

**Baker
McKenzie.**

Fighting Domestic Violence

Pro Bono Initiative

Asia



In association with





Malaysia

Domestic Violence Legislation

“

“Domestic violence victims may avail themselves of both civil and criminal legal remedies...”

Malaysia

1 Legal provisions

1.1 What are the relevant statutes and codes?

The relevant legislation on domestic violence in Malaysia includes the following:

- Domestic Violence Act 1994
- Penal Code
- Sexual Offences Against Children Act 2017
- Child Act 2001
- Married Women Act 1957

1.2 What is the controlling case law?

There is no specific controlling case law for domestic violence in Malaysia. The appellate cases on domestic violence include the following:

Mangaleswary a/p Ponnampalam v Giritharan a/l E Rajaratnam

This is a court of appeal decision that clarifies that the court has discretion to set aside an interim protection order issued pursuant to the Domestic Violence Act 1994, notwithstanding that the police investigation has not been completed and criminal proceedings have not been instituted.¹

Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib

This is a Supreme Court (now known as the Federal Court of Malaysia) decision that clarifies that civil allegations of assault and battery that occurred during marriage between a Muslim couple is a matter for Islamic family law and falls within the exclusive jurisdiction of the Syariah court.²

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

There are no specific parts of the court system in Malaysia that address domestic violence. Generally, an action may be commenced in a magistrates' court, a session court or a high court, depending on the subject matter and the amount of claims.

1.4 What are potential causes of action?

The potential causes of action include tortious actions such as battery and assault. In fact, it is expressly recognized under the Married Women Act 1957 that a husband or a wife is entitled to sue each other in tort for damages in respect of injuries to his/her person and for the protection or security of his/her property.

Apart from civil actions, there are various offenses under the Penal Code that are relevant for domestic violence, which include the following:

- causing hurt³
- causing hurt in order to have sexual intercourse with wife⁴
- using criminal force and/or committing assault⁵

2 Introduction: framework guiding domestic violence law

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

Yes. Domestic violence victims may avail themselves of both civil and criminal legal remedies against the perpetrators.

- **Civil remedies:** Domestic violence victims may claim for various damages under civil actions from the perpetrators, such as special damages (e.g., medical expenses), general damages (e.g., pain and suffering), aggravated damages and exemplary damages. Separately, the victims may seek specific relief such as an injunction against the performance of specific actions by the perpetrator.
- **Criminal remedies:** Domestic violence perpetrators may be imprisoned and/or fined for criminal actions. In fact, the maximum term of imprisonment for causing hurt to a spouse, former spouse, child, incapacitated adult or other family member is double that incurred for causing hurt to other persons.⁶

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

There are no legal provisions in this regard.

2.3 Has your country signed and ratified the conventions?

Yes. Malaysia has acceded to the Convention on the Elimination of All Forms of Discrimination against Women, with reservations on certain articles in view of the provisions of Syariah Law and the Federal Constitution.

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 has the recommendations part of General Comment No. 35 been implemented into national law?

Malaysia has enhanced the legal protection of women from gender-based violence, such as by amending the Domestic Violence Act 1994 in 2017. However, the Committee on the Elimination of Discrimination against Women remains concerned with several aspects and has recommended a list of actions to be taken in its Concluding Observations to Malaysia in 2018.

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	<p>The commission of one or more of the following acts:</p> <ul style="list-style-type: none">(a) willfully or knowingly placing, or attempting to place, the victim in fear of physical injury(b) causing physical injury to the victim by an act that the perpetrator knew or ought to have known would result in physical injury(c) compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain(d) confining or detaining the victim against the victim's will(e) causing mischief or destruction or damage to property with the intent to cause or knowing that it is likely to cause distress or annoyance to the victim<ul style="list-style-type: none">1. dishonestly misappropriating the victim's property, which causes the victim to suffer distress due to financial loss2. threatening the victim with the intent to cause the victim to fear for his/her safety or the safety of his/her property, to fear for the safety of a third person, or to suffer distress3. communicating with the victim, or communicating about the victim to a third person, with the intent to insult the modesty of the victim through any means, electronic or otherwise(f) causing psychological abuse, which includes emotional injury, to the victim(g) causing the victim to suffer delusions by using any intoxicating substance or any other substance without the victim's consent or if the consent is given, the consent was unlawfully obtained(h) in the case where the victim is a child, causing the victim to suffer delusions by using any intoxicating substance or any other substance <p>by a person, whether by himself/herself or through a third party, against (i) his or her spouse; (ii) his or her former spouse; (iii) a child; (iv) an incapacitated adult; or (v) any other member of the family.⁷</p>
Stalking	No legislative definition.
Harassment	No legislative definition. Note that the Employment Act 1955 defines "sexual harassment" as any unwanted conduct of a sexual nature, whether verbal, nonverbal, visual, gestural or physical, directed at a person that is offensive or humiliating or is a threat to his/her well-being, arising out of and in the course of his/her employment. ⁸

