

The Definition of Domestic Violence in Malaysia: A Cross-National Comparison

Definisi Keganasan Rumah Tangga di Malaysia: Kajian Perbandingan

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ABSTRACT

Malaysia is the first Asian country to have laws to protect victims of domestic violence and has recognized domestic violence as an issue of public concern. The Domestic Violence Act 1994 in Malaysia was finally amended and gazetted on 9 February 2012. Further amendments were gazetted on 21 September 2017 which came into enforcement on 1 January 2018. Desirable and much welcomed amendments addressed the outcry of many concerned parties involving domestic violence. Many crucial issues have been looked into and incorporated into the new amendments of the Domestic Violence Act such as focusing on the expanded definition of domestic violence, allowing the Act to be read together with the Penal Code or any written law involving offences relating to domestic violence and by making it possible that an Interim Protection Order be made by way of an application to the court. This article examines the recent amendments introduced by the Domestic Violence (Amendment) Act 2012 (Malaysia, Act AA1414) and Domestic Violence (Amendment) Act 2017 (Act A1538) to the Domestic Violence Act 1994 (Malaysia, Act 521) (hereafter referred to as the DVA 1994) specifically aimed at dealing with the definition and meaning of domestic violence in Malaysia. Several cases and statutory provisions will be examined in this article. The article seeks to critically examine the definition from other jurisdiction and will suggest legislative reforms which will involve a comparative study of other comparable jurisdictions.

Keywords: Domestic violence; economic abuse; financial abuse; psychological abuse; emotional abuse

ABSTRAK

Malaysia adalah negara Asia pertama yang mempunyai undang-undang untuk melindungi mangsa keganasan rumah tangga dan mengakui keganasan rumah tangga sebagai isu yang semakin membimbangkan ramai orang. Akta Keganasan Rumah Tangga 1994 di Malaysia akhirnya dipinda dan diwartakan pada 9 Februari 2012. Pindaan selanjutnya telah diwartakan pada 21 September 2017 yang mula berkuatkuasa pada 1 Januari 2018. Yang diinginkan dan banyak mengalu-alukan pindaan membincangkan bantahan dari banyak pihak yang melibatkan keganasan rumah tangga. Banyak isu penting telah dipertimbangkan dan dimasukkan ke dalam pindaan baru Akta Keganasan Rumah Tangga seperti memberi tumpuan kepada takrif keganasan rumah tangga yang diperluaskan, membenarkan Akta dibaca bersama dengan Kanun Keseksaan atau mana-mana undang-undang bertulis yang melibatkan kesalahan yang berkaitan dengan keganasan rumah tangga dan dengan membuat kemungkinan bahawa Perintah Perlindungan Interim dibuat dengan cara permohonan kepada mahkamah. Artikel ini mengkaji pindaan baru-baru ini yang diperkenalkan oleh Akta Keganasan Rumah Tangga (Pindaan) 2012 (Malaysia, Akta AA1414) dan Akta Keganasan Rumah Tangga (Pindaan) 2017 (Akta A1538) kepada Akta Keganasan Rumah Tangga 1994 (Malaysia, Akta 521) (selepas ini dirujuk sebagai DVA 1994) dan makna keganasan rumah tangga di Malaysia. Beberapa kes dan peruntukan statutori akan diperiksa dalam artikel ini. Artikel ini bertujuan untuk mengkaji secara kritis definisi dari bidang kuasa lain dan akan mencadangkan pembaharuan perundangan yang akan melibatkan kajian komparatif bidang kuasa sebanding yang lain. Analisis di atas bertujuan untuk meningkatkan definisi undang-undang kekerasan domestik yang ada di bawah DVA 1994.

Kata kunci: Keganasan rumah tangga; penderaan ekonomi; penderaan kewangan; penderaan psikologi; penderaan emosi

INTRODUCTION

Violence within the family unit is not something new and has existed since the beginning of society. Wife beating has a long history of more than 2000 years dating to pre-Christian times and even further than that, to the pre-Biblical times in which the law has condoned violence towards wives. ¹For centuries, husbands had the right to chastise their wives. The acceptance of brutality towards women and wives is a cultural phenomenon which promotes the position of women as underdogs and gives a feeling of self-righteousness to the indulgence of male whim or temper. ²Moreover, since this offence happens within the walls of a home, between a husband and wife, it is usually viewed as 'private family matter' and at times these problems are just swept under the carpet and such cases are often never detected or reported.

