

**Baker
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Fighting Domestic Violence

Pro Bono Initiative

Asia

In association with



Japan

Domestic Violence Legislation



“...gender-based discrimination and violence are prohibited.”

Japan

1 Legal provisions

1.1 What are the relevant statutes and codes?

The relevant statutes and codes are as follows:

- (a) Civil Code
- (b) Penal Code
- (c) Act on the Prevention of Spousal Violence and the Protection of Victims ("**Prevention of Spousal Violence Act**")
- (d) Anti-Stalking Act

1.2 What is the controlling case law?

As Japan does not adopt a case law system, no particular case law is controlling. There are many cases in the district courts and the family courts; however, no notable cases from the high courts or the Supreme Court of Japan are significant in terms of legal principles on domestic violence in Japan.

1.3 What are the specific parts of the court system that address domestic violence?

No specific courts are designated to address issues in relation to domestic violence. Generally, the district court has the first instance jurisdiction over civil cases and criminal cases related to domestic violence. In addition, since any incidence of domestic violence would be an important factor in determining the success or failure of a divorce action, the family court with jurisdiction over divorce actions also handles cases related to domestic violence.

1.4 What are potential causes of action?

Potential causes of action under the main Japanese legislation are as follows:

- (a) Under the Code of Civil Procedure, generally, the victim may claim for damage by claiming and proving the fact that: (i) he/she has been assaulted or mentally abused; and (ii) the fact that the assault or mental abuse has caused damage.

- (b) In addition, a protection order under the Prevention of Spousal Violence Act may be ordered by the district court if a victim is highly likely to experience serious harm due to further bodily harm caused by the spouse.
- (c) Under the Code of Criminal Procedure, any act of physical violence against another person constitutes a crime of assault (or a crime of injury if the assault results in some injury) under the Penal Code. As for verbal violence, it may constitute a crime of insults under the Penal Code, but it is a minor crime and cases upholding a crime of insults are rare.
- (d) In addition, certain repeated behaviors to a certain person (defined as "stalking" under the Anti-Stalking Act) are prohibited and a person who commits stalking would be punished by way of imprisonment for up to one year or a fine of up to JPY 1 million.

2 Introduction: framework guiding domestic violence law

2.1 Are there civil and criminal legal remedies for domestic violence victims?

- (a) Regarding civil remedies, a domestic violence victim may file a claim against the abuser for damages (including mental damages). In addition, a victim may request a protection order by the district court pursuant to the Prevention of Spousal Violence Act if a victim is highly likely to experience serious harm due to further bodily harm caused by the spouse.
- (b) Regarding criminal remedies, a domestic violence victim may request assistance from police officers to prevent him/her from suffering harm from a spouse. In addition, if the damage is serious (e.g., the victim's death, serious injury or illness, or disability remains), the victim or his/her family may be eligible to receive "benefits for crime victims." The three types of benefits for crime victims stipulated in the Act on Support for Crime Victims through Payment of Benefits for Crime Victims are as follows: survivor benefit, serious injury/illness benefit and disability benefit. The methods of calculating the amount of these benefits payments are also stipulated in the law.

2.2 Is protection from domestic violence identified in national law as a human right?

Yes, the preamble of the Prevention of Spousal Violence Act recognizes that spousal violence constitutes a serious violation of human rights and it is a crime. The act also recognizes that, despite the nature of domestic violence (i.e., violation of human rights), efforts to help victims have not always been adequate.

2.3 Has your country signed and ratified the Conventions?

Yes, Japan ratified the 1979 Convention in 1985.

2.4 If it has ratified the Maputo Protocol, how has it been implemented into national law (African Union member states only)?

N/A

2.5 If it has ratified the 1979 Convention, how have the recommendations part of General Comment No. 35 been implemented into national law?

In Japan, equality between men and women is provided for in the Constitution of Japan and gender-based discrimination and violence are prohibited. In addition, the Act on Securing, etc. of Equal Opportunity and Treatment between Men and Women in Employment was enacted in 1985 to promote equality between men and women. Further, the Basic Act for Gender Equal Society was enacted in 1999 to comprehensively and systematically promote the formation of a gender-

equal society (http://www.gender.go.jp/english_contents/about_danjo/lbp/laws/pdf/laws_01.pdf). However, none of these laws specifically addresses issues of gender-based violence.