Term	Definition
Victim	A victim of domestic violence. ⁹
Abuser	No legislative definition.
Civil protection order	No legislative definition (please refer to Section 4.1 below for further information).
Causes of action	<ul style="list-style-type: none"> ▪ Every material fact to be proved to entitle the plaintiff to succeed.¹⁰ ▪ A cause of action normally accrues when there is a person who can sue and another who can be sued, and when all the material facts to be proved to entitle the plaintiff to succeed have happened.¹¹
Marital rape	No legislative definition. While marital rape is not expressly criminalized in Malaysia, it is an offense for any man, during the subsistence of a valid marriage, to cause hurt or fear of death or hurt to his wife or any other person in order to have sexual intercourse with his wife. ¹²

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

Term	Definition
Child	A person below the age of 18 who is living as a member of the offender's family or of the family of the offender's spouse or former spouse, as the case may be. ¹³

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 are three types of civil protection orders available to victims of domestic abuse under the Domestic Violence Act 1994, as follows:

- (a) emergency protection order (EPO)
- (b) interim protection order (IPO)
- (c) protection order (PO)¹⁴

4.1.2 Who can petition for civil protection orders?

EPO:

- (a) Victims of perpetrators who have (i) willfully or knowingly placed, or attempted to place, the victim in fear of physical injury; or (b) caused physical injury to the victim by an act that they knew or ought to have known would result in physical injury, or the victim's lawyer can petition for an emergency protection order.
- (b) Where the victim is a child or an incapacitated adult, the guardian, relative or the carer of the child or incapacitated adult can apply on their behalf.

IPO and PO:

- (a) Victims of acts of domestic violence (as set out in the definition of "domestic violence" under the Domestic Violence VA) or the victim's lawyer or social welfare officer from the Social Welfare Department can apply.
- (b) Where the victim is a child or an incapacitated adult, the guardian, relative or the carer of the child or incapacitated adult can apply on their behalf.

Note that applications may be made in the absence of the offender.

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

Yes.

Temporary custody: A Protector¹⁵ or police officer who is satisfied on reasonable grounds that a child is in need of care and protection may take the child into temporary custody.¹⁶

Child support orders: The court may at any time order a man to pay maintenance for the benefit of his child:¹⁷

- (a) if he has refused or neglected reasonably to provide for the child
- (b) if he has deserted his wife and the child is in her charge
- (c) during the pendency of any matrimonial proceedings
- (d) when making or subsequent to the making of an order placing the child in the custody of any other person

Note that the court also has the corresponding power to order a woman to pay or contribute toward the maintenance of her child where it is reasonable based on her means to contribute.

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

Yes.

EPO:

The offender may be prohibited from entering a protected person's place of residence or shelter.

IPO and PO:

An order may:

- (a) grant a protected person the right to exclusive occupation at a shared residence
- (b) prohibit the offender from entering any place of residence, shelter or place of employment of a protected person or going within a distance of at least 50 meters of a protected person
- (c) prohibit the offender from personally contacting a protected person other than in the presence of a police officer or social welfare officer or deny communication altogether

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

Please see the response to "Are there civil protection orders available to victims of domestic abuse?" under Section 4.1 above.

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

Yes. Please see the response to "Who can petition for civil protection orders?" under Section 4.1 above.

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

Yes. Please see the response to "Are there civil protection orders available to victims of domestic abuse?" under Section 4.1 above.

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

Yes. All protective orders may be made *ex parte*.

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

No. The protection order is limited to protection of a specified protected person, and not the family members of the victim.

4.1.10 How long do the orders last?

EPO:

An emergency protection order is valid for seven days from the date of issuance of the order.