Conflict in the family institution is inevitable due to goals, values and individual perceptions nevertheless it can be dealt by using appropriate conflict management styles; individual personality influences conflict management style and affect the harmony in a family.

In Malaysia, the issue of wife battering is common. The term domestic violence is commonly used to refer to violence against women within a family. To curb this problem, the Domestic Violence Act 1994 (Act No. 521)(hereafter referred to as the DVA 1994)was passed in early 1994 by the Malaysian Parliament. The aim of this Act is to help victims in domestic violence cases. This act offers battered women protection from the abuser in the form of protective orders and provides for compensation and counseling to be made available to them.

The DVA 1994 was finally amended and gazetted on 9 February 2012. Further amendments were gazetted on 21 September 2017 which came into enforcement on 1 January 2018. Desirable welcomed amendments answer the outcry of many concerned parties involving domestic violence. Many crucial issues have been looked into and incorporated into the new amendments of the DVA 1994 such as focusing on the expanded definition of domestic violence, allowing the Act to be read together with the Penal Code or any written law involving offences relating to domestic violence and by making it possible that an Interim Protection Order be made by way of an application

to the court. However, these amendments to the Act seem to suggest a less significant change on the law. Dhillon et al. opine that serious action must be taken immediately to halt the current methods being employed to deal with domestic violence cases.

This article examines the recent amendments introduced by the Domestic Violence (Amendment) Act 2012 (Malaysia, Act A1414) and the Domestic Violence (Amendment) Act 2017 (Act A1538) to the DVA 1994 (Malaysia, Act 521) specifically aimed at dealing with the definition and meaning of domestic violence in Malaysia. The article seeks to suggest legislative reforms based on an examination of a comparative study of how other comparable jurisdictions have extensively and comprehensively defined the meaning of domestic violence. Specific reference will be made to the loose definition of domestic violence in Malaysia.

RESEARCH METHODOLOGY

This paper uses doctrinal legal research to analyze the law pertaining to the definition of domestic violence in the Malaysian Domestic Violence Act 1994. Article will be primarily based on library research, wherein a qualitative analysis is adopted to assess ramifications and improvements of the laws specifically dealing with the definition and meaning of domestic violence in Malaysia. Reference comprises of extensive literature gathered from textbooks and articles, seminars papers and relevant statutes from specific jurisdictions. Valid sources from the internet are also referred to in keeping up with the latest development of the matter.

Comparative analysis is adopted by comparing and contrasting the applicable laws in selected jurisdictions in order to improvise on the shortcomings and deficiencies of the laws of domestic violence applicable in Malaysia. External reference will be made to the laws in certain developed and developing countries. Reference is made to two specific states in Australia which is Victoria and South Australia as it provides comprehensive definition of the meaning of domestic violence supported with examples. Reference pertaining to the law in India is made for its content definition and it is related closely to the same legal milieu in Malaysia. Article focuses on analyzing the differences, special and

unique features of the definition and explanation of domestic violence under the domestic violence law in these selected jurisdictions.

INTERCHANGEABLE MEANING OF DOMESTIC VIOLENCE

There are several definitions given for explaining the meaning of domestic violence. It is important to consider what would commonly be considered as domestic violence, as a multiplicity of terms are used, sometimes interchangeably, to explain domestic violence. Some of the examples include domestic violence, family violence, domestic disputes, partner abuse, spouse abuse, wife abuse, wife battering, battered wives, battered women and intimate violence. Each term used may denote a different meaning as choosing one definition over another can affect how the crime of domestic violence is addressed.

Domestic violence is defined as violence between intimate couples living together or who have previously cohabited. It shows an imbalance of power that is maintained by a pattern of coercive tactics of control carried out by actual or threatened physical, sexual, psychological, economic, or verbal abuse, which places an individual with whom there is a past or present intimate relationship, in fear.

The term “wife abuse” explains the beatings of married women by their husbands wherein “spouse abuse” differs as it refers to a gender-neutral term which refers to wife or husband battering among those who are legally married. “Partner abuse”, also referred to as domestic violence, is generally defined as the abuse of a wife by her husband or the abuse of a woman by a male companion with whom she is cohabiting. This term could be seen as one of the broadest terms which refers to all male and female initiated violence arising from intimate romantic relationships, including couples who are just dating or living together, whether heterosexual or homosexual. “Wife battering” is usually abuse committed on a married woman by her husband whereas “woman battering” refers to female victims, whether married or not and this term may even include other forms of violence such as rape.

