

OLDER PERSONS: THE DEVELOPMENT OF LEGAL PROTECTION ON EMOTIONAL ABUSE IN DOMESTIC VIOLENCE

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Abstract: *Due to life expectancy, the older persons will need to stay together with their family’s members, normally with their adult children or grandchildren or even extended family members. This paper seeks to discuss the provision of the right of the older persons to be protected as regards to emotional or psychological abuse against domestic violence. By the year 2050, Malaysia will be considered as an Aging Nation. In order to cope with the increase in the elderly population, there is a need to have legal protection against domestic violence as to the older person’s psychological and emotional injury. In other words, it is important to ensure that the right, in particular, the aging citizens or older person regards, on emotional abuse in domestic violence.*

Keywords: *Older Person, Emotional Abuse, Emotional Injury, Psychological Abuse, Domestic Violence.*

Introduction

Generally, functionalists have argued that the family is a universal institution which performs certain specific functions essential to society’s survival. There was presumption that a married couple, or parent and child or children, will form a household, and that family implies and presupposes “household”. Household is the term normally used to refer to co-residence. Some have argued that a household can be defined to some extent in terms of a range of domestic activities (Gittins, 2011). Due to life expectancy the older persons will need to stay together with their family’s members, normally with their adult children or grandchildren or even extended family members.

Malaysia will achieve the status of an Aging Nation in 2030 when the population aged 60 and above, reaches 15 percent of the population (Tengku Aizan Hamid, 2015, cited in Mona Ahmad 2015). At present, Malaysia has 2.8 million senior citizens aged 60 years and over last or nine percent of the total population of 31 million. During the Dewan Rakyat sitting on March 23, 2016, the Women, Family and Community Development Minister Datuk Seri Rohani Abdul Karim, said that based on the Department of Statistics, Malaysia is expected to achieve its old state status in 2035 when 15 percent of the population was senior citizens or the elderly in the country in 2035 is 5.6 million people (Farhana Hanim Mohd Mydin, 2016).

In order to cope with the increase in the elderly population, there is a need to have legal protection as regards to the elderly emotional disorder or abuse against domestic violence. There are, till to date many news or headlines on older persons being emotionally abused and even beaten or abused until dead by their family members or close relatives. For example, "Home alone' elderly parents feel abandoned", (Loh Foon Fong, 2017), "A child beaten his mother with iron" (Mohamad Azim Fitri Abd Aziz, 2018), "A 60-Year-Old Mother Was Brutally Beaten to Death in Her Sepang Home" (Sadho Ram, 2018) and "Man allegedly kills disabled father and dumps decapitated body into septic tank" (Ivan Loh, 2018). Therefore, it is important that there is specific legislation to protect the right of the aging citizens or older persons from domestic violence. Many actions have been taken by the government to ensure that the rights of the older persons are protected from domestic violence.

As regards to the right to be protected against domestic violence there is enforcement of the Domestic Violence Act 1994. Since then, a few amendments were made in the Domestic Violence Act 1994. As the functions of law are to maintain social control and protect public order, legislation is seen as an important mechanism to help reduce the abuse and neglect of the elderly (Jal Zabdi, 2009). As such, this paper seeks to discuss the provision of the right to be protected from emotional or psychological abuse against domestic violence for the older persons in Malaysia. Certain provisions involving the procedures will also be reviewed for a better understanding of the right of the older persons, in particular the emotional abuse or emotional injury to be protected under Domestic Violence Act 1994.

Basically, in Malaysia 'all persons are equal before the law and entitled to the equal protection of the law', and 'no person shall be deprived of his life or personal liberty save in accordance with law'. These are provisions pursuant to the Article 8(1) and Article 5 of the Federal Constitution, respectively.

Definition Older Person

Most developed world countries have accepted the chronological age of 65 years as definition of older person. The ageing process is a biological reality which has its own dynamic, largely beyond human control. At the moment, there is no United Nations standard numerical criterion, but the United Nations agreed that a person who is 60 years old and above, would refer to as 'older person' (WHO, 2010).

In Malaysia, according to the National Policy on Senior Citizens, 'old' are those above the age of 60 years. In advanced and developed nations, because of better economic, educational and health levels, established health services, and longer life expectancy compared against developing nations, there are those above 65 years old and this definition is based on the calendar/age. However, 'old' also could be from the physiological, biology or functional aspects or functional ability. There is a concept often used that is for those who are between the age of

65 to 74 years old fall under the “Old-Young” Concept, for ‘Old-Old’ is between the age of 75 to 84 years old and ‘Very Old-Old’ is above the age of 85 years old. It is an easy concept or method if age is the consideration and normally there is not much problem in the Old-Young group (JPA, 2010)

Society normally relate ‘old’ problem as ‘unhealthy’, ‘useless’, ‘lifeless’ etc. - ageism, negative, myths, stereotyping concept (similar to sexism concept). Mostly common age-related to chronic illnesses, such as heart disease, arthritis or cancer. These illnesses have the potential to affect one’s ability to perform everyday activities of daily living (ADLs) (McKenry, Patrick C. & Price Sharon J. 2000). Due to these illnesses, there is a need for the family members to look after or care for the older persons or sometimes to stay or live together with the older persons. There is recent research stated that domestic violence includes physical, mental or economic harassment, control, threats, or other illegal attacks; and these violent acts are imposed on family members i.e. intimate partner, children, youth and the elderly (Chang, Lin & Liu, 2017).