2.6 If the Conventions have not been ratified or signed, is it envisaged that your country will do so?

N/A

3 Similarities and differences in terminology

Term	Definition
Domestic violence	The term "spousal violence" is defined under the Prevention of Spousal Violence Act as bodily harm caused by one spouse (illegal physical attacks that threaten the other spouse's life or body) or words and deeds by one spouse that cause the same level of psychological or physical harm to the other spouse.
Stalking	It is defined under the Anti-Stalking Act as repeated behavior to a particular person of stalking, telling he/she that he/she is being watched, requesting visits or companionship, using abusive words or behavior, making silent phone calls or sending continuous mails, etc., sending filthy matters, etc., damaging the reputation of the person or causing sexual shame.
Harassment	Although sexual or power harassment in the workplace is a common and well-known issue, spousal harassment is not a familiar concept in Japan. In addition, there are no specific regulations in relation to spousal harassment. However, in recent years, a growing number of divorce petitions have been filed on the grounds of mental abuse of a spouse, known as moral harassment.
Victim	"Victim" is defined under the Prevention of Spousal Violence Act as a person who has been subject to spousal violence. "Spousal violence" is interpreted to include violence against persons who are in a de facto state of marriage that has not been legally registered and persons who are already divorced or in the process of divorce.
Abuser	It is not defined as a specific term under Japanese laws and regulations, but it is simply interpreted as a person who commits spousal violence or stalking.
Civil protection order	As a protection order, the court may order an abuser: <ul style="list-style-type: none">(a) to refrain from approaching the victim at the victim's residence, workplace, etc.(b) to leave the residence that is the principal place where the abusing spouse and the victim are based together and to refrain from loitering in that vicinity(c) to refrain from "stalking"(d) to refrain from approaching the victim's child/children or relatives

Term	Definition
Causes of action	Please see the question in Section 1 entitled "What are potential causes of action?" in Section 1.
Marital rape	<p>It is not defined as a specific term under Japanese laws and regulations. Under the Penal Code, "rape" is defined as an act of committing sexual intercourse forcibly through assault or intimidation. A few cases have held that the crime of rape can be committed between the spouses in a married couple. In these cases, the defendants' argument that the crime of rape cannot be committed between the spouses in a married couple as long as they are married was rejected. The courts have held that although married couples have the right to ask each other for sexual intercourse, the crime of rape can be committed between the spouses of a married couple if the manner in which that right is realized exceeds the extent to which it is generally recognized as acceptable under social conventions.</p> <p>Therefore, the crime of rape can be committed between the spouses in a married couple and there are no differences in terms of the requirements that constitute rape between marital rape and normal rape. A person who forcibly commits sexual intercourse with his/her spouse will be deemed to have committed rape as defined in the Penal Code.</p>

3.1 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

No.

4 Protection for domestic violence victims and relief granted

4.1 Civil protection orders

4.1.1 Are there civil protection orders available to victims of domestic abuse?

Yes, there is a protection order under Article 10 of the Prevention of Spousal Violence Act. The court may order the abusing "spouse" (which includes persons who are in a de facto state of marriage that has not been legally registered, and the same applies hereafter):

- (a) to refrain from approaching the victim at the victim's residence, workplace, etc.
- (b) to leave the residence that is the principal place where the abusing spouse and the victim are based together and to refrain from loitering in that vicinity
- (c) to refrain from "stalking"
- (d) to refrain from approaching the victim's child/children or relatives

(English translation of the Prevention of Spousal Violence Act:

http://www.gender.go.jp/policy/no_violence/e-vaw/law/pdf/nichiei.pdf.)

4.1.2 Who can petition for civil protection orders?

A victim who has been subject to bodily harm, life-threatening intimidation, etc., (meaning intimidation through announcing the intention to harm the life or body of a victim) by a spouse can petition for a civil protection order. A victim who has obtained a divorce or annulment of marriage subsequent to being subject to violence by a spouse but who continues to be subject to violence by the former spouse can also petition for a civil protection order (Article 10, paragraph 1 of the Prevention of Spousal Violence Act).

