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FEMALE VICTIMS OF DOMESTIC VIOLENCE AND THEIR RIGHTS TO COMPENSATION IN MALAYSIA

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ABSTRACT

In Malaysia, victims of domestic violence including women may seek protection under the Domestic Violence Act 1994 (Act 521) (hereinafter “DVA 1994”). Pursuant to section 10 of the DVA 1994, female victims of domestic violence (hereinafter “FVDV”) have the right to claim compensation from their husbands or former husbands (hereinafter “Abusive Husbands”). The criminal court also has jurisdiction to make a compensation order as stated under section 426 (1A) of the Criminal Procedure Code (Act 593) (hereinafter “CPC”). A qualitative approach was used for this research, consisting of a detailed analysis of the DVA 1994, CPC, Penal Code (Act 574), case laws, journals, newspapers and scholarly writings related to this area. Based on the findings, there are shortcomings within both provisions which may affect the FVDV’s claim for compensation. Thus, it is timely to propose amendments and reforms to enhance their rights. These include the insertion of a provision stressing that the claim for compensation under section 10 of the DVA 1994 can be applied through a stand-alone application, the inclusion of a provision allowing the compensation order to be initiated by the court on its own motion or upon the application by the FVDV themselves, imposing a responsibility on the court to give reasons if the court decides to disallow the application for compensation made, explaining the legal consequence to the offender should the offender fail

to comply with the compensation order, and alternatively to consider a state-funded compensation scheme to provide immediate financial assistance to FVDV without going through the court process.

Keywords: Abusive husbands, domestic violence, female victims of domestic violence (FVDV), right to compensation.

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1.0 INTRODUCTION

The issue of domestic violence against women is a global phenomenon that can be found in all sections of society regardless of race, religion and status (Devries et al., 2013). Domestic violence against women is a serious phenomenon because of its harmful effects, physically and mentally. Examples of physical injuries that are commonly reported include cuts, bruises, bite marks, broken bones, miscarriage, loss of hearing and vision, and permanent disability (Alejo, 2014). In addition, domestic violence has a negative impact on the mental state of the victim. Depression, anxiety, disorders of personality, eating and sleeping disorders and suicide are some examples of how victims' mental states are affected (Uzun & Uzunboylu, 2015). The DVA 1994 protects victims of domestic violence in Malaysia. Section 2 of the DVA 1994 stipulates that women who are victimised in domestic violence by their Abusive Husbands as victims of domestic violence. What then is the definition of domestic violence? When the DVA 1994 was first implemented, the definition of "domestic violence" as referred to in paragraphs (a) to (e) of section 2 was confined to "*wilfully or knowingly placing, or attempting to place, the victim in fear of physical injury; causing physical injury to the victim by such act which is known or ought to have been known would result in physical injury; 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; confining or detaining the victim against the victim's will; 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 fact that this earlier interpretation of domestic violence did not take into consideration the fact that victims also suffer from psychological abuse from domestic violence was openly criticised. The definition of domestic violence was

therefore amended in 2012 by inserting three more paragraphs which are (f), (g) and (h) to expand the meaning of domestic violence to include “*psychological abuse which includes emotional injury to the victim*” The definition even included “*causing the victim to suffer delusions by using intoxicating substance or any other substance without the victim’s consent, and if consent was given, it was deemed unlawfully obtained.*” The interpretation of domestic violence under the DVA 1994 was again amended in 2017 by inserting three more paragraphs which are (ea), (eb) and (ec): “*dishonestly misappropriating the victim’s property which causes the victim to suffer distress due to financial loss; 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; communicating with the victim, communicating about the victim to a third person, with intent to insult the modesty of the victim through any means, electronic or otherwise.*” Presently, the definition of domestic violence has in it a comprehensive list of harms which include physical, psychological, emotional, sexual, financial abuse and abuse of victim’s dignity. The paper focuses on FVDV as their numbers continue to grow (Nazli, Aspaella, Asmar, & Che Thalbi, 2016). It was reported by the former Deputy Minister of Ministry of Women, Family and Community Development, Datin Paduka Chew Mei Fun in the Dewan Negara on 26 April 2017 that around 23,212 cases of domestic against women were reported between 2010 and March 2017 (Chow, 2017).