As regards to the emotional and verbal abuse against the older persons, normally it is difficult to see that the older persons are being abused because that persons may not being hurt physically. But emotional and verbal abuse can have short-term and long-lasting effects that are just as serious as the effects of physical abuse. Emotional and verbal abuse includes insults and attempts to scare, isolate, or control the persons being abused. It is also often a sign that physical abuse may follow. Emotional and verbal abuse may also continue if physical abuse starts. There were suggestions that, a specific law should be legislated to protect the older persons from being abused by the adult children (Jal Zabdi, 2009) and provisions in the Domestic Violence Act 1994 to be amended to add a clear provision on elder abuse (Aishath, 2010).

Domestic Violence Act 1994

Domestic Violence Act 1994 (Act 521) was gazetted on 7 July 1994, in order to provide for legal protection in situations of domestic violence and matters incidental thereto. As regards to the meaning of domestic violence, pursuant to section 2, “domestic violence” means commission of any of the following acts:

- (a) wilfully 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; or
- (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, by a person against—
 - (i) his or her spouse;
 - (ii) his or her former spouse;
 - (iii) a child;
 - (iv) an incapacitated adult; or
 - (v) any other member of the family.

The ‘old person’ under Domestic Violence Act 1994 is interpreted as “incapacitated adult” which means a person who is wholly or partially incapacitated or infirm, by reason of physical or mental disability or ill-health or old age. Further, this “incapacitated adult” is a person who is living as a member of the offender’s family (section 2).

Under Domestic Violence Act 1994 the victim may seek interim protection order by virtue of section 4. The interim protection order would be issued by the court during the pendency of investigations relating to the commission of an offence involving domestic violence, as an order prohibiting the person against whom the order is made from using domestic violence against an incapacitated adult, as the case may be, as specified in the order. However, this order shall cease to have effect upon the completion of the investigations, as provided under sub-section (2).

Nevertheless, section 5(1) of the Domestic Violence Act 1994 gives the power to the court, in proceedings involving a complaint of domestic violence, issue any one or more of the protection orders. Unfortunately, the protection order to have effect for such period, not exceeding twelve months from the date of the commencement of such order, as may be specified in the protection order as provided in section 6. But it could be made anew, upon the contravention of a protection order, in accordance with section 9, or extended for a further period, not exceeding twelve months from the date of the expiration of the original order, under subsection (2).

Based from the above provisions, it seems that the domestic violence acts do not include ‘emotional abuse’ or ‘psychological abuse’ against old person or “incapacitated adult”. Moreover, it seems that if the victim would want to seek for the protection order from the court, the victim need to lodge a police report first. Due to the loopholes in the Domestic Violence Act 1994, later in 2012 the said Domestic Violence Act was amended.

Domestic Violence (Amended) Act 2012

The Domestic Violence Act 1994 was amended and the Act is known as Domestic Violence (Amended) Act 2012 (Act 1414) whereby a few provisions were inserted including the meaning of “domestic violence” and the interpretation concerning the older persons.

Pursuant to section 2 of this Domestic Violence (Amended) Act 2012, the meaning of “domestic violence” where a few acts are inserted as follows:

- (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, by a person, whether by himself or through a third party, against—
 - (i) his or her spouse;
 - (ii) his or her former spouse;
 - (iii) a child;
 - (iv) an incapacitated adult; or
 - (v) any other member of the family.

Thus, the meaning of ‘domestic violence’ under the Domestic Violence (Amended) Act 2012 which involves psychological abuse is extended by including emotional injury to the victim.

Further, it also may cause the victim to suffer delusions by using any intoxicating substance or any other substance with or without the victim's consent.

As regards to the older persons, under the Domestic Violence (Amended) Act 2012 'older persons' is interpreted as 'an incapacitated adult' pursuant to section 2, which includes:

“a person who is wholly or partially incapacitated or infirm, by reason of permanent or temporary physical or mental disability or ill-health or old age, who is living as a member of the family of the person alleged to have committed the domestic violence, and includes any person who was confined or detained by the person alleged to have committed the domestic violence”.

In this matter when the older person, known as 'an incapacitated adult', being emotional abused or psychological abused by any his or her family members, which includes emotional injury, the said older person is entitled to seek for protection under the Domestic Violence Act 1994, as the principal Act.