4.1.3 Are there temporary custody of a child or child support orders?

Child guidance centers may take temporary custody of a child or entrust an appropriate person to do so (Article 33 of the Child Welfare Act —

<http://www.japaneselawtranslation.go.jp/law/detail/?id=11&vm=&re=>).

4.1.4 Is there a provision to order the abuser to move out or stay away from places the victims frequent?

Yes, Article 10, Paragraph 1 of the Prevention of Spousal Violence Act provides that the court may order an abusing spouse to:

- (a) refrain from approaching the victim at the victim's residence (excluding a residence that is the principal place where the victim and the spouse are based together) or any other place, or from loitering in the vicinity of the residence, workplace or any other location normally frequented by the victim, for a six-month period from the day on which the order comes into effect
- (b) leave the residence that is the principal place where the spouse and the victim are based together and to refrain from loitering in that vicinity for a two-month period from the day on which the order comes into effect

4.1.5 Are there any other types of emergency, preventive and civil protection orders?

There are no emergency, preventive and civil protection orders, but a victim may move into a public or private shelter dedicated to women (<http://www1.tokyo-womens-plaza.metro.tokyo.jp/consult/tabid/96/Default.aspx>).

4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?

Under the Prevention of Spousal Violence Act, only direct victims can request these orders. Pursuant to Article 10, paragraph 3 of the Prevention of Spousal Violence Act, a victim may petition for a civil protection order for their child where the victim's child who is a minor lives with the victim and certain conditions are met. The conditions include that the orders are necessary to prevent the victim from being obliged to meet the spouse with regard to the child who lives with the victim, and that the spouse uses or carries out words or deeds sufficient to lead to the suspicion that the spouse is likely to take the child away, or other circumstances. (https://www.courts.go.jp/tokyo/saiban/minzi_section09/dv/index.html). However, this order is intended only to protect the victim by prohibiting the spouse from approaching the victim due to his/her contact with their child, not to protect the child from the abuse.¹

Apart from the civil protection order under the Prevention of Spousal Violence Act, in the case of a child, the court may make a ruling of a suspension/loss of parental authority pursuant to Articles 834 and 834-2 of the Civil Code. These rulings may be made at the request of the child, any relative of the child, a guardian of a minor, a supervisor of a guardian of a minor, a public prosecutor or a child guidance center's director (Articles 834 and 834-2 of the Civil Code; Article 33-7 of the Child Welfare Act).

4.1.7 Are there different types of civil protection orders, e.g., for a short-term period?

N/A

4.1.8 Are *ex parte* orders permitted without the aggressor being present?

Civil protection orders may not be issued before a fixed date for oral arguments or for a hearing that the opposite party can attend from the standpoint of assuring adequate procedure pursuant to Article 14, paragraph 1 of the Prevention of Spousal Violence Act. However, in a civil protection order case where it is not appropriate for the petitioner (victim) and the opposite party (abuser) to meet face to face, generally, only a hearing will be held.²

Notwithstanding the above principle, even in the cases where the opposite party does not attend the hearing, if it is confirmed that (i) the summons to the opposite party for the hearing has been properly received and (ii) the opposite party did not attend the hearing for reasons such as the lack of any particular allegation, it can be considered that the opposite party was given an opportunity to argue, so the court may also issue a civil protection order based on evidence at that point.³ In such cases, the civil protection order comes into effect when the court's written decision is sent to the opposite party (Article 15, paragraph 2 of the Prevention of Spousal Violence Act).

4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?

Civil protection orders may extend protection for abuse and intimidation to: (i) the victim's child who is a minor and lives with the victim; and (ii) the victim's relative or other person with whom the victim has a close relationship (except for a child who lives with the victim and a person who lives with the spouse) (Article 10, paragraphs 3 and 4 of the Prevention of Spousal Violence Act). However, as mentioned above, these orders are intended only to protect the victim by prohibiting the spouse from approaching the victim due to his/her contact with their child/relative, not to protect the child/relative from the abuse.

4.1.10 How long do the orders last?

Orders a, b and c listed above ("Are there civil protection orders available to victims of domestic abuse?") last six months; and order d lasts six months (Article 10, paragraphs 1-4 of the Prevention of Spousal Violence Act).