One important difficulty in analyzing the problem of “wife battering” is the problem of nominally defining the concepts of “wife abuse” and “wife battering”, as the two terms “abuse”

and “battering” are pejorative, emotion-charged terms used to draw attention to behaviour considered deviant and because of the variation in nominal definitions of battering, there is a lack of comparability among various investigations of types of wife abuse and wife battering.

Similarly, Gray, Messing and White from their review demonstrates a significant problem in consistency of terminology, with 14 different terms and 29 corresponding definitions in the literature assessed. In some instances, the same terms had conflicting definitions; in other instances, different terms were used to refer to the same definitions. This creates significant problems in operationalizing constructs and leads to confusion in definition and measurement

Domestic violence can also occur when a male is assaulted by his female partner or between two individuals of the same sex who are living together as a couple. It may also include all assaults committed by persons who are currently romantically involved (whether legally married or not) and attacks by ex-spouses and former lovers who are no longer part of the household. Although there are several explanations of the meaning of domestic violence, it is important to focus primarily on a concise and precise definition.

THE DEFINITION OF DOMESTIC VIOLENCE UNDER THE MALAYSIAN DVA 1994

Before the amendments to the DVA 1994, section 2 of the DVA 1994 defined domestic violence as the commission of any of the following acts:

1. willfully or knowingly placing, or attempting to place, the victim in fear of physical injury;
2. causing physical injury to the victim by such act which is known or ought to have been
3. ing the victim by force or treat to engage in any conduct or act, sexual or known would result in physical injury;
4. compellotherwise, from which the victim has a right to abstain;
5. confining or detaining the victim against the victim’s will; or
6. causing mischief or destruction or damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the victim.

The above provisions explain that domestic violence encompasses all types of violence occurring within a family institution. The scope of domestic violence as defined by the Act, mainly covers physical injury such as threatening to injure, causing physical injury, engaging in sexual conduct forcefully, confining or detaining the victim and causing damage to property. However, the provision does not include psychological, emotional and economic abuse as an act of domestic violence, despite the fact that it is one of the most common forms of abuse by a partner in a relationship.

Due to the concern, quite desiring, the definition after the amendments have included psychological, emotional abuse and financial loss. The definition of domestic violence has been expanded under section 2 of the DVA and included subsection (a), (b), (c), (f), (g) and (h) as such:

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

There are several definitions given to cover the wide ambit of the meaning of domestic violence. The Act encompasses all types of violence that occur within a family. Although the improvements made to the Act have included a limited psychological, emotional abuse and financial loss, the definition however does not recognize the broader forms of psychological/emotional abuse, verbal abuse and economic abuse as acts of domestic violence, when in fact these types of abuses have been identified as common forms of abuse by a partner in a domestic relationship.

COMPARATIVE DEFINITION IN SELECTED JURISDICTIONS

Certain countries have adopted a broader definition of domestic violence which encompasses a wide range or types of violence by incorporating the cultural standing of a particular country.

ECONOMIC OR FINANCIAL ABUSE

Another common form of abuse that is seen is economic or financial abuse. The Indian provision clearly addresses this form of abuse, especially on the issue of dowry which is a major concern in the Indian community. For example, in India under section 3(b) of the Indian Protection of Women from Domestic Violence Act 2005 includes harm or injuries to the aggrieved person to meet with any unlawful demand for dowry. The provision reads:

3. For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it –
 - (b) harms or injures or endangers the health, safety, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
 - (c) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security;

The issue about dowry demands can be seen in the case of *Om Prakash vs. State of Rajasthan & Anor*, the wife claimed that she got married with the husband twelve years back in Jaipur, and ever since her marriage, her in-laws and husband have tortured her for dowry demands. Due to the torture committed on her, she was living separately from the husband since the last seven years. Moreover, in the case of *Gajendra Singh v Smt. Minakshi Yadav and Anor*, the husband and wife were married on 19th February 2002. Out of the wedlock a son, Jatin was born on 21st October 2004. According to the wife, ever since her marriage, the husband and his family members constantly demanded a Maruti car and Rs. one lac as dowry. Since her parents could not afford to fulfil the said demand, she was subjected to mental and physical cruelty.

Eventually, on 3rd May 2004, the husband left the wife at her parental house.