IPO:

An interim protection order is valid until:

- (a) completion of criminal investigations and decision that no further action is to be taken against the alleged offender
- (b) seven days after the victim is informed about the commencement of criminal proceedings against the offender where no application for a protection order is made
- (c) determination of an application for a protection order
- (d) set aside by the court

PO:

A protection order is valid for 12 months from the date of commencement of the order, but:

- (a) new orders may be made/an existing protection order may be renewed if the offender contravenes the existing order
- (b) an existing order may be extended once, for no longer than 12 months, if the court is satisfied that the extension is necessary for the protection and personal safety of the protected person or persons

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 for domestic and sexual violence.

The [official portal](#) of Women's Aid Organisation provides information on, among other things, domestic violence laws in Malaysia, how to obtain an emergency protection order/interim protection order/protection order, and guidance for victims to seek help in domestic violence incidents(s).

4.2 Steps for receiving a protective order

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

EPO:

- (a) a completed prescribed Form 1 under the Domestic Violence (Prescribed Forms) Regulations 2018
- (b) the victim's national identity card (or birth certificate if the victim is a child without national identity card)

IPO:

- (a) police report
- (b) referral letter from the police officer that the police is investigating the alleged domestic violence case
- (c) the victim's national identity card (or birth certificate if the victim is a child without a national identity card)

PO:

- (a) letter from the social welfare department
- (b) letter from the police confirming that the case has been charged in court
- (c) the victim's national identity card (or birth certificate if the victim is a child without a national identity card)

4.2.2 Does the victim need to attend a hearing?

Potentially, yes. The victim will need to provide a statement on the alleged domestic violence incident(s) at the police station. Subsequently, the victim may be required to provide witness testimony at trial if the alleged offender is charged in court.

4.2.3 Can you request remedies?

Yes. A victim of domestic violence may claim compensation for personal injuries, damage to property and financial loss as a result of domestic violence.¹⁸

The court hearing a claim for such compensation may take into account:

- (a) the pain and suffering of the victim, and the nature and extent of physical injury or psychological abuse, which includes emotional injury suffered
- (b) the cost of medical treatment for such injuries
- (c) any loss of earnings arising therefrom
- (d) the amount or value of the property taken or destroyed or damaged
- (e) necessary and reasonable expenses incurred by or on behalf of the victim when the victim is compelled to separate or be separated from the defendant due to the domestic violence, such as:
 - (i) lodging expenses to be contributed to a safe place or shelter
 - (ii) transport and moving expenses
 - (iii) the expenses required in setting up a separate household, which, subject to the following paragraph, may include housing loan payments or rental payments or part thereof of the shared residence, or an alternative residence as the case may be, for such period as the court considers just and reasonably necessary

In considering any necessary and reasonable expenses that may be taken into account to set up a separate household, the court may also take into account:

- (a) the financial position of the victim as well as that of the defendant
- (b) the relationship that exists between the parties and the reasonableness of requiring the defendant to make or contribute toward such payments

- (c) the possibility of other proceedings being taken between the parties and the matter being more appropriately dealt with under the relevant laws relating to the financial provision of spouses or former spouses and other dependents

4.2.4 Are there time limits?

EPO:

There are no time limits to a request for an emergency protection order.

IPO:

An interim protection order may be sought after a domestic violence complaint has been filed with the police and pending investigations by the police.

PO:

A protection order may be sought:

- (a) where an interim protection order has been issued against the alleged offender, within seven days after the victim has been informed in writing by a police officer that a criminal proceeding will be instituted against the alleged offender (i.e., the person against whom the interim protection order was made)
- (b) at any stage of the criminal proceedings against an alleged offender charged with a domestic violence offense

Note that the duration of validity of each type of protection order is highlighted in the response to "How long do the orders last?" under Section 4.1 above.

4.2.5 Are there different rules in emergencies?

Yes. The victim may apply for an emergency protection order in the events of an emergency (which, in most cases, is issued within two hours of application). Please refer to the relevant responses concerning the application for an emergency protection order.

4.3 Judicial discretion

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

EPO:

An emergency protection order is granted by an authorized officer of the Social Welfare Department. The authorized officer generally has unfettered discretion in granting the emergency protection order.

IPO and PO:

The court generally has unfettered discretion in granting interim protection orders and protection orders, provided that it is satisfied on the balance of probabilities that it is necessary for the protection and personal safety of the victim.

4.3.2 Are there age limits on who can obtain orders?

No. The Domestic Violence Act 1994 does not prescribe a minimum or maximum age limit on persons who can obtain an emergency protection order, interim protection order and protection order.