4.1.11 Please provide any resources or hyperlinks to websites displaying data on how often civil protection orders are granted and any demographic information from the last two to four years, e.g., police complaints related to domestic violence, prosecutions of domestic violence and convictions on domestic and sexual violence.

"Data regarding domestic violence (配偶者からの暴力に関するデータ)" published by the Gender Equality Bureau (内閣府男女共同参画局) as of 25 September 2019:
http://www.gender.go.jp/policy/no_violence/e-vaw/data/pdf/dv_data.pdf.

4.2 Steps for receiving a protective order

4.2.1 What documentation is needed to obtain a civil protection order?

The following documents are required to obtain a civil protection order:

- (a) a petition form
- (b) a copy of a family register or certificate of residence (as material that proves that the petitioner and the other party is/was married)
- (c) evidence of violence (e.g., the victim's statements, doctor's notes, emails from the other party, etc., if any)
- (d) in cases where the victim also petitions for civil protection orders for their child or relative as described in Section 4.1 above, a document that certifies the relationship between the petitioner and the child/relative and the consent of the child/relative (<https://www.courts.go.jp/osaka/vc-files/osaka/file/05.hogomeirei.pdf>)

4.2.2 Does the victim need to attend a hearing?

As described in Section 4.1, the victim is not required to attend an opposite party's hearing. Apart from that hearing, the victim needs to have an interview with a judge. This interview is usually held on the same day of the petition.⁴

4.2.3 Can you request remedies?

The victim cannot request any special remedy under the Prevention of Spousal Violence Act. However, generally, a domestic violence victim may file a claim against the abuser for damages (including mental damages) by claiming and proving the fact that he/she was assaulted or mentally abused and the fact that the assault or mental abuse caused damage pursuant to the Civil Code.

4.2.4 Are there time limits?

No.

4.2.5 Are there different rules in emergencies?

Under the Prevention of Spousal Violence Act, a women's consulting office in each prefecture can provide temporary protection to secure the victim's safety in an emergency and provide temporary protection for victims (when a victim is accompanied by family members, for the family members as well as the victim) (Article 3, paragraphs 3(3) and 4 of the Prevention of Spousal Violence Act).

4.3 Judicial discretion

4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?

It is unclear what and how much discretion a judge has. This is because, although the Supreme Court of Japan collects and publishes data on some types of court cases, it does not publish specific data in relation to court cases for domestic violence against women. However, a judge examines relatively strictly whether each requirement (existence of "bodily harm" by the spouse, the fact that the violence received after the divorce has been continuously received for the duration of the marriage, the existence of a high possibility of future violence, etc.) is met based on the objective evidence and, therefore, only approximately 60-80% of the petitions for civil protection orders are granted by the district courts.⁵

4.3.2 Are there age limits on who can obtain orders?

No.

4.4 Restitution and remedies available to victims

4.4.1 Can victims obtain reimbursement for costs and restitution paid?

As discussed in Section 4.2, generally, a domestic violence victim may file a claim for damages caused by assault or mental abuse pursuant to the Civil Code.

4.4.2 Can they recover wages and profits lost?

As discussed above, wages and profits lost can be recovered in cases where wages or profits lost are caused by assault or mental abuse and it can be proved that the assault or mental abuse caused such damage.

4.4.3 Is a separate civil process required?

Yes.

5 Prosecutorial considerations

Japanese law does not explicitly provide for domestic violence in terms of prosecutorial considerations. Considering the definition of domestic violence in Section 3 above, however, there are a number of pertinent crimes stated in the Penal Code, including the following: (i) assault;⁶ (ii) injury;⁷ (iii) injury causing death;⁸ and (iv) forcible sexual intercourse.⁹ These crimes apply in the context of violence that is both domestic and not domestic.

5.1 Police procedures

5.1.1 When do the police get involved in domestic disputes or legal actions?

A victim may report domestic disputes by calling 110 (in cases of emergency) or #9110, or by reporting such incidents to the police in person, i.e., at a police station. Following the report, the police will then commence their investigation and take any necessary measures, including arresting an offender. Relatedly, the police may also provide guidance or warnings to offenders to prevent further domestic violence and protect victims by introducing spousal violence counseling and support centers. However, the police are not obliged to investigate when an incident is reported; hence, they sometimes fail to prevent serious domestic violence by underestimating the seriousness of the violence.