In India, economic abuse has been recognized as the right of women to the finances of the husband, as well as, economic right of having the *Stridhan* and the right to be maintained by the husband. This form of abuse has been incorporated into the country's domestic violence Act under section 3 explanation 1(iv) (a), (b) and (c) of the Indian Protection of Women from Domestic Violence Act 2005 which provides protection for battered wives in India. The provision reads:

Explanation 1- For the purpose of this section-

(iv) "economic abuse" includes-

- (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, *stridhan*, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
- (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her *stridhan* or any other property jointly or separately held by aggrieved person; and
- (c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

The right of the wife to receive maintenance was discussed in the case of *Om Prakash vs. State of Rajasthan & Anor*. In this case the court directed the husband to pay Rs.800/- per month, although the parties have been living separately since 2001 and even if the husband is a handicapped person. A bare perusal of section 3 of the Indian Protection of Women from Domestic Violence Act 2005 clearly reveals that the law recognizes the right of women to the finances of the husband. In case the said

right is violated as a civil wrong the Act provides a remedy to the aggrieved person. The Act recognizes the right of a woman to be maintained even from a physically challenged husband. Moreover, poverty is not a defence against the right of a woman. Hence, the husband was both legally and morally bound to pay maintenance of Rs.800/- per month to the wife. Also, the Act does not require that the aggrieved person must stay with the offending husband. Merely because the wife is not staying with the husband, it would not absolve the husband from liability under the Act.

Even in the case of *Gajendra Singh v Smt. Minakshi Yadav and Anor*, the wife claimed for maintenance for herself and her son. The court directed the husband to pay a maintenance of Rs.1500/- to the wife and Rs.1000/- to the son, Jatin, along with Rs.500/- as rental amount for alternative residential place. A bare perusal of the facts clearly reveal that the wife was abandoned by her husband on 3rd May 2004; Jatin was born on 21st October 2004. Both the wife and son were staying with her parents. The husband's family members had repeatedly threatened her over the phone and the safety of her child.

Honourable Judge, R.S. Chauhan, J. explained that the Act recognised the fact that domestic violence is limited not only to physical and mental cruelty, but also extend to verbal and emotional abuse, and even to economic abuse. The Act has recognised the fact that mental cruelty can take the form of verbal and emotional abuse, such an abuse would include threat to causing physical abuse to any person in whom the aggrieved party is interested. Moreover, the Act has recognized that aggrieved person has a right to economic resources of the husband and his family members, has a right to *stridhan*, and has a right to be maintained. In case a wife's economic rights is violated by the husband or his family members, then according to section 3 of the Act, domestic violence is committed.

In this present case, the wife was denied her *stridhan*, in which she has been denied maintenance and access to shared household. The marriage of the parties continues to subsist and although the parties are living separately, the wife continued to face domestic violence including threats, verbal, and emotional abuse, and economic abuse.

This type of abuse can take on many forms. A battered wife who undergoes economic or financial abuse usually struggles to overcome a more economically secure live. Another clear and

precise definition including examples of economic abuse is defined under section 6(a) (b) of the in the Victoria Family Violence Protection Act 2008, Australia. It reads:

For the purposes of this Act, *economic abuse* is behaviour by a person (the *first person*) that is coercive, deceptive or unreasonably controls another person (the *second person*), without the second person's consent—

- (a) in a way that denies the second person the economic or financial autonomy the second person would have had but for that behaviour; or
- (b) by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the second person or the second person's child, if the second person is entirely or predominantly dependent on the first person for financial support to meet those living expenses.

Examples —

- coercing a person to relinquish control over assets and income;
- removing or keeping a family member's property without permission, or threatening to do so;
- disposing of property owned by a person, or owned jointly with a person, against the person's wishes and without lawful excuse;
- without lawful excuse, preventing a person from having access to joint financial assets for the purposes of meeting normal household expenses;
- preventing a person from seeking or keeping employment;
- coercing a person to claim social security payments;
- coercing a person to sign a power of attorney that would enable the person's finances to be managed by another person;
- coercing a person to sign a contract for the purchase of goods or services;
- coercing a person to sign a contract for the provision of finance, a loan or credit;
- coercing a person to sign a contract of guarantee;
- coercing a person to sign any legal document for the establishment or operation of a business.

It is not unusual for a batterer to without lawful excuse to economically abuse the victim as explained in the given examples above of the Victoria Family Violence Protection Act 2008. Such economic abuse may be impactful upon a woman by demeaning and making them feel helpless.