The rights of victims including women can be seen in Article 8(1) of the Federal Constitution of Malaysia. The Article states that “*All persons are equal before the law and entitled to equal protection of the law.*” Although the Federal Constitution does not expressly state the status of a victim, the word “persons” mentioned above may refer to any person, including the victim and the offender. Thus, by virtue of this Article, victims including women should also be guaranteed equal rights and protection before the law (Nasimah, 2011). This coincides with the stance of the United Nations that can be seen under paragraph 4 of the United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power (hereinafter “Declaration”) where it emphasizes that “*Victims should be treated with compassion and respect for their dignity*”. The recognition of rights of victims at an international level was first achieved through this Declaration. The Declaration was adopted by consensus by the United Nation General Assembly on 29 November 1985 through Resolution 40/34 of 29 November 1985. Through the Declaration, it recommends measures to be taken by states to improve access to justice and fair treatment, restitution, compensation and assistance for victims.

The FVDV's rights to obtain legal protection can be seen in the DVA 1994. Among the legal protections available to FVDV are protection orders, compensation and rehabilitation programme to improve the victim's safety by ensuring greater access to justice and protection from domestic violence. In an effort to ensure the interests of FVDV are safeguarded financially, the law in Malaysia permits the court to make a compensation order to recompense the FVDV for injury or loss sustained as a result of domestic violence. The aim of the paper is to analyse the rights of FVDV to obtain compensation under section 10 of the DVA 1994 and section 426 (1A) of the CPC.

2.0 METHODOLOGY

This research is qualitative in nature with a pure legal approach. This research adopted a content analysis method which involved a detailed analysis of the DVA 1994, CPC, Penal Code and case laws as the primary sources. In addition to that, this research also analysed the journals, newspapers and scholarly writings related to this area to discuss the rights of FVDV to obtain compensation under section 10 of the DVA 1994 and section 426 (1A) of the CPC. The data collected from this research were critically analysed to identify the current legal position on the issue of rights to compensation of FVDV in Malaysia and proposes the necessary enhancement to the legal framework.

3.0 FINDINGS AND DISCUSSION

3.1 Compensation in Civil Proceeding

FVDV who suffered injury or damage to property or financial loss as a result of domestic violence have, under section 10 of the DVA 1994, the right to claim for compensation from their Abusive Husbands in tort. This is explained in section 2 of the DVA 1994, which states that "*in respect of civil proceedings for compensation under section 10, the court is competent to hear such claims in tort.*" In general, the section does not explicitly state whether the application for compensation can be made through a stand-alone application or in addition to other civil actions, particularly through divorce applications under the Law Reform (Marriage and Divorce) Act 1976 (Act 164) (hereinafter "LRA 1976"). Based on the case law, the application is normally made by the FVDV in addition to application for dissolution of marriage. The rationale of making the application at this stage is because the FVDV do not wish to continue with the marriage as they can no longer tolerate and live with their spouses and therefore, may want to make various applications prior to the separation, such as

compensation for injury or loss sustained through domestic violence. This right, however, depends on the wish of the FVDV to enforcing the provision, despite the law already being in place. This provision must therefore be pleaded in court to claim compensation from the Abusive Husbands for injuries suffered as a result of domestic violence.

An example in which the compensation had been pleaded by the FVDV can be seen in *Sathia Vadivaloo v Megendran Vellasamy* [2013] 1 LNS 429. In this case, the petitioner (wife) filed an application for divorce. In addition to the divorce application, the petitioner also applied for compensation amounting to RM10,000 for injuries suffered in consequence of domestic violence. Nevertheless, the court was of the view that there was no legal basis under the LRA 1976 for the court to allow the petitioner's claim for the respondent (husband) to pay RM10,000 in special and exemplary damages on domestic violence injuries. The court also highlighted that the petitioner's lawyer failed to show the grounds for the application. For that reason, the petitioner's application was rejected.