5.1.2 What circumstances affect law firm involvement?

Although police and prosecutors take a major role in prosecutorial procedure, law firms may also provide certain support to victims. Law firms typically provide the following support: (i) liaising with police and prosecutors; (ii) negotiating with victims for settlement on behalf of victims; and (iii) representing victims of certain crimes (such as injury, injury causing death and forcible sexual intercourse)¹⁰ in criminal court procedures to question the accused and witnesses in cross-examination and expressing opinions to the court.¹¹ Relatedly, the Japan Legal Support Center (Hou-terrace) provides a free consultation service for victims of domestic violence who cannot afford legal fees.

5.2 Standard of proof

5.2.1 Is proof required by any legal means?

Yes. Victims of domestic violence can file a criminal case without evidence against an abuser to the police, but a successful prosecution will require evidence to support the facts underpinning the case.

For the proof required for civil protection orders, please refer to Section 4.2.

5.2.2 Are there any requirements regarding evidence and documents?

Yes, albeit the types of evidence required to build a case vary from case to case.

For assault, evidence typically consists of circumstantial evidence, such as evidence establishing an intention to assault, in addition to evidence to prove the assault objectively.¹²

For injury and injury causing death, in addition to the aforementioned assault-related evidence, evidence that a person was injured or died (e.g., a medical certificate), as well as evidence showing a causal relationship between the assault and the injury or death,¹³ is required.

For forcible sexual intercourse, evidence that objectively proves the nonexistence of consent is also required.¹⁴

5.2.3 Is proof "beyond a reasonable doubt" required?

Yes. In order to prosecute an abuser in the criminal courts successfully, the crime must be proven beyond a reasonable doubt.

5.2.4 Is the standard of proof different for ex parte orders?

Ex parte orders are not available for criminal procedures in Japan.

5.3 Affirmative defenses

5.3.1 Are affirmative defenses available to the accused?

Yes, the Penal Code sets out certain types of affirmative defense for criminal cases, including the following: (i) justifiable acts;¹⁵ (ii) self-defense; (iii) averting present danger;¹⁶ and (iv) insanity and diminished capacity.

5.3.2 Is willful intent required?

Willful intent is required to charge the perpetrator for the above-mentioned crimes, as set out below. For assault, injury and injury causing death, the accused must have an intent to commit an assault, but an intent to cause injury or death is not required. For forcible sexual intercourse, the accused must have an intention to have sexual intercourse without the consent of the victim.

5.3.3 Are false accusations punishable for the victim?

Yes. For criminal accusations, the Penal Code¹⁷ states that persons who have filed a false complaint with the aim being the imposition of a punishment may be subject to imprisonment with work for between three months and 10 years. With regard to civil protection orders, the Prevention of Spousal Violence Act¹⁸ states that persons who have filed a petition for a protection order with a written petition containing a false entry may be subject to a civil fine of not more than JPY 100,000.

5.3.4 How is consent discussed in the law?

A lack of consent from a victim is necessary to charge the accused with forcible sexual intercourse. In this context, "forcible sexual intercourse" means to have sexual intercourse with a victim in circumstances where it is impossible or extremely difficult to refuse it. Here, "possibility" is examined based on circumstantial evidence such as an assault or threat made to the victim, relationship, surrounding environment or any other specific circumstances. In some cases, the court may find the accused not guilty despite the victim claiming no consent when a judge cannot eliminate the possibility that the victim agreed to have sexual intercourse.

For assault, injury and injury causing death, neither the Penal Code nor precedents contain specific standards, but the accused is likely to face punishment when severe injury or death occurs, even if the victim provided consent.

5.3.5 Is self-defense or insanity a defense?

Yes. If an act of the accused falls under self-defense or insanity, such act is not punishable. The following elements must exist with respect to self-defense or insanity.

Self-defense¹⁹

In practice, the act of the accused must be carried out to protect themselves or others from violence, without the intention to actively harm the victim. If the act of the accused does not fall under this paragraph, such act is not regarded as self-defense and is punishable. In addition, the act of the accused will not exceed the limits of self-defense, i.e., using excessive violence compared to the original assault, albeit the punishment for an act exceeding such limits may be reduced or be exculpated at a judge's discretion.