4.4 Restitution and remedies available to victims

4.4.1 Can victims obtain reimbursement for costs and restitution paid?

Please see the response to "Can you request remedies?" under Section 4.1 above.

4.4.2 Can they recover wages and profits lost?

Please see the response to "Can you request remedies?" under Section 4.1 above.

4.4.3 Is a separate civil process required?

If the alleged offender is tried under criminal proceedings for domestic violence-related offenses (and where an interim protection order or protection order has been applied for), a separate civil proceeding will be required for the victim to claim compensation.¹⁹

5 Prosecutorial considerations

5.1 Police procedures

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

The Domestic Violence Act 1994 prescribes the duties²⁰ of an enforcement officer (including police officers), which, in consequence, highlights the circumstances and extent to which they are involved in domestic violence disputes. Generally, police officers are required to:

- (a) assist a survivor of domestic violence to file an application for an interim protection order regarding the domestic violence
- (b) provide or arrange transportation for the survivor to an alternative residence or a safe place or shelter if such transportation is required
- (c) provide or arrange transportation for the survivor to the nearest hospital or medical facility for treatment of injuries if such treatment is needed
- (d) explain to the survivor their rights to protection against domestic violence
- (e) accompany the survivor to their residence or previous residence to collect personal belongings
- (f) remove or supervise the removal of a person excluded from a shared residence, where the court has issued an interim protection order or protection order that excludes the person from the shared residence
- (g) inform the survivor of the status of the investigations relating to the offense involving domestic violence
- (h) inform the survivor of the status of the application for an interim protection order or a protection order, including the service of the order, and the relevant court dates relating to the application
- (i) arrest a perpetrator who breaches or is anticipated to breach an interim protection order or protection order
- (j) arrest a perpetrator for committing domestic violence against an individual protected by an interim protection order or protection order

5.1.2 What circumstances affect law firm involvement?

If the accused has been presented with formal charges arising from the domestic violence dispute and seeks assistance from legal counsel in respect of the same.

5.2 Standard of proof

5.2.1 Is proof required by any legal means?

Yes. As with any criminal accusation, proof of an offense concerning domestic violence (as charged under the Penal Code) is necessary for the deputy public prosecutor to proceed with a formal charge against the accused, and to establish the legal elements of an offense committed by the accused.

5.2.2 Are there any requirements regarding evidence and documents?

Yes. Evidence is required for a formal charge and the establishment of a criminal offense. There are no evidential or documentary requirements that are specific to domestic violence disputes.

5.2.3 Is proof "beyond a reasonable doubt" required?

Yes. The standard of "beyond reasonable doubt" will apply in criminal proceedings against the accused as a threshold to establish that the accused committed a criminal offense in the domestic violence dispute.

A different standard of proof applies to civil protection orders sought by survivors pursuant to the Domestic Violence Act 1994. Please see the response to "Is the standard of proof different for *ex parte* orders?" in Section 5.2 below.

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

EPO:

There are no formal standards of proof that must be met to obtain such an order, even though it is applied for *ex parte* and is issued administratively by the social welfare department.²¹

IPO and PO:

The standard of "balance of probabilities" will apply.²² These orders are granted pursuant to the Domestic Violence Act 1994, which does not differentiate the applicability of the standard of proof for *ex parte* orders.

5.3 Affirmative defenses

5.3.1 Are affirmative defenses available to the accused?

Yes. The right of private defense is expressly provided for under the Penal Code.²³

5.3.2 Is willful intent required?

Not always. While "domestic violence" is defined to include willfully or knowingly placing, or attempting to place, the victim in fear of physical injury, there are other acts of domestic violence that do not require willful intent.²⁴ Please see the response to "What are the definitions of the below term ...?" under Section 3 above.

