

Are You One of the Victims of Domestic Violence?

Here's What You Can Do
under the Domestic
Violence Act 1994



~ FAQ ~

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After the Movement Control Order (“MCO”) announced by the Prime Minister on 16 March 2020, we are seeing an increase in the number of calls and reports for domestic violence in Malaysia according to the NGOs.¹ The domestic violence cases have risen at an alarming rate in other countries too since the implementation of coronavirus-related lockdown.² On the day I wrote this FAQ, which was on 10.4.2020, the Prime Minister had announced that the MCO would be further extended until 28 April 2020 to curb the spread of COVID-19. The extended period of MCO could put the victims of domestic violence at higher risks of further abuse. Therefore, it is essential for us to know about domestic violence and how to stop it. This FAQ here is to assist you in understanding how the Domestic Violence Act 1994 can protect you or someone you know is in situation of domestic violence.

¹ The New Straits Times, <https://www.nst.com.my/news/exclusive/2020/04/581233/mco-linked-domestic-violence-rises>, 4 April 2020

² The Guardian, <https://www.theguardian.com/us-news/2020/apr/03/coronavirus-quarantine-abuse-domestic-violence>, 3 April 2020

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1. What is the purpose of Domestic Violence Act 1994?

The Domestic Violence Act 1994 is intended to provide for legal protection in situations of domestic violence and matters incidental thereto. It was passed by the Parliament in 1994 and it subsequently came into force in 1996. In Malaysia, domestic violence is now a crime under the Act which read in conjunction with the Penal Code (Act 574) and the Criminal Procedure Code (Act 593).³



2. How to define domestic violence?

Section 2 of the Domestic Violence Act 1994 provides that one or more of the following acts constitute domestic violence :-

- (a) willfully or knowingly placing, or attempting to place, the victim in fear of physical injury;
- (b) causing physical injury to the victim by such act which is known or ought to have been 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 intent to cause or knowing that it is likely to cause distress or annoyance to the victim;
- (ea) dishonestly misappropriating the victim's property which causes the victim to suffer distress due to financial loss;⁴

³ Section 3 of the Domestic Violence Act 1994

⁴ Section 2(a) of the Domestic Violence (Amendment) Act 2017

- (eb) 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;⁵
- (ec) 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;⁶
- (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.



3. Are you protected by the Domestic Violence Act 1994?

If the offender has committed one or more of the acts of domestic violence (set out in question 2 above) against you, whether by himself or through a third party, you are protected by the Domestic Violence Act 1994 provided that you fall under any of the following categories:-

- (a) his or her spouse (includes de facto spouse, who has gone through a form of marriage ceremony according to the religion or custom of that person);
- (b) his or her former spouses;

⁵ Ibid

⁶ Ibid

- (c) a child (who is below the age of 18 years and living as a member of the offender's family or of the family of the offender's spouse or former spouse);
- (d) an incapacitated adult; or
- (e) any other member of the family (includes adult child, parent or sibling or any other relative of the offender).

It is however important to note that the Act does not cover the couples who are not married. Such couples may lodge a police report for assault.



4. Under the Domestic Violence Act 1994, what can you do to protect yourself and your children from suffering the acts of domestic violence?

Pursuant to the Domestic Violence Act 1994, you can apply for Emergency Protection Order ("EPO"), Interim Protection Order ("IPO") or Protection Order ("PO") which can prohibit the offender from committing further domestic violence against you and your children.



5. What is Emergency Protection Order (EPO)? And how can you apply for it?

- (a) EPO acts as an immediate temporary protection for you and your children from domestic violence without having you to lodge a police report first or go to court. An authorised social welfare officer is empowered to issue EPO to the

victim. EPO can prohibit the offender from causing physical injury to the victim, inciting another person to commit domestic violence or entering a safe shelter or place of residence of the victim.

- (b) You can apply for EPO if you are the victim of domestic violence referred to in paragraph (a) or (b) in question 2 above. You can obtain EPO from the nearest Social Welfare Department, which known as Jabatan Kebajikan Masyarakat (“JKM”). The application for EPO can be made at any time regardless of whether an Interim Protection Order (“IPO”) or Protection Order (“PO”) has been issued or such application is still pending. The EPO will not affect the existing IPO or PO. The EPO is valid for 7 days from the date of its issuance.
- (c) The Steps to apply for EPO are as follows :-
 - (i) You need to go to the nearest Social Welfare Department (“JKM”) to apply for EPO ex-parte (i.e. in the absence of offender).
 - (ii) You can apply either by yourself or through your appointed lawyer and if the victim is a child or an incapacitated adult, the guardian, relative or caregiver of the child or incapacitated adult, or a social welfare officer can apply on behalf.
 - (iii) The authorised social welfare officer will usually issue the EPO to you within 2 hours after an application is made.
- (d) If the offender violates the EPO, he will be punished as follows :-

