptly and accurately, it is even more critical for the police to monitor the investigations actively.

With regards to this, the researchers suggest the Parliament to amend section 19(2) of the DVA 1994 by imposing an additional duty on the police officers to hasten their thorough investigation relating to the offence involving domestic violence by finishing it within a reasonable time, such as not more than four months after the police report is lodged. In *Mangaleswary Ponnampalam v Giritharan E Rajaratnam*, where the police report has been submitted on 3rd of August 2012 but no information on the outcome of the police investigation was available when the case was brought before the Magistrate for a hearing on the 30th of April 2013, which was eight months later. This is also a detriment to the domestic violence victim who applies for IPO if the investigation takes longer time, which is deemed unreasonable as it will cause the domestic violence victim heightened levels of stress, worry, and emotional discomfort which have an adverse effect on their mental health because they had to wait for the investigation and endure prolonged periods of ambiguity.

As mentioned previously, with regards to imposing an additional legal duty to the medical practitioner, section 18(1) of the DVA 1994 is not comprehensive or strict enough as it does not impose a compulsory duty to the medical practitioner due to the word "may". Therefore, a provision to legally bind the medical practitioner to inform the relevant agency or individual regarding any potential domestic violence cases can be added to the Penal Code to criminalise their omission. When such omission becomes a crime, it is believed that the medical practitioner will be more responsible to disclose the relevant information, thus preventing any domestic violence cases from being undiscovered and unsolved.

Besides, Section 33 of the Confidentiality Guidelines provides a duty to a medical practitioner who believes a patient is being abused, to disclose information quickly to a relevant individual or statutory agency when he thinks that it is in the best interest of the patient. It is stated in **Section 29 of the Medical Act 1971** that a medical practitioner who breaches the guideline will be taken action by the Malaysia Medical Council (MMC) through disciplinary proceedings. However, since it is not the court that will directly take action against them first, there is a tendency for MMC to ignore or not taking complaints seriously. For example, in January 2020, it was reported that MMC failed to investigate 90 per cent of over 3,500 complaints of medical errors. Besides, disciplinary action has taken in less than 1 per cent of cases. Throughout a 14-year period, only 14 physicians had their licenses revoked, 39 had their practices suspended, and 73 had their licenses reprimanded (Su-Lyn, 2020). Therefore, there is a need for the Parliament to impose a strict legal duty on the MMC to take the complaints seriously to make them more responsible in dealing with cases relating to medical practitioners' failure to inform about the potential domestic violence victims to the relevant agency.

To summarise, several solutions can be applied by the government to fill up the lacunae mentioned in previously. These include the establishment of Domestic Violence Courts for

efficient case handling, mandatory pre-marital courses to train the couples with essential skills and knowledge, and introduction of a Domestic Violence Investigation Unit. Clear definitions of psychological and financial abuse in DVA provide a better understanding of the actual issue, while additional legal duties on police officers and medical practitioners emphasise the importance of timely action in investigating and reporting cases. The researchers opined that the collaboration between relevant authorities and stakeholders is crucial for the effectiveness of these legal measures.

Conclusion

There is still a long journey ahead for the Malaysian government to eliminate the domestic violence issue even in the post-Covid-19 era. It is not a novel issue that has popped out these few years, but it is a worldwide challenge that emerged long ago. Moreover, there are lacunae inside the national legal system and they have become a barrier against the country to handle the domestic violence issue effectively. The researchers have pointed out these lacunae, and suggestions have also been proposed to give the government a clear guideline on improving the legal framework to solve the problem.

Based on the research done by the researchers, it is clear that the issue of domestic violence needs to be tackled immediately by the government in order to promote a safe environment for all citizens. This research states various suggestions that should be implemented to curb the rise of domestic violence cases. However, it should be noted that these suggestions should be inspected thoroughly in order to ensure their effectiveness. It is evident that the findings obtained by the researchers consist of practical ideas which need more detailed research before their effect can be seen on the issue of domestic violence. For instance, the establishment of a Domestic Violence Court under the judiciary system requires careful consideration in order to process and deliver rulings on domestic violence cases more systematically. The researchers believe that the strong suggestions to address the lacunae in the existing law on domestic violence require the cooperation of all governmental bodies to put them into effect.

There are various legal solutions mentioned by the researchers in the previous chapter and they will not be repeated in this part. These legal solutions should be considered by the authority to be implemented as they are able to fill the lacunae in the legal framework. Apart from the legal solutions, the most important thing is that the awareness of the domestic violence issue must be widely spread among the community, as everyone would have the possibility to become one of the victims of it. The researchers believe that the role of the law is very limited to a certain degree; sometimes, it only treats the symptoms but not the root cause. Education is the key to solving the problem from the root, and it must be started from a very young age. The people will understand the importance of a harmonious family, and they will know that domestic violence is not a wise way to solve their problems.

At the end of the article, the researchers sincerely hope that the domestic violence issue can be solved in the very near future. It is not only for the peace of a single family, but it is for the prosperity of a country as it is formed by various family units. Nevertheless, it is the collective responsibility of individuals, communities, and authorities to foster an environment which is free from domestic violence, ensuring the well-being of families and the nation as a whole. This research will improve Malaysia's reputation internationally in the fight against domestic abuse which is a serious violation of human rights. As a result of its commitment to upholding

the rights of all people, Malaysia not only complies with its international commitments but also establishes a model for other countries to follow in the global fight against domestic abuse.

Acknowledgment

This research was supported by the University Sultan Zainal Abidin through Kajian Pengukuhan Projek Ilmiah Tahun Akhir- FUHA (UniSZA/2024/PSU-TDA/08, Project No. RU020).

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