5.3.3 Are false accusations punishable for the victim?

Yes. Furnishing false information to any public servant is a criminal offense and is punishable with imprisonment for a maximum term of six months and/or with a maximum fine of MYR 2,000 (approx. USD 495).²⁵

5.3.4 How is consent discussed in the law?

"Domestic violence" is defined so as to include causing the victim to suffer delusions by using any intoxicating substance or any other substance without the victim's consent or if the consent is given, the consent was unlawfully obtained.²⁶

Under the Penal Code, an act from which a person has expressly or implicitly consented to suffer harm or to take such risk of harm would not give rise to an offense, if:

- it is not intended to and not known by the perpetrator to be likely to cause death or grievous hurt,²⁷ for example, conduct that would normally constitute a criminal assault may be condoned when carried out in the context of rough contact sports such as rugby
- it is not intended to cause death and is carried out in good faith for the benefit of that person,²⁸ for example, the act of a surgeon in good faith during surgery that caused a patient's death may not attract criminal liability

For persons under 12 years old or of unsound mind, their guardian may consent to an act that may cause harm to them, if the act is done in good faith for the benefit of such persons. Such acts exclude those that are likely to cause death or grievous hurt, unless they are carried out for the purpose of preventing death or grievous hurt or curing grievous disease or infirmity.²⁹ For example, a mother who, with the intention of curing her child's disease, consents to surgery performed on her child, which causes the death of her child, will not be culpable.

In any event, consent is negated if it is made under fear of injury or under a misconception of fact and the perpetrator reasonably believes that the consent was made under such fear or misconception. Likewise, consent is negated if it is made by a person who is of unsound mind or is intoxicated.³⁰

5.3.5 Is self-defense or insanity a defense?

Yes.

- **Self-defense:** Self-defense is a complete defense provided for under the Penal Code and is referred to as "the right of private defense" in Malaysia. Among others, every person has a right of private defense to defend his/her own body, and the body of any other person, against any offense affecting the human body.³¹
- **Insanity:** Insanity is a complete defense and is known as "a person of unsoundness of mind" in Malaysia. This refers to an individual who is incapable of knowing the nature of the act, or that what he/she is doing is either wrong or contrary to law.³²

5.4 Witness status

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

Before testifying, a witness would have to swear upon oath or affirmation before giving evidence in court.³³ Further, by taking the oath, every person testifying is bound to state the truth.³⁴

A person testifying in open court can be summarily punished for contempt (i.e., called upon immediately by the court without prior notice and hearing to give reasons for his/her act of contempt and, upon failure to give proper reasons, be sentenced by the court), if:³⁵

- (a) that person knowingly gives false evidence³⁶ on a material issue
- (b) that person makes two or more contradictory statements of fact on a material issue before the court.

Further, whoever intentionally gives or fabricates false evidence, whether in any stage of a judicial proceeding or in any other case, is also liable for criminal punishment under the Penal Code.³⁷

5.4.2 Who may abstain from testifying in certain situations?

An instance of abstention may arise where the court considers that these potential witnesses are unable to understand the questions put to them or give rational answers to questions posed to them, by reason of very young age, extreme old age, disease — whether of body or mind, or any other cause of the same kind.³⁸

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

Some of the "excuses" are that the witness is very young, extreme old age, has a disease of the body or mind, or any other possible causes of the same kind.³⁹

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

As the potential impact of domestic violence may be traumatizing and cognitively damaging, special procedures are available for a child witness, which include the following:

- A child witness may testify in the company of an adult who must not prompt the child witness to answer any question, influence the answers of the child witness or disrupt the questioning of the child witness.⁴⁰
- When testifying, these child witnesses may be prevented from seeing and being seen by the accused or a child charged with any offense by means of a screen drawn up or an alternative arrangement.⁴¹
- Evidence may be given by means of a live link from a location other than the courtroom in which the proceeding is being held.⁴²

5.4.5 Can children be called upon to testify?

Yes. By way of brief definition, a child witness is any person under the age of 16 who is called to testify in any proceedings, but this does not include an accused or a child charged with any offense.⁴³

If the court holds the opinion that a child witness does not understand the nature of an oath, then his/her evidence may be received, though it will not be given upon oath. However, this will only happen if the court opines that he/she is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.⁴⁴

Nevertheless, a child who in the opinion of the court ought not give evidence upon oath, may in any case be admitted to give evidence after being cautioned by the court to speak the truth.⁴⁵

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

Presently, there are no particular offenses that provide for a different charge to be made for committing an act or acts of domestic violence against a child victim.