From the abovementioned case, it shows the need for the FVDV or their lawyers to know section 10 of the DVA 1994, to state (plead) the said section in the application for compensation and able to prove their case under the said section before the court. This would help the court to make the right decision. The question at this juncture is how is the application affected if section 10 of the DVA 1994 is not specifically stated by the FVDV? Is the court able to use its discretion to decide on the application? To answer this question, reference can be made to Order 1A of the Rules of Court 2012 (hereinafter "RoC 2012") which states: "*In administering these Rules, the Court or a Judge shall have regard to the overriding interest of justice and not only to the technical non-compliance with these Rules.*" This provision indicates that the RoC 2012 allows the court to hear the case on its merits to attain justice and should not be dismissed because of non-compliance with the rules. This principle was affirmed by the court in *Redang Paradise Vacation Sdn Bhd v Yap Chuan Bin & Other Appeals* [2017] 10 CLJ 296.

Order 7 Rule 2 (1A) of the RoC 2012 states that "*Every originating summons shall state in its intitulement any provision of these Rules and any provision of any written law under which the Court is being moved.*" The words "*any provision of any written law*" means the FVDV must state the law under which the application is based. Hence, if FVDV wish to apply for compensation from their Abusive Husbands, then section 10 of the DVA 1994 must be stated in the intitulement to ensure the court is notified of the law under which it is being moved. A reading of this provision shows that if the FVDV fails to comply with Order 7 Rule

2 (1A) of the RoC 2012 to state the law (which is section 10 of the DVA 1994) under which the court is being moved will not result in immediate dismissal, but may be cured under Order 1A of the RoC 2012. This is known as curable principle in law. Nevertheless, as a matter of caution, it is advisable for the FVDV to state section 10 of the DVA 1994 in the intitlement to avoid any undesirable outcome.

In a case reported by the Star Online dated 13 September 2015, the Kuala Lumpur High Court Judge, Justice Noraini Abdul Rahman had granted the application of a wife to obtain compensation from her husband (Koshy, 2015). It had been described as “*the first time here, a judge gave compensation for injuries caused by domestic violence.*” The case referred to was the case of *Chin Yoke Yin v Tan Theam Huat* [2015] 11 MLJ 577. In this case, the petitioner (wife) had applied for compensation in addition to the application for dissolution of marriage. The court was satisfied that it had the jurisdiction to hear and decide on the application as it falls within the civil jurisdiction of a High Court since the “*intitlement of the suit mentioned ‘Dalam perkara Seksyen-Seksyen 2 dan 10 Akta Keganasan Rumah Tangga 1994’ (p. 557)*”. The court then held that in addition to dissolving the marriage, the court also ordered the respondent (husband) to pay compensation to his wife amounting to RM4,000 for the injuries caused. In granting the compensation, the court had relied on the evidence testified by two doctors and a medical report. This case shows that such evidence is crucial for the court to allow the application for compensation under section 10 of the DVA 1994.

It can be inferred that the application for compensation can be made through civil action. Looking at both cases, the application was pleaded in addition to the divorce application. However, it is important to note that the application for compensation can also be made through a stand-alone application because of the general wording of section 10 of the DVA 1994 itself. Notwithstanding the existence of Order 1A of the RoC 2012, in order to ensure that the application for compensation is successful and not rejected due to technical issues, it is advisable for the FVDV to state section 10 of the DVA 1994 in the intitlement to avoid any undesirable outcome. Moreover, in order to support the application for compensation in court, the FVDV should ensure they get medical treatment and are able to provide medical proof for the injuries suffered in court. If they fail, it can affect the chance of the FVDV to claim compensation from the Abusive Husbands. This was evident in *Loo Pang Kee v Anna Jacqueline Ching Lling* [2019] 1 LNS 76 where the court dismissed the claim for compensation made by the respondent (wife) pursuant to section 10 of the DVA 1994 on the following reasons: “... *there was no other evidence led to support her allegations. There was also no*