Hence, economic abuse or financial loss being usual and regular forms of abuse, has now been addressed and included very plainly and limitedly in the Malaysian DVA 1994. It is important to include this form of abuse into the Act as it is necessary for a woman to protect her finances to ensure firmness and security for the future. Gelles suggests that women with limited educational attainment and occupational skills were more likely to stay with battering husbands due to the financial constraints put on them by their husbands. The lesser resources a woman has, the less power she has and the more she is entrapped in a marriage and the more she suffers at the hands of her husband. Reichel also points out that there is more Intimate Partner Violence (IPV) among couples with a lower income and where a woman has a lower educated partner, therefore confirming the tendency of higher prevalence of IPV among couples with lower socioeconomic status. Similarly, Lockton and Ward state that lack of adequate protection by the criminal and civil law, shelter space, housing, and access to financial assistance then further imprison these women and allow the 'cycle of battering' to continue.

On the same note, Tsai confirms a causal relationship between women's independent financial management and their experiences of Intimate Partner Violence (IPV) in the Philippines. On the surface, one might assume that women's high levels of involvement in household financial management in the Philippines would be empowering for women and therefore protective against IPV; the reality, in fact, is more complicated as in households in which income is insufficient to cover basic needs, the role of financial manager can be a burdensome responsibility. Disagreements around the use of finances can lead to heightened frustrations and interpersonal conflicts if women feel that they alone carry the responsibility for making sure that household finances are stretched to cover all necessary expenses. When the family has healthy and close family cohesion, there will be some emotional closeness and loyalty in the relationship and this strong emotional bonding among family members can serve as a significant social support for family members.

Economic abuse does not just comprise withholding the financial support of a person or preventing a person from seeking employment but includes coercing a person to claim social security payments, to sign a power of attorney, to sign a contract for the purchase of goods or property, to sign a contract for the provision of finance, a loan or credit, to sign a contract of guarantee and to sign any legal document for the establishment or operation of a business. Such forms of abuse are equally common and are necessarily required in the definition of domestic violence.

PSYCHOLOGICAL AND EMOTIONAL ABUSE

No doubt physical abuse may look far more serious, dangerous and damaging when it is inflicted on a victim since it leaves scars in its wake. However, in reality, emotional and psychological abuse can be just as serious, dangerous and damaging as any other abuse inflicted on a victim. In a study conducted by Fatima against Saudi women, emotional violence was the most common type, followed by social economic, physical and sexual violence. Based on the findings of study by Omorogiuwa, Tracy B. E, it is concluded that domestic violence has negative impacts on women, given the emerging separation/divorce, physical and health as well as the emotional issues experienced.

Similar examples of the inclusion of such forms of violence can be found under section 7 of the Victoria Family Violence Protection Act (No.52 of 2008) (Australia). Here the law has provided a comprehensible meaning of emotional or psychological abuse. The provision reads:

For the purposes of this Act, emotional or psychological abuse means behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person.

Examples—

- repeated derogatory taunts, including racial taunts;
- threatening to disclose a person's sexual orientation to the person's friends or family against the person's wishes;
- threatening to withhold a person's medication; preventing a person from making or keeping connections with the person's family, friends or culture, including cultural or spiritual ceremonies or practices or preventing the person from expressing the person's cultural identity;

- repeated threatening to commit suicide or self-harm with the intention of tormenting or intimidating a family member, or threatening the death or injury of another person

From the above it is clear that emotional and psychological abuse can manifest in many forms and in many contexts. Withholding a person's medication, threatening to disclose a person's sexual orientation and preventing a person to practice his or her cultural belief are widely included as emotional or psychological abuse. Perhaps some may perceive these examples as trivial and less significant. However, the cumulative effect may gradually cause a drastic and extreme effect upon a victim.

In the case of *YY v ZZ*, a child was removed from applicant father's care and placed in care of foster parents. Magistrates Court of Victoria (VMC) found applicant and paternal grandmother made threats in respect of child in course of telephone conversation, applicant made endeavours to find where child lived, applicant visited child and made threats of physical violence against child. Applicant claimed endeavours by applicant to ascertain child's address could not fall within definition of "family violence" in the Act. VMC made family violence intervention order of indefinite duration against applicant pursuant to (VIC) Family Violence Protection Act 2008.