5.5 Penalties and sentencing; penalty enhancements

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

The penalties and sentencing for offenses related to domestic violence vary depending on the nature of the offense. Some examples of offenses under the Penal Code with their maximum punishments for first time offenders are provided below:

Offense	Maximum punishment
Committing assault or using criminal force on a spouse ⁴⁶	6 months' imprisonment and/or fine of MYR 2,000 (approx. USD 495)
Voluntarily causing hurt to a spouse, former spouse, a child, an incapacitated adult or other family member ⁴⁷	2 years' imprisonment and/or fine of MYR 2,000 (approx. USD 495)
Voluntarily causing grievous hurt to a spouse, former spouse, a child, an incapacitated adult or other family member ⁴⁸	14 years' imprisonment and/or fine (no maximum limit)
Causing hurt in order to have sexual intercourse with wife ⁴⁹	5 years' imprisonment

5.5.2 Are there criminal penalties?

Yes. Offenses related to domestic violence in Malaysia attract criminal penalties.

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

Anyone who willfully contravenes a protection order commits an offense and upon conviction will be liable to a maximum fine of MYR 2,000 (approx. USD 495) and/or imprisonment with a maximum term of six months. If violence is used on a protected person to willfully contravene a PO, the maximum punishments double for both fine and imprisonment.⁵⁰

For a second or subsequent violation of a PO, the offender will be liable to imprisonment with a minimum term of 72 hours but not more than two years, and to a maximum fine of MYR 5,000 (approx. USD 1,240).⁵¹

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

Domestic violence victims may be awarded compensation by the court in respect of injury or damage to property or other financial loss. In deciding the claim for compensation, the court may consider the following:

- (a) the pain and suffering of the victim, and the nature and extent of physical injury or psychological abuse, which includes emotional injury suffered
- (b) the cost of medical treatment for such injuries
- (c) any loss of earnings arising therefrom

- (d) the amount or value of the property taken or destroyed or damaged
- (e) necessary and reasonable expenses incurred by or on behalf of the victim when the victim is compelled to separate or be separated from the defendant due to the domestic violence⁵²

5.6 Post-release restrictions

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

There are no legal provisions in this regard.

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.)

Potentially, yes. Evidence of battered woman syndrome or other domestic abuse has not been tested as an affirmative defense in Malaysian courts. It is unclear whether it will be accepted by courts in Malaysia as there is a problem with relying on the defense of provocation in relation to battered woman syndrome. Provocation requires immediacy or suddenness. The behavior of battered women who are repeatedly beaten is typically to fight back only after the attack, which invalidates the suddenness requirement.⁵³ Furthermore, if the battered woman gets hold of a weapon to kill their abuser, it could be demonstrated as a chance to calm down and plan the act. This would negate the suddenness requirement.⁵⁴ That said, evidence of battered woman syndrome or other domestic abuse can potentially be brought up as a mitigating factor.

6.2 Domestic violence in the workplace

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

There are no legal provisions in this regard.

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

There are no legal provisions in this regard.

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

There are no legal provisions in this regard.

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 legal provisions that specifically prohibit this. In any event, note that refugees and noncitizens may still fall within the scope and protection of local legislation, such as the Domestic Violence Act 1994 and Penal Code.

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

No. There are no immigration remedies available in such situations.

6.3.3 Does domestic violence law discuss asylum accessibility?

No. There are no domestic violence legislative or administrative provisions in place for dealing with the situation of asylum accessibility in Malaysia. The detention of asylum-seekers in Malaysia is mandatory and governed under the Immigration Act 1959/63.

6.4 Armed forces

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

No. Military POs are not available in Malaysia.

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?

There are no special rules regarding child custody in domestic violence cases.

Generally, the law on granting custody of a child is provided under the Law Reform (Marriage and Divorce) Act 1976. The court may order a child to be placed in the custody of his/her father or mother. Where there are exceptional circumstances making it undesirable that the child be entrusted to either parent, any other relative of the child or any association (including child welfare) or another suitable person may be given custody instead.⁵⁵

The paramount consideration is the welfare of the child and subject to this, the court will also consider the wishes of the parents of the child and the wishes of the child, where he or she is of age to express an independent opinion.⁵⁶ There is also a rebuttable presumption that, if the child is below the age of seven, it is for the good of the child to be with the child's mother.⁵⁷ The rationale behind this presumption is that this is a period of nurture when a young child is dependent on the mother for its physical and emotional needs. The courts tend to lean in favor of the mother being given custody of a young child.

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

Yes. The judge can consider the testimonies of the other spouse and the children when determining custody.

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?

There are no legal provisions in this regard.

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

There are no legal provisions in this regard.

6.6.3 Can an order exclude the abuser from the residence?

Yes. Please see the response to "Is there a provision to order the abuser to move out, or stay away from, places that the victims frequent?" under Section 4.1 above.