medical report produced to show that she had suffered depression, anxiety, traumatic stress and tension as she alleged (para. 52).” Although section 10 of the DVA 1994 does not state medical report as a prerequisite for a successful claim for compensation; however based on the above case law, such report is necessary in order to prove the injuries alleged in court to meet the standard of proof required by the law which is on the balance of probabilities. Hence, the FVDV have to get a medical examination from a doctor for evidence purposes in court as the burden of proof lies on them. This could assist the court in considering and granting the claim for compensation under section 10 of the DVA 1994.

It should be noted that the application for compensation in both cases were made by non-Muslim FVDV. This is because application for divorce under the LRA 1976 is only applicable to non-Muslims. For Muslims, divorce applications are governed by Islamic Family Law and thus, such application shall be made to the Shariah Court (Siti Marshita, 2016).

This raises the very important question of whether Muslim FVDV can apply for compensation under section 10 of the DVA 1994 in a civil court. Before any attempt is made to answer this, it must be noted that Malaysia has a dual legal system of civil and Shariah laws, which are governed by their respective civil and Shariah courts (Siti Zubaidah, 2015). Both systems exist parallel to each other, with neither court being subordinate to the other. More importantly, in a 1988 constitutional amendment, Article 121 (1A) was inserted providing that the civil courts “*shall have no jurisdiction in respect of any matter within the jurisdiction of the Shariah Courts.*” This provision is crucial in order to ensure clarity in the relationship between Shariah and civil courts so as to prevent the civil court from interfering in a matter falling within the jurisdiction of Shariah courts (Farid Sufian, 2012). In general, the jurisdiction of the Shariah court can be seen in item 1 of List II (State List) in the Ninth Schedule to the Federal Constitution, where it states that the Shariah courts have jurisdiction over “*Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower ...*” Thus, this shows that matters which relate to marriage involving Muslims fall within the jurisdiction of the Shariah courts and should therefore be heard and determined by the Shariah courts.

Before the DVA 1994 came into effect, a married woman may sue her husband in tort under section 9(2) of the Married Women Act 1957 (Act 450) (hereinafter “MWA 1957”). It is important to note that before the Act was amended through the Married Women (Amendment) Act 1994 which came into force on 8 July 1994, married women could not sue their husbands in tort except for the protection or security of her property. However, after the

amendment in 1994, particularly with the insertion of section 4A, the scope of suit in tort has been extended to cover claims for damages resulting from personal injuries. The Supreme Court case of *Mohd. Habibullah Mahmood v Faridah bt. Dato Talib* [1993] 1 CLJ 264 took place before the 1994 amendment to the MWA 1957. In this case, an appeal against the decision of the High Court Kuala Lumpur which held that it has jurisdiction to hear the application made by the respondent (wife) against the appellant (husband) for damages and injunction for acts of assault and battery which occurred during their marriage. Two issues arose in this case which required the decision of the Supreme Court as follows:

- (i) whether the High Court Kuala Lumpur has jurisdiction to hear the respondent's application; and
- (ii) whether the respondent can bring an action in tort against the appellant under section 9(2) of the Married Women Act 1957.