For example, in India the cultural aspect of domestic violence has been addressed in the law dealing with domestic violence. Based on the cultural standing in India, the fact that a woman who is constantly being insulted, ridiculed or humiliated with regards to not having a child or a male child, is tantamount to verbal or emotional abuse. This form of abuse has been incorporated into the country's domestic violence Act under section 3 explanation 1(iii) (a) and (b) of the Indian Protection of Women from Domestic Violence Act 2005 which provides protection for battered wives in India. The provision reads:

Explanation 1- For the purpose of this section,-

(iii) "verbal and emotional abuse" includes-

- (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
- (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

Verbal, emotional, ridicule and humiliation was seen in the case of *Sukrit Verma and Anr. v State of Raj. And Anr.*, the petitioner and the respondent were married, at New Delhi, on 25th January 2002, according to the Hindu customs and rites. They left for United States of America (USA) on 6th June 2002. They continued to live there till January 2006. According to the husband, the respondent wife refused to return back to USA, to live with him, for the reasons best known to her. However, according to the respondent wife, she refused to go back with him for the reason that while she was staying in the USA, with him, she was subjected to acts of domestic violence. Therefore, she had no desire to join him back in the USA. The petitioner husband kept on threatening the respondent wife that he would not get the wife's visa renewed, but instead would have her deported from the USA. The petitioner husband locked the computer and denied access to the wife. The husband would even ridicule the wife for her dark complexion and for her wearing Indian clothes in America. He would even drag the wife to go to nude camps despite her unwillingness.

However, in South Australia the Court has included a broader scope to the meaning of domestic violence by including publishing or transmitting offensive material by means of internet or other forms of electronic communication like mail, telephone or facsimile, in its Domestic Violence Act. Section 4(2)(c)(iv)(A) and (B) of the South Australia Domestic Violence Act 1994, reads as:

- (2) For the purpose of this Act, a defendant commits domestic violence-
- (c) If on two or two or more separate occasions-
- (iv) the defendant
 - (A) gives or sends offensive material to a family member or leaves offensive material where it will be found by, given to, or brought to the attention of family member; or
 - (B) publishes or transmits offensive material by means of the internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, a family member;

Under section 4(2)(iva)(v)(vi) of the South Australia Domestic Violence Act 1994 also

prohibits the defendant to communicate with any family member using any form of electronic and digital communications. The provision reads:

- (iva) or the defendant communicates with a family member, or to others about a family member, by way of mail, telephone (including associated technology), facsimile transmission or the internet or some other form of electronic communication; or
- (v) the defendant keeps a family member under surveillance or
- (vi) the defendant engages in other conduct, so as to reasonably arouse in a family member apprehension or fear of personal injury or damage to property or any significant apprehension of fear.

Hence, the interpretation and meaning of domestic violence should not be restricted or limited to just physical or mental abuse or cruelty, but must also include any circumstances or hardship made on the internet or other form of electronic communication. Under such circumstances, interpreting and defining the meaning of domestic violence in accordance with the modern development of information and technology should be considered.

In *Warwick David Phillips v Police*, the court explained that serious apprehension or fear is one which is accompanied by anxiety, distress, depression or other emotional and psychological upset. The extent to which those conditions must be intended to interfere with a person's social, family or working life to be classified as serious necessarily requires an evaluative judgment by the tribunal of fact. It will be influenced by community standards as to what is part of modern social exchanges and what is unacceptably harmful and destructive of another's right to participate safely in them. The appellant's intention to cause serious fear and apprehension can be inferred from the very posting of the communications. The appellant sent private Facebook messages to the victim, and then subsequently made public posts about the victim on Facebook. The Magistrate was satisfied that two of the posts were such that could reasonably be expected to arouse a reasonable apprehension or fear for his reputation, or a reasonable apprehension or fear that he might be embarrassed in front of his partner, family and friends, colleagues and associates, or his employer.

Domestic Violence against women encompasses an enormous range of abusive actions. Some women suffer severe physical abuse and some who live with repeated verbal assaults, humiliation, sexual coercion, and other forms of psychological abuse, are often victims of economic exploitation as well. According to Barakat, Ashgar Ali & Mariam (2007) emotional abuse includes when some men are temperamental and sensitive in which they sometimes react to trivial issues, taking vengeance on their partners and when some even prefer their relations over and above their wives and children, living at the mercy of the extended family members who influence and dictate the relationship and sometime cause chaos among the couple. Horton and Marquez refer to verbal, psychological, or emotional abuse as covert or hidden abuse which is one of the most insidious forms of abuse as this sort of abuse is not easily identified and its damage is not easily measured and not easily stopped. According to Bancroft, the scars from mental cruelty can be as deep and long-lasting as wounds from punches or slaps but are often not as obvious and in fact, even among women who have experienced violence from a partner, half or more report that the man's emotional abuse is what is causing them the greatest harm.