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?

There are no legal provisions in this regard.

Endnotes

¹ [2015] 5 MLJ 305.

² [1992] 2 MLJ 793.

³ Sections 319-326 of the Penal Code.

⁴ Section 375A of the Penal Code.

⁵ Sections 349-352 of the Penal Code.

⁶ Section 326A of the Penal Code.

⁷ Section 2 of the Domestic Violence Act 1994.

⁸ Section 2 of the Employment Act 1955.

⁹ Section 2 of the Domestic Violence Act 1994.

¹⁰ *Cooke v Gill* (1873) LR 8 CP 107.

¹¹ *Lim Kean v Choo Koon* [1970] 1 MLJ 158.

¹² Section 375A of the Penal Code.

¹³ Section 2 of the Domestic Violence Act 1994.

¹⁴ Sections 3A, 4 and 5 of the Domestic Violence Act 1994.

¹⁵ Protector means (a) the director general; (b) the deputy director general; (c) a divisional director of social welfare, department of social welfare; (d) the state director of social welfare of each of the states; (e) any social welfare officer appointed under Section 8 of the Child Act 2001.

¹⁶ Section 18 of the Child Act 2001.

¹⁷ Section 93 of the Law Reform (Marriage & Divorce) Act 1976.

¹⁸ Section 10(1) of the Domestic Violence Act 1994.

¹⁹ Section 10 of the Domestic Violence Act 1994.

²⁰ Section 19 of the Domestic Violence Act 1994.

²¹ Section 3A of the Domestic Violence Act 1994.

²² Section 6(1) of the Domestic Violence Act 1994.

²³ Sections 76-106 of the Penal Code.

²⁴ Section 2 of the Domestic Violence Act 1994.

²⁵ Section 182 of the Penal Code.

²⁶ Section 2(g) of the Domestic Violence Act 1994.

²⁷ Section 87 of the Penal Code.

²⁸ Section 88 of the Penal Code.

²⁹ Section 89 of the Penal Code.

³⁰ Section 90 of the Penal Code.

³¹ Sections 96 and 97 of the Penal Code.

³² Section 84 of the Penal Code.

³³ Section 6(1)(a) of the Oaths and Affirmations Act 1949.

³⁴ Section 13 of the Oaths and Affirmations Act 1949.

³⁵ Section 14 of the Oaths and Affirmations Act 1949.

³⁶ Any statement that is false, and which the deponent either knows or believes to be false, or does not believe to be true: section 191 of the Penal Code

³⁷ Sections 191-193 of the Penal Code.

³⁸ Section 118 of the Evidence Act 1950.

³⁹ Ibid.

⁴⁰ Section 9 of the Evidence of Child Witness Act 2007.

⁴¹ Section 4 of the Evidence of Child Witness Act 2007.

⁴² Section 5 of the Evidence of Child Witness Act 2007.

⁴³ Section 2 of the Evidence of Child Witness Act 2007.

⁴⁴ Section 133A of the Evidence Act 1950.

⁴⁵ Section 8 of the Oaths and Affirmations Act 1949.

⁴⁶ Section 352A of the Penal Code.

⁴⁷ Sections 323 and 326A of the Penal Code.

⁴⁸ Sections 325 and 326A of the Penal Code.

⁴⁹ Section 375A of the Penal Code.

⁵⁰ Section 8(1) and (2) of the Domestic Violence Act 1994.

⁵¹ Section 8(3) of the Domestic Violence Act 1994.

⁵² Section 10 of the Domestic Violence Act 1994.

⁵³ Provocation and Battered Women Who Kill in England [2000] 1 MLJ xvii.

⁵⁴ *Ibid.*

⁵⁵ Section 88(1) of the Law Reform (Marriage and Divorce) Act 1976.

⁵⁶ Section 88(2) of the Law Reform (Marriage and Divorce) Act 1976.

⁵⁷ Section 88(3) of the Law Reform (Marriage and Divorce) Act 1976.

Baker McKenzie helps clients overcome the challenges of competing in the global economy.

We solve complex legal problems across borders and practice areas. Our unique culture, developed over 65 years, enables our 13,000 people to understand local markets and navigate multiple jurisdictions, working together as trusted colleagues and friends to instill confidence in our clients.

bakermckenzie.com

© 2021 Baker McKenzie. All rights reserved. Baker & McKenzie International is a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner or equivalent in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.