- (i) for a fine not exceeding RM2,000.00 or maximum 6-months 'imprisonment, or both;
- (ii) for the violation with use of violence on the victim, a fine not exceeding RM4,000.00 or imprisonment of not more than 1 year, or both; and
- (iii) for the second and subsequent violations will result in a fine not exceeding RM5,000.00 and imprisonment of not less than 72 hours and not more than 2 years.⁷



6. What is Interim Protection Order (IPO)? And how can you apply for it?

- (a) The IPO is a court order to prohibit the offender from committing domestic violence against the victim throughout the police investigation of commission of domestic violence. The Court may also include any one or more of the following orders in the IPO:
 - (i) prohibit the offender from inciting any other person to commit domestic violence against the victim;
 - (ii) grant the exclusive occupation of the entire shared residence to the victim regardless of whether the shared residence is solely owned or leased by the offender or jointly owned or leased by the offender and the victim;
 - (iii) prohibit or restrain the offender from entering into the victim's shelter or shared residence, workplace or school or going near the victim at a distance of at least 50 metres or at a distance the court thinks reasonable;

⁷ Section 3A of the Domestic Violence Act 1994

- (iv) prohibit the offender from making person contact with the victim unless in the presence of a police officer or a social welfare officer or such other person specified in the order;
 - (v) require the offender to permit the victim to enter the shared residence or the residence of offender to collect the personal belongings, accompanied with a police officer or social officer;
 - (vi) require the offender to avoid making communication by any means with the victim or limited to the circumstances where such communication is permitted; or
 - (vii) require the offender to permit the victim to continue using a vehicle which has previously been used by the victim.
- (b) The Magistrates Court is empowered to issue IPO to the victim during pendency of police investigation. The IPO is valid so long as the police investigation is carried out. However it ceases to have effect upon you being informed in writing by a police officer that the police investigation is completed and no further action to taken against the offender OR 7 days after being informed in writing that the offender will be charged in court with offence involving domestic violence. Therefore, if the offender is charged in court, you can apply for a Protection Order from the court within 7 days of being notified to ensure continued protection against any domestic violence.
- (c) The steps to apply for IPO are as follows :-
- (i) You shall lodge a police report at the nearest police station and inform the police that you want to apply

for an IPO. You need to obtain a police report and referral letter from the police for the purpose of IPO application.

- (ii) You then bring the police report and referral letter to the nearest JKM and inform the social welfare officer that you want to apply for IPO.
 - (iii) The social welfare officer will assist you to file an application to the Court for an IPO and accompany you to the Court for hearing. Alternatively, you can also appoint a lawyer to file on your behalf.
- (d) If the offender violates the IPO, he will be punished the same as for EPO.⁸



7. What is Protection Order (PO)? And how can you apply for it?

- (a) The victim can obtain a PO from the Court if the offender has been charged in court with offence involving domestic violence. The PO is valid for 12 months with a maximum extension of another 12 months if the Court is satisfied that such extension is necessary for the protection and personal safety of the victim. The PO serves the same purpose of IPO as stated in answer (a) to question 6 above.
- (b) The steps to apply for PO are as follows :-
 - (i) You can apply to the court for a PO within 7 days of being that the offender will be charged in the court or during the criminal proceedings.

⁸ Section 4 of the Domestic Violence Act 1994

- (ii) You may apply to the court for PO with the assistance of a social welfare officer or by your appointed lawyer.
- (c) If the offender violates the PO, he will be punished the same as for EPO.⁹



8. If you have sustained physical injuries due to domestic violence, what can you do?

You can seek free medical treatment and obtain medical report at the nearest One-Stop Crisis Centres (“OSCC”) which established in all government hospitals in Malaysia. At the centre, you can lodge a police report for your safety and protection. Other than that, the OSCC also provides services such as safe shelter, legal advice and counseling from social welfare officers to help the victim of domestic violence.