On the same note, researchers such as Murphy and Cascardiare of the view that diverse and profound forms of psychological abuse are commonly experienced by battered women, who generally report that it is more painful and damaging than physical abuse. Duffy also emphasizes that psychological and emotional abuse in wife battering are significant and prevalent and that emotional abuse is much harder to endure and transcends physical blows and injuries. Thus, Horton and Marquez, Bancroft, Murphy and Cascardi as well as Duffy have agreed that just as physical abuse may scar and incapacitate battered women, psychological or emotional abuse may have an equal impact or may do more damage to battered women.

CONCLUSION

The analysis above has sought to improve the existing legal definition of domestic violence under the DVA 1994. Introducing legislation and suggesting reforms alone is not enough to curb issues of domestic violence.

Thus, a comprehensive definition of domestic violence will cover a broader perspective and this can facilitate immediate and necessary actions to be taken. On this premise the extension of violence goes even further to include witnessing pornography, causing the victims to witness abusive injury to pets, inflicting unlawful or unwanted deprivation of the rights for custody and/or visitation of a common child, and practicing discrimination based on thoughts, religion or culture, customs and tradition. These can be placed/categorised under psychological abuse. In some countries, the interpretation of domestic violence follows the cultural standing of a particular country wherein a woman being insulted, ridiculed or humiliated with regards to not having a child or a male child amounts to verbal or emotional abuse.

The definition of violence must take into account cultural and values within the society as this will provide a better understanding against the backdrop of the Malaysian socio-cultural dynamics. Although, it is a desired move that the Malaysian DVA 1994 has included the definition of psychological or emotional abuse and financial loss, it has not explicitly defined its meaning. Thus, the issue of definition should not be considered lightly as the type of violence committed will determine the seriousness of the offence. Psychological or emotional abuse and economic abuse must not just be included in the Act but also explicitly defined with explanations based on the cultural backdrop of the society. It is important to recognize and identify the proper and complete definition of domestic violence as, by identifying and addressing the actual and broader definition of violence, many violent incidents can be avoided and their impact can be minimized. Simple definition of domestic violence undermines and cripples the graveness of the offence. Concerted and coordinated efforts by all stakeholders can help to design and implement a proper legal framework.

FOOTNOTE

- ¹ Davidson T., 1997. Wifebeating: A Recurring Phenomenon Throughout History. In *Battered Women: A Psychosociological Study of Domestic Violence*, edited by Roy M. p. 2. New York: Van Nostrand Reinhold Company.
- ² Shainess N. 1997. Psychological Aspects of Wifebattering. In *Battered Women: A Psychosociological Study of Domestic*