Regarding the first issue, the Supreme Court held that Article 121(1A) of the Federal Constitution has accorded exclusive jurisdiction to the Shariah courts over personal and family Islamic Laws. Tan Sri Dato' Haji Mohd Azmi bin Dato' Haji Kamaruddin, one of the three Supreme Court Judges, explained that in accordance with section 52(1) (h) (i) of the Islamic Family Law (Federal Territory) Act 1984 (Act 303) (hereinafter "IFLA 1984"), a woman married in accordance with Shariah law has the right to apply for the dissolution of marriage if the husband treats her with cruelty (which may be construed as domestic violence). The case fell under the jurisdiction of the Shariah court since the claims for damages and injunction related to the marriage and the parties involved were Muslims. The respondent had also applied for dissolution of marriage in Shariah court. By allowing the respondent to subsequently apply for damages and injunction in the civil court could be viewed as an abuse of process of the court by jumping from one jurisdiction to another over the same subject matter. Moreover, section 45(3)(b) of the Administration of Muslim Law Enactment 1952 confers jurisdiction on the Kuala Lumpur Shariah Court to hear cases concerning marriage involving Muslims. This consequently means that, in light of Article 121 (1A) of the Federal Constitution, the High Court Kuala Lumpur is excluded from hearing applications involving the same subject matter under section 24 of the Court of Judicature Act 1964.

Moving on to the second issue, the Supreme Court held that since the action brought by the respondent against the appellant in tort was to claim damages for assault and battery as

well as an injunction to restrain the appellant from assaulting, harassing and molesting the respondent, it did not relate to the protection or security of property. Thus, the respondent could not sue the appellant in tort under section 9(2) of the Married Women Ordinance 1957. In other words, the claims were not due to the protection of her property, they therefore went beyond the scope of section 9(2).

Based on the abovementioned case, it is unlikely for married Muslim FVDV who suffered injuries as a result of domestic violence to claim for compensation to the civil court either in accordance with section 10 of the DVA 1994 or under section 4A of the MWA 1957 on the grounds of Article 121(1A) of the Federal Constitution. This is particularly where an application for dissolution of marriage has already been made in the Shariah court as this would lead to the abuse of process of law.

The next question is whether IFLA 1984 contains provisions that allow married Muslim FVDV to claim for compensation as a result of domestic violence. A reading of the IFLA 1984 indicates that no provision can be found in the Act for compensation due to domestic violence (Zaini & Zuliza, 2004). Is it possible then for married Muslim FVDV to apply for compensation to the civil court in the absence of such provision in the IFLA 1984? This issue was discussed by the Federal Court in *Majlis Ugama Islam Pulau Pinang dan Seberang Perai v Shaik Zolkaffily Shaik Natar & Ors* [2003] 3 CLJ 289 where it was held that if a party could not have his remedy before the Shariah court, it would not be a reason for him to apply to the civil court, but for the state legislature to provide the remedy. It can therefore be inferred from this case that the right of married Muslim FVDV to apply for compensation is subject to the availability of the provision of compensation in the Islamic Family Laws and the power of the Shariah courts to grant it. If they exist, married Muslim FVDV may apply for such compensation. If not, then it is proposed for the relevant state legislatures to amend the relevant provisions in the Islamic Family Laws to allow married Muslim FVDV who suffered injury or damage to property or financial loss as a result of domestic violence to claim for compensation. This will ensure that married Muslim FVDV's interests are better protected financially.

3.2 Compensation in Criminal Proceedings

Before exploring this matter further, it is important to explain the two common terms used in financial penalties i.e. fine and compensation. In general, both are the examples of financial penalties that can be imposed by the court in criminal proceedings. However, the notable difference between the two is that the former is a payment made to the country, whereas the

latter is awarded by the court to the victim. Although the court has the power to issue a compensation order, fine is the more common financial penalty imposed on criminal offenders compared to compensation (Nasimah, 2011). The rationale is that the fine is usually mentioned as an alternative to the sentence of imprisonment as stipulated in the sentencing provision itself. Meanwhile, compensation is not incorporated in the sentencing provision as an alternative punishment. It is rather a separate and discretionary provision laid down in section 426(1A) of the CPC.