Insanity²⁰

In this context, insanity means a complete lack of ability to make decisions and control one's behavior. This includes both mental illnesses and a temporary lack of ability, such as when under the influence of alcohol. If the accused is found to have an extremely low ability to either make decisions or control one's behavior during domestic violence, the accused is considered to have diminished capacity and the punishment will likely be reduced.

5.4 Witness status

5.4.1 What is a witness's duty to testify honestly and completely?

Witnesses must swear an oath to tell the truth before giving evidence and before examination in the court.²¹ In this regard, the court will advise witnesses of the punishment for perjury²² should a false testimony be offered.

5.4.2 Who may abstain from testifying in certain situations?

Witnesses, including the victim, do not have a right to refuse to testify unless there is a justifiable reason for refusing (as noted in the next question). In practice, however, prosecutors rarely compel witnesses to testify when they do not wish to do so.

5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

Witnesses, including the victim, are entitled to refuse to give testimony where this may result in criminal prosecution or the conviction of the witnesses or their relatives.²³

5.4.4 What is the impact of domestic violence on witnesses who are children?

Judges typically consider the impact of providing an interview in connection with a domestic violence case on children, together with the risk of influence or "contamination" by an interviewer toward the children, especially when the abuser is a relative of the child witness.

5.4.5 Can children be called upon to testify?

Yes. The Code of Criminal Procedure allows the court to call upon individuals to testify regardless of their age.²⁴

5.4.6 What is the effect of a child victim on the charges against the offender?

As noted above, a child victim may testify. The court carefully assesses the credibility of any testimony given by the victim regardless of his/her age. With respect to child victims in particular, however, the court may consider that there is a reasonable doubt of the child telling the truth or accurately remembering the incident and that their evidence is insufficient by itself to establish a criminal charge against the offender — unless there is corroborating objective evidence to support the credibility of his/her statement. Further, there is no particular rule that requires the court to put any more or less weight on a child victim's statement compared to any other testifying individual.

5.5 Penalties and sentencing; penalty enhancements

5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?

Generally, first-time offenders receive penalties and sentences that are more lenient compared with those who have been charged several times. In this section, we will provide detailed responses regarding penalties and sentences.

5.5.2 Are there criminal penalties?

As stated in Section 5 above, Japanese law does not expressly provide criminal penalties for domestic violence. The court may impose the following penalties for crimes related to domestic violence under the Penal Code:

- Assault: This may entail imprisonment with work for not more than two years, a fine of not more than JPY 300,000, or misdemeanor imprisonment without work or a petty fine.²⁵
- Injury: This may entail imprisonment with work for not more than 15 years or a fine of not more than JPY 500,000.²⁶ Typically, imprisonment may be between six months and three years with two to five years of probation, depending on the severity of the crime.
- Injury causing death: This may entail imprisonment for a definite term of not less than three years.²⁷ Typically, sentences may be between three years and five years for domestic violence.
- Forcible sexual intercourse: This may entail a definite term of not less than five years.²⁸ Typically, sentences may be between two years and three years.

5.5.3 What is the result of a violation of an existing order for protection?

A violation of an existing order for protection may result in imprisonment with work for not more than one year or a fine of not more than JPY 1 million.²⁹

5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?

As noted above, fines may be imposed for certain crimes.

5.6 Post-release restrictions

5.6.1 Does the law notify the victim of the offender's release from custody?

Yes, in certain circumstances. A victim can generally receive a notification of the expected date of release if the offender has served his/her full sentence and if the actual date the offender was released upon written request. Prosecutors may decline such request, however, when they consider it inappropriate based on the nature of the case, e.g., when the notification may hinder the possibility of the offender's rehabilitation. The victim may also receive a notification on the actual date of release before the offender's release when the prosecutor deems it necessary to avoid contact with the victim.

6 Special issues

6.1 Battered woman syndrome

6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered woman syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)

No. While domestic abuse may be taken into consideration as an affirmative defense in certain circumstances, ordinarily, it is very difficult to justify crimes committed by a battered woman.

6.2 Domestic violence in the workplace

6.2.1 Can courts issue orders to protect employees suffering from domestic violence?

No.