9. What are the support services and NGOs that you can seek immediate help from?

- (a) The Women, Family and Community Development Ministry’s Talian Kasih;
- (b) The nearest Social Welfare Department (“JKM”);
- (c) The nearest police station;
- (d) The nearest OSCC at government hospital (if you are bodily injured) ;

Click here: <http://www.myhealth.gov.my/en/one-stop-crisis-centre-oscc/> ;

⁹ Sections 5 and 6 of the Domestic Violence Act 1994

- (e) Women's Aid Organisation ("WAO") (Petaling Jaya) - provides services in the form of free shelter, counseling and crisis support to the abused women and children
Click here: <https://wao.org.my/> ;
- (f) All Women's Action Society ("AWAM") (Petaling Jaya) - provides assistance such as free legal advice, counseling and referral service to the abused victims
Click here: <https://www.awam.org.my/> ;
- (g) Women's Centre for Change ("WCC") (Penang & Seberang) - provides services of free counselling, temporary shelter and legal advice to women and children who are abused, raped or sexually assaulted
Click here: <https://wccpenang.org/> ;
- (h) Good Shepherd Centre (Ipoh, Kuala Lumpur and Sabah) - provides services of temporary safe home, counseling, support and life skill programmes to women and their children in crisis situation such as domestic/ family violence
Click here: <https://goodshepherd.my/home> ;
- (i) Sabah Women's Action-Resource Group - provides free service to women and families in crisis such as legal support, refuge or shelter, counseling and referral service
Click here: <http://www.sawo.org.my/> ;
- (j) Sarawak Women For Women Society - provides support to women in distress through its phone line and drop in centre
Click here: <https://sarswws.org/about-us/>
- (k) Tenaganita (Selangor and Penang) - protect and provide shelter to foreign women, spouse of migrant worker or refugee and children who are in critical distress
Click here: <http://www.tenaganita.net/>



10.If you are unable to leave your abusive home and seek help because you are closely being watched by the offender, what can you do?

You can contact the relevant authorities or NGOs via telephone call, SMS or WhatsApp for help and here is the list of helplines number:-

- (a) Talian Kasih hotlines at 15999 (landline) or WhatsApp at 019-2615 999;
- (b) Police Whatsapp line: 019-261 5999;
- (c) Victim Care Centre (set up by Bukit Aman’s Sexual, Women and Child Investigations Division (“D11”)) at 03-2266 6313;
- (d) WAO’s hotline at 03-7956 3488 or SMS/WhatsApp TINA at 018-988 8058;
- (e) AWAM’s Telenita helpline at 03-7877 0224 / (MCO Emergency Hotline) at 016-228 4221 / 016-237 4221 ;
- (f) WCC (Penang)’s hotline (Mon- Fri, 9am to 5pm) at 04-228 0342 / (Mon- Sat, 9am to 9pm during MCO period) at 011-3108 4001 / 016-428 7265 or WhatsApp at 016-448 0342;
- (g) WCC (Seberang)’s hotline (Mon- Fri, 9am to 5pm) at 04-398 8340 / (Mon- Sat, 9am to 9pm during MCO period) at 016-439 0698 / 016 - 418 0342 or WhatsApp at 016-448 0342;
- (h) Good Shepherd Service ’hotline at 019-534 9044 / 014-323 4618 (Call/WhatsApp/SMS);
- (i) Sabah Women’s Action-Resource Group’s helpline at 088 280 200; and
- (j) Sarawak Women for Women Society’s hotline at 082 416 053
- (k) Tenaganita’s hotline at 012-335 0512 / 012-339 5350



11. Can you seek monetary compensation against the offender in court for the personal injuries or losses suffered as a result of domestic violence?

Yes, you can. Section 10 of the Domestic Violence Act 1994 provides that a victim of domestic violence who suffers personal injuries, damage to property or financial loss as a result of the domestic violence, may apply to the court for compensation in respect of the injury or damage or loss as it deems just and reasonable.

Section 2 of the Domestic Violence Act 1994 states that “in respect of civil proceedings for compensation under section 10, the court competent to hear such claims in tort”. Pursuant to this section, you can file a claim in the civil court.

Not only the civil court, the criminal court also has jurisdiction to make a compensation order to the victim upon the application of the Public Prosecutor under section 426(1A) of the Criminal Procedure Code.

In determining the compensation to be awarded, the court will consider, amongst others, the following factors :-

- (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 costs of medical treatment;
- (c) loss of earning;
- (d) 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 lodging, moving and transport expenses to a safe place, the housing loan payment or rental payment in respect of alternative residence.



12. Conclusion

In conclusion, if you are one of the victims of domestic violence, do not suffer in silence. Break the silence, reach out and seek help from the NGOs, hospital, police officers and social welfare department, who can assist you and your loved ones to leave the vicious cycle of violence and the offender. It is a huge step for you and much courage is needed but do not forget that you are not alone as there are many support services out there to help you navigate your journey to a safe and peaceful environment. If you have noticed any sign of domestic violence from your family, friends or even neighbours, do report to the authorities immediately so that they can get the assistance and protection needed.



The contents of this FAQ are intended for purposes of general information only. It should not be construed as legal advice or legal opinion on any fact or circumstance.

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