It is important to note that pursuant to section 3 of the DVA 1994, the Act shall be read together with the Penal Code or any other written law involving offences relating to domestic violence. This provision indicates that committing domestic violence under section 2 (a) to (h) of the DVA 1994 per se does not amount to an offence. Domestic violence can only turn into an offence if it violates any provision of the Penal Code or any other written law as well. An example of this is when a husband abuses his wife and injures her, the husband has committed domestic violence under section 2(a) of the DVA 1994 and at the same time, such act is an offence under section 323 of the Penal Code and therefore, if there was a police report lodged against him, he might be charged with an offence of causing hurt under section 323 of the Penal Code. The same section states that upon conviction, the accused may be punishable up to one-year imprisonment or a fine up to two thousand ringgit or both. Beginning from 31 December 2014, such offence can be read together with section 326A of the Penal Code that basically allows the court to increase the sentence of imprisonment.

Besides section 323, there are several other sections that can be read with section 326A of the Penal Code such as sections 324, 325, 326, 334 and 335 of the Penal Code if they relate to domestic violence. Section 326A of the Penal Code was again amended and came into force on 1 September 2017. The reason for the amendment was explained by the former Deputy Minister in the Prime Minister's Department, Datuk Razali Ibrahim when winding up the debate in the Dewan Negara. He said that the amendment was aimed at extending the application of section 326A of the Penal Code to offences committed against a former spouse, child, incapacitated adult or any other member of the family as defined in section 2 of the DVA 1994 and it is not limited only to those who are still in a legal marriage (Bernama, 2017). At present, under section 326A of the Penal Code, a person who causes injury to his former spouse, child, incapacitated adult or any other member of the family, if convicted "*shall be punished with imprisonment for a term which may extend to twice of the maximum term for which he would have been liable on conviction for that offence under the relevant section*

notwithstanding any other punishment provided for that offence.” In other words, with the amendment, the sentence of imprisonment becomes mandatory on the offender. In light of section 326A of the Penal Code, upon conviction, the accused shall be punished with imprisonment for a term which may extend to twice of the maximum term for which he would have been liable on conviction for that offence under the relevant section. Hence, reading section 323 with section 326A of the Penal Code, the accused, if found guilty, shall be imprisoned up to two years [1 year (under section 323) x 2 (under section 326A) = 2 years]. In addition to imprisonment, the court may also impose a fine under section 323 of the Penal Code if the court considers it necessary. This principle can be seen in *Budiman Che Mamat v Public Prosecutor* [2017] 1 LNS 1936 where the accused (husband) pleaded guilty to offence under section 326 of the Penal Code read together with section 326A of the same Code for voluntarily causing grievous hurt to his wife by dangerous weapons. The accused was sentenced to 8 years in prison and 1 stroke of whipping. Dissatisfied with the decision passed by the trial court, the accused appealed to the High Court in which the latter affirmed the sentence. The case shows that in addition to the sentence of imprisonment, the court may also impose additional sentences set out in the original charge (section 326) which are fine and whipping. It can be inferred that both sections 323 and 326A of the Penal Code only mention sentences of imprisonment and fine and do not mention compensation. Having said that, in accordance with section 426 (1A) of the CPC, the court may still award compensation to the victim. This is because section 326A of the Penal code does not prohibit the court itself from granting an order of compensation.

Based on section 426 (1A) of the CPC, the court may make an order of compensation to a victim upon an application made by the Public Prosecutor. But in criminal cases, the compensation order can only be made if the Abusive Husbands are found guilty of the offence charged. Hence, when the FVDV suffer harm or losses as a result of the crime, then it is important for the Public Prosecutor to invoke this particular provision and apply to the court for compensation to be awarded to the FVDV. For the sake of clarity, the text is reproduced in full as follows: “*Without prejudice to subsection (1), the Court before which an accused is convicted of an offence shall, upon the application of the Public Prosecutor, make an order against the convicted accused for the payment by him, or where the convicted accused is a child, by his parent or guardian, of a sum to be fixed by the Court as compensation to a person who is the victim of the offence committed by the convicted accused in respect of the injury to his person or character, or loss of his income or property, as a result of the offence committed.*”