6.2.2 Can departure be deemed "for good cause" if related to domestic violence?

There is no way for an employee suffering from domestic violence in the workplace to take paid leave other than ordinary annual leave.

6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?

Practically, family members may take ordinary annual leave, but there is no specific provision for individuals to take special leave to help victims.

6.3 Immigration

6.3.1 Does the law include provisions that are intended to prevent abusers who are citizens or permanent residents of your country from using immigration laws to perpetrate domestic violence against their spouse?

No, there are no such provisions.

6.3.2 If battered immigrants cooperate with law enforcement in domestic violence, can they obtain immigration remedies?

Ordinarily, the Ministry of Justice can revoke the status of residence of a foreign national residing in Japan with the status of "spouse of a Japanese national" or "spouse of a permanent resident" where they have not been a spouse continuously for six months or more. However, battered immigrants who require protection may not have their status of residence revoked, even if they have not been a spouse continuously for more than six months.

6.3.3 Does domestic violence law discuss asylum accessibility?

No.

6.4 Armed forces

6.4.1 Can a victim seek a military protective order if the abuser is in active military?

No.

6.5 Child custody and child/spousal support

6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?

Yes, when the court issues a proximity prohibition order related to a child, the court will also issue a proximity prohibition order related to the victim.

6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?

Yes. Judges may consider the testimonies of the other spouse, but they do not ordinarily seek the testimony of children. Additionally, if the victim seeks a proximity prohibition order related to their child and the child is 15 years old or older, written consent of custody from the child is required.

6.6 Housing rights of domestic violence victims

6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?

No.

6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?

No.

6.6.3 Can an order exclude the abuser from the residence?

Yes. The court can issue a deportation order where the abuser and his/her spouse cohabit. In such cases, the court may order the abuser to leave the property for two months to allow the victim to prepare to move out and the abuser will be prohibited from loitering around the home.

6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?

No.