- Violence, edited by Roy M, p. 111, New York: Van Nostrand Reinhold Company.
- 3 Randawar, D. K. & Jayabalan, S. 2013. Wife Battering-A Malaysian Perspective In: Hashim R., Abdul Majeed A. (eds). Proceedings of the Colloquium on Administrative Science and Technology. Springer. Singapore
 - 4 Norazlina Mohd Kiram, Raja Masittah Raja Ariffin & Jama' yah Zakaria. 2017. Conflict Management Styles and Its Impact on Family Institution in Novel Saga, *Akademika* 87(2) :77-87
 - 5 Act No. 521, [1.6.1996-PU(B) 226/1996]
 - 6 Domestic Violence (Amendment) Act 2012 Act A1414, in force from 20.2.2012 - PU(B) 56/2012
 - 7 Domestic Violence (Amendment) Act 2017 Act A1538, in force from 1 January 2018- P.U. (B) 601
 - 8 Dhillon, G., Ram, D.S., Tan Ti Nee & Lee Sook Ling. 2015. Domestic Violence in Malaysia - Is there a need to Tweak the Domestic Violence Act and the Enforcement Mechanisms?, *Legal Network Series* 1(A) lxxvii
 - 9 It can be seen that some of these terms concentrate on a marital relationship between the victim and the perpetrator, or is gender specific, as opposed to domestic violence which involves a much wider form of relationship between the victim and the perpetrator.
 - 10 Buzawa, E.S. & Buzawa, C.G. 2003. *Domestic Violence: The Criminal Justice Response*. 3rd Edition. United States of America: Sage Publications.
 - 11 Devasto G.P., 2003. Victims of Domestic Violence. In *Victimology: A Study of Crime Victims and Their Roles*, edited by Sgarzi J.M., & McDevitt J. p.117-158. New Jersey: Prentice Hall
 - 12 Wiehe, V.R. 1998. *Understanding Family Violence: Treating and Preventing partner, Child, Sibling, and Elder Abuse*. California: Sage Publication.
 - 13 Karmen, A. 2004 *Crime Victims: An Introduction to Victimology*. 5th Edition. Canada: Thomson Wadsworth.
 - 14 There is a distinction between wife battering and wife beating in which wife battering is something extraordinary, possibly resulting in severe injury, incapacity or even death. Wife beating on the other hand occurs where men who beat their wives are not "abnormal" or deviant and their conduct is culturally accepted. In Brown J.K. (1992). Introduction: Definitions, Assumptions, Themes and Issues. In Counts D.A., Brown J.K. & Campbell J.C (Ed). *Sanctions and Sanctuary Cultural Perspectives on the Beating of Wives*. (pp.1). Colorado: Westview Press; see also Mahoney P., Williams L.M. & West C.M. (2001) *Violence Against Women by Intimate Relationship Partners*. In Renzetti C.M., Edleson J.L. & Bergen R.K. (Ed). *Sourcebook on Violence Against Women*. (pp.143) California: Sage Publications, battering is a term used to describe a pattern of behaviors through which one person continually reinforces a power imbalance over another in an intimate/romantic relationship context. Typically, a batterer uses both assault and non-assault behaviors, which, over time, have the effect of dominating, controlling, and inducing fear and/or subservience in the partner.
 - 15 Ahuja R. 1987. *Crime against Women*. Jaipur: Rawat Publications.
 - 16 Gray, M.E.B., Messing, J.T., and White, A.B. 2015. Intimate Partner Sexual Violence: A Review of Terms, Definitions, and Prevalence. *Trauma, Violence, & Abuse*, Vol. 16(3) 316-335 <http://journals.sagepub.com/doi/pdf/10.1177/1524838014557290>. Retrieved on: 1 June 2017
 - 17 Karmen, A. 2004 *Crime Victims: An Introduction to Victimology*. 5th Edition. Canada: Thomson Wadsworth.
 - 18 Slabbert I. & Green S. 2013. Types of Domestic Violence Experienced by Women in Abusive Relationships. *Social Work/ Maatskaplike Werk*. Vol. 49(2). 234-247 <http://dx.doi.org/10.15270/49-2-67> Retrieved on: 25 May 2018
 - 19 In the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur (S.B. Criminal Revision Petition No.1220/2010), Date of Order: April 29, 2011
 - 20 In the High Court of Rajasthan (Jaipur Bench) (S.B. Cr. Revision Petition No. 449/2010), Decided on: 05.05.2011
 - 21 *Stridhan is the property that a woman obtains at the time of her marriage, it differs from Dowry in the way that it is the voluntary gifts given to a woman before or after her marriage*

and has no element of coercion. What articles that has to be returned to girl side in case of divorce among gift given to girl, gift given to boy like wrist watch, car etc., gift given to couple like bed.

- ²² Available [online]: 2/2/2017 <http://www.lawyersclubindia.com/forum/what-is-the-definition-of-stridhan-27371.asp>
- ²³ In the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur (S.B. Criminal Revision Petition No.1220/2010), Date of Order: April 29, 2011
- ²⁴ In the High Court of Rajasthan (Jaipur Bench) (S.B. Cr. Revision Petition No. 449/2010), Decided on: 05.05.2011
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- ³⁰ Fatima Hamza Barnawi. 2017. Prevalence and Risk Factors of Domestic Violence Against Women Attending a Primary Care Center in Riyadh, Saudi Arabia. *Journal of Interpersonal Violence*, Vol. 32(8) 1171–1186.
- ³¹ DOI: 10.1177/0886260515587669 journals.sagepub.com/home/jiv <http://journals.sagepub.com/doi/pdf/10.1177/0886260515587669> Retrieved on 29 May 2017.
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- ³⁹ Horton A.L. & and Marquez B.J. 1993, *Healing Covert Abuse: Defining Verbal, Psychological, and Emotional Abuse*. In *Confronting Abuse*
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