Pursuant to section 426 (1B) of the CPC, in cases where the FVDV have died, the order of compensation shall be made to their representatives. In determining the amount of compensation, the court may take into account the factors specified in paragraphs (a) to (g) of subsection (1C) of section 426 of the CPC as follows: “*the nature of the offence; the injury sustained by the victim; the expenses incurred by the victim; the damage to, or loss of, property suffered by the victim; the loss of income incurred by the victim; the ability of the convicted accused to pay; and any other factors which the Court deems relevant.*”

It is important to note that, section 426 (1D) of the CPC also allows the court to conduct inquiries where appropriate in determining the amount of compensation particularly when it involves a high amount of compensation and there is dispute over the amount of compensation that should be paid by the offender. This was discussed in the case of *Shahrin Ahmad Suffian v Public Prosecutor* [2015] 1 LNS 206. In this case, the court did not deny that the compensation payment order might be made by the court in light of section 426 (1A) of the CPC, but the court was of the view that an inquiry should be conducted to consider factors in subparagraph (1C), particularly when the amount of compensation payable to the victim is in question.

It follows that in light of section 426 (4) of the CPC, the order for payment shall not prejudice any right to a civil remedy for the recovery of any property or for the recovery of damages beyond the amount of compensation paid under the order. This indicates that if the amount of compensation is not sufficient to compensate for loss or harms suffered, then the FVDV at any time may claim compensation through a civil action against the Abusive Husbands.

A thorough reading of section 426 (1A) of the CPC shows some deficiencies within the section that may affect the efficiency of the section. Firstly, the court may make a compensation order subject to an application made by the Public Prosecutor. Therefore, failure of the Public Prosecutor to apply for compensation may deny the opportunity of the FVDV to get compensation. Furthermore, section 426 (1A) of the CPC is silent as to the legal consequence of non-conformity with the compensation order. Hence, compliance with the order may be difficult to be enforced.

3.3 Comparison between Compensation in Civil and Criminal Proceedings

This part seeks to highlight the differences and similarities between compensation in civil and criminal proceedings. Generally, there are several differences between compensation in civil and criminal proceedings.

Firstly, the burden to prove that the FVDV have been abused and are therefore entitled to compensation is on the FVDV. FVDV have to ensure all relevant evidence is presented to the court as proof. On the other hand, in criminal proceedings, the legal burden to present all the relevant evidence to prove the accusation lies on the Public Prosecutor, who will conduct the case on behalf of the victim. This is the fundamental principle laid down in section 101 of the Evidence Act 1950.

Secondly, in terms of the standard of proof, in civil cases, the FVDV have to prove the case on a balance of probabilities. Meanwhile, for criminal cases, the standard of proof required is beyond reasonable doubt. Thirdly, compensation through civil proceedings has to be applied and pleaded by the FVDV. On the other hand, in criminal proceedings, compensation can only be applied once the Abusive Husband is found guilty of the offence and upon the application made by the Public Prosecutor.

With respect to similarities, the decision to grant compensation is made by the court. In reaching the decision, the court is guided by a number of criteria that have to be taken into consideration. A reading of section 10 DVA 1994 and section 426 CPC shows that the criteria are more or less the same, which include the injury sustained by the victim the expenses incurred by the victim, the damage to or loss of property suffered by the victim, the loss of income incurred by the victim and other factors which are deemed relevant by the court.

4.0 CONCLUSION

The government has its part to play in situations of domestic violence in order to ensure the rights of FVDV to seek protection are guarded. The rights shall not only protect FVDV physically and mentally, but also financially. The FVDV's claims for compensation can be made either through a civil or criminal proceeding through section 10 of the DVA 1994 and section 426 (1A) of the CPC respectively. The compensation serves to make up for loss or harm as a result of victimisation. Although in general the FVDV have the right to apply for compensation, there are however improvements that can be made to encourage the FVDV to claim for compensation.