Endnotes

- ¹ Ogawa, Naoto (2018) "Protection Orders at the Tokyo District Court" Family Court Journal, No. 16, p. 19.
- ² Ogawa, Naoto (2018) "Protection Orders at the Tokyo District Court" Family Court Journal, No. 16, p. 17.
- ³ Taniguchi, Tetsuya (2018) "Protection Orders at the Osaka District Court" Family Court Journal, No. 16, p. 37.
- ⁴ Ogawa, Naoto (2018) "Protection Orders at the Tokyo District Court" Family Court Journal, No. 16, p. 17; Taniguchi, Tetsuya (2018) "Protection Orders at the Osaka District Court" Family Court Journal, No. 16, p. 35.
- ⁵ Ogawa, Naoto (2018) "Protection Orders at the Tokyo District Court" Family Court Journal, No. 16, pp. 18-19; Taniguchi, Tetsuya (2018) "Protection Orders at the Osaka District Court" Family Court Journal, No. 16, pp. 37-38.
- ⁶ Under Article 208 of the Penal Code, a person found guilty of assault without injuring the victim may be imprisoned for up to two years, be fined up to JPY 300,000, face a penal detention and/or be ordered to pay a petty fine.
- ⁷ Under Article 204 of the Penal Code, a person found guilty of causing injury to another person may be imprisoned for up to 15 years and/or be fined up to JPY 500,000.
- ⁸ Under Article 205 of the Penal Code, a person found guilty of causing an injury to another person that results in death may be imprisoned for a definite term of not less than three years. Typically, sentences may be between three years and five years for domestic violence.
- ⁹ Under Article 177 of the Penal Code, a person found guilty of forcibly committing sexual intercourse, anal intercourse or oral intercourse with another person over the age of 13 years old, through assault or intimidation, may be imprisoned for a definite term of not less than five years. The same rules apply to an individual found guilty of forcible sexual intercourse, etc., with another person under 13 years old.
- ¹⁰ Under Article 316-33 (1) of the Code of Criminal Procedure, on the request of persons to participate in proceedings, the court may, when it finds it appropriate, make a ruling to allow the victim or others, or the legal representative of the victim, to participate in the proceedings of the case after hearing the opinions of the accused or the defense counsel and considering the following: (i) the nature of the crime; (ii) the relationship with the accused; and (iii) other circumstances where the crimes cause death or injury to a person through an intentional criminal act, where they are provided for in Articles 176-178, Article 211, Article 220 or Articles 224-227 of the Penal Code, where they include the aforementioned criminal acts (except for the offenses stated in item (i)) and where there are attempts to commit the offenses in the preceding three items.
- ¹¹ Articles 316-33 to 316-39 of the Code of Criminal Procedure provide for the victim participation system.
- ¹² Article 209 of the Penal Code.
- ¹³ Articles 204 and 205 of the Penal Code.
- ¹⁴ Article 177 of the Penal Code.
- ¹⁵ Under Article 35 of the Penal Code, an act performed in accordance with laws and regulations, or in the pursuit of lawful business, is not punishable.
- ¹⁶ Under Article 37(1) of the Penal Code, an act unavoidably performed to avert a present danger to the life, body, liberty or property of oneself or any other person is not punishable only when the harm produced by such act does not exceed the harm to be averted, provided that an act causing excessive harm may lead to the punishment being reduced or may exculpate the offender in light of the circumstances. Article 37(2) states that the preceding paragraph does not apply to a person under a special professional obligation.
- ¹⁷ Under Article 172 of the Penal Code, a person who is found guilty of submitting a false complaint, accusation or other denunciation for having a punishment or disciplinary action imposed upon another may face imprisonment with work for not less than three months, but for not more than 10 years. However, it is rare for individuals to be charged with perjury in practice.
- ¹⁸ Under Article 30 of the Prevention of Spousal Violence Act, persons who have filed a petition for a protection order with a written petition stating a false entry with regard to matters to be stated pursuant to the provisions of Article 12, paragraph (1) (including when the provisions are applied following the deemed replacement of terms pursuant to the provisions of Article 18, paragraph (2)) or the provisions of Article 12, paragraph (1) as applied *mutatis mutandis* pursuant to Article 28-2 following the deemed replacement of terms (including when the provisions of Article 12, paragraph (1) are applied following the deemed replacement of terms pursuant to the provisions of Article 18, paragraph (2) as applied *mutatis mutandis* to Article 28-2) are subject to a civil fine of not more than JPY 100,000.
- ¹⁹ Under Article 36(1) of the Penal Code, an act unavoidably performed to protect the rights of oneself or any other person against imminent and unlawful infringement is not punishable. Under Article 36(2), an act exceeding the limits of self-defense may lead to the punishment being reduced or may exculpate the offender in light of the circumstances.
- ²⁰ Under Article 39(1) of the Penal Code, an act of insanity is not punishable. Under Article 39(2), an act of diminished capacity will lead to a reduction in punishment.
- ²¹ Article 154 of the Code of Criminal Procedure states, "[t]he court must, except as otherwise provided in this Code, have witnesses swear an oath."
- ²² Under Article 169 of the Penal Code, where a witness who has been sworn in gives false testimony, they may face imprisonment with work for not less than three months and not more than 10 years.
- ²³ Under Article 146 of the Code of Criminal Procedure, "[a]ny person may refuse to give testimony when there is a concern that such testimony may result in said person's criminal prosecution or conviction." Further, under Article 147, "[a]ny person may refuse to give testimony when there is a concern that such testimony may result in criminal prosecution or conviction against: (i) said person's spouse, blood relatives within the third degree of kinship or relatives by affinity within the second degree of kinship or a person who formerly had such relationship with said person; (ii) said person's guardian, the supervisor of said person's guardian or said person's curator; (iii) a person for whom said person is a guardian, supervisor of a guardian or a curator."
- ²⁴ Under Article 143 of the Code of Criminal Procedure, "[t]he court may, except as otherwise provided in this Code, examine any person as a witness."

²⁵ Article 208 of the Penal Code.

²⁶ Article 204 of the Penal Code.

²⁷ Article 205 of the Penal Code.

²⁸ Article 177 of the Penal Code.

²⁹ Under Article 29 of the Prevention of Spousal Violence Act, "[a] person who violates a protection order (including those under Article 10, paragraphs (1) to (4) as applied *mutatis mutandis* pursuant to the preceding Article following the deemed replacement of terms; the same applies to the following Article) is subject to imprisonment for not more than one year or a fine of not more than 1,000,000 Yen."

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