First and foremost, it is proposed to include a provision emphasizing that the application for compensation under section 10 of the DVA 1994 may be applied through a stand-alone application instead of followed by divorce application. This makes the general public particularly FVDV more aware of the fact that the right to compensation arises immediately after suffering injury or damage to property or financial loss as a result of domestic violence. In this way, it helps the FVDV to recover financially from medical expenses, loss of wages and other relevant expenses due to domestic violence without the need to wait for divorce application.

Secondly, it is proposed that the power to make any compensation order under section 426 (1A) of the CPC should not only depend on the application made by the Public Prosecutor, but may also be initiated by the court on its own motion (Wing, 2008) or upon the application by the FVDV themselves. It should also be noted that pursuant to section 183A of the CPC, before a sentence is passed, the court shall allow a victim to make a statement on the impact the offence has had on the victim. Given the spirit of section 183A of the CPC which allows victims to make a statement on the impact of the offence on the victim, it is proposed that section 426 (1A) of the CPC be expanded to not only allow the Public Prosecutor to make an application for compensation to be paid to victim but also to permit the victim to make such an application to court by himself or herself. In this way, the statutory provisions available in the criminal justice system will no longer be neglected and can be fully utilised to protect the interest of the FVDV. Furthermore, it will ensure that the sentence imposed not only maintains the public interest, but is also adequate to respond to the FVDV's plight and suffering.

Thirdly, in an effort to encourage the court to grant a compensation order under section 426 (1A) of the CPC, it is also proposed to impose a responsibility on the court to give reasons if the court decides to reject the application for compensation made (Wing, 2008). This will place a greater responsibility on the court to carefully examine the application for compensation and take account of all relevant factors before making any decision.

Fourthly, to ensure that the compensation order is respected and complied with, it is proposed that a provision to be inserted in section 426 of the CPC to explain the legal consequence should the Abusive Husband fail to comply with the compensation order by the court. Knowing the legal consequence is important to threaten the offender to adhere strictly and not to take the compensation order lightly. One of the legal consequences that may arise in case the Abusive Husband fails to comply with the compensation order is that an action of contempt of court can be initiated against him.

Last but not least, it is important to note that application for compensation before the court can be time-consuming and costly. Furthermore, the enforcement of the compensation order depends on the Abusive Husband's ability to pay and therefore will not guarantee that the victim will receive the compensation amount. Thus, a state-funded compensation scheme should be considered to offer immediate financial aid without going through court process for the FVDV's survival. Although this scheme failed to garner acceptance and due recognition in Malaysia in the past (Siti Zubaidah, 2011), many other countries have accepted and established the scheme to support FVDV such as the United Kingdom, Northern Ireland, United States, Canada and Australia. These countries have established non-profit organizations recognized as the Criminal Injuries Compensation Board (Siti Zubaidah, 2011). The very first compensation scheme funded by the state was initiated by the United Kingdom for crime victims in the year 1964. The Criminal Injuries Compensation Scheme aimed to indemnify innocent victims of violent crimes for the suffering of loss or harm. Subsequently, the Criminal Injuries Compensation Authority was sanctioned through the Criminal Injuries Compensation Act 1995 to govern a tariff-based compensation scheme in England, Wales, and Scotland (Criminal Injuries Compensation Authority, 2017). Thus, it is worthwhile for the Malaysian government to analyse the cost and benefits of such a scheme and seriously reconsider adopting the scheme to effectively support FVDV financially.

In view of the foregoing discussions, the suggestions listed above should be given due consideration to ensure that the rights of FVDV to compensation will be better protected. It is hoped that the proposed recommendations will be able to enhance and provide more clarity to existing legal framework to strengthen the law in providing compensation in domestic violence cases. It will thereby further protect FVDV's interest financially.

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