By virtue of section 4(1) of the Domestic Violence (Amended) Act 2012, the older person as the victim may firstly seeks for interim protection order. The provision gives the court power, during the pendency of investigations relating to the commission of an offence involving domestic violence, to issue an interim protection order prohibiting the person against whom the order is made from using domestic violence against an incapacitated adult. Sub-section (2) provides that the interim protection order shall be made by way of an application to the court, and this order may include a provision prohibiting the person against whom the order is made from inciting any other person to commit domestic violence against an incapacitated adult.

Later, when the interim protection order ceased effect, sub-section (4), the victim or an incapacitated adult may under section 5 seeks another protection order. The provision gives the power to the court in an application involving a complaint of domestic violence, to issue any one or more of the following protection orders:

- (a) a protection order restraining the person against whom the order is made from using domestic violence against the complainant;
- (b) a protection order restraining the person against whom the order is made from using domestic violence against the child;
- (c) a protection order restraining the person against whom the order is made from using domestic violence against the incapacitated adult.

However, it seems that the older persons' right or the said incapacitated adult to be protected from emotional abuse or psychological abuse under Domestic Violence Act 1994 is still not adequate. Due to victim's refusal to make a police report in order to seek the protection order from the court, once again the Domestic Violence Act 1994 was amended. When the Domestic Violence Act 1994 first amended in 2012, it was to include psychological, emotional and mental abuse as forms of domestic abuse. This is because the effects of psychological and emotional abuse are not so obvious compared to physical abuse where the scars on the victim are clear on the victim. Also, in order to determine psychological abuse, victims are required to undergo a mental state assessment at a government hospital (accompanied by a welfare officer). The report of the assessment will be submitted to the police as part of the evidence for investigations. As a result, victims are often disregarded and even turned away when they report such forms of abuse (Melissa Mohd Akhir, 2017).

Domestic Violence (Amendment) Act 2017

In 2017, the government again amended the Domestic Violence Act 1994 by inserting a few provisions in the Domestic Violence (Amendment) Act 2017 or Act A1538. The intention of proposed Domestic Violence (Amendment) Act 2017 is to offer victims of domestic abuse more protection. The new Act is more progressive and addresses the grave and insidious nature of domestic abuse. This was because from the police statistics showed that domestic violence is on the increase, with 15,617 reported cases between 2014 and 2016. On a positive note, this shows that more victims are coming forward to report such abuse (Indramalar, 2017).

Under the Domestic Violence (Amendment) Act 2017, the definition of “domestic violence”, is extended by inserting the following paragraphs in section 2, which includes:

- “(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; and
- (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;”.

Due to lack of clarity about what constitutes psychological abuse, the victims are sometimes turned away when they want to make a report. Victims also often worry about the stigma they may face with the term ‘psychological abuse’, the Domestic Violence Act 1994 was amended in 2017. The Domestic Violence (Amendment) Act 2017 was passed in Dewan Rakyat, which among others, provides for an emergency protection order to be issued by a Welfare Department officer instantly (Indramalar, 2017).

Under the Domestic Violence (Amendment) Act 2017, section 2 was amended by inserting Section 3(A) where the emergency protection order will be valid for seven days from the time notice is given to the alleged abusers. Further, an emergency protection order can be issued by a social welfare officer regardless of whether an interim protection order or protection order has been previously made or is pending. As such, the Act also added that anyone who wilfully contravened the emergency protection order would, upon conviction, be liable to a fine not exceeding RM2,000 or not more than six months in prison or both. Any individual who wilfully contravenes the emergency protection order using violence is liable to a fine of not more than RM4,000 or to imprisonment of not more than one year or both.

The amended Domestic Violence Act 2017 also expanded the definition of abuse, which includes misappropriation of funds or property, particularly relevant for domestic violence cases involving the elderly or older person. This can also be interrelated with cases whereby the older persons have been swindled out of their pensions or property. As such, when the domestic violence victims no longer need to wait for the court to protect them from their abusers, it is hoped that the right of older person would be protected from emotional abuse or psychological abuse under the Domestic Violence (Amendment) Act 2017, where the victim can get instant and comprehensive protection with the new Emergency Protection Order.

Conclusion

From the Women, Family and Community Development Ministry statistic showed that 4,026 domestic violence cases, of which more than 30 per cent involved male victims, mostly aged 60 years and older. This would indicate, even after Domestic Violence (Amendment) Act 2012

was enforced, that the right of the older persons or the said incapacitated adult to be legally protect from emotional abuse or psychological abuse is still not protected. Furthermore, initially the victims who lodged these reports were ashamed because of the stigma that men were never victims of domestic abuse, but this is not true, the older person must come forward where they can be helped in any way as provided under the new amendment (Bernama, 2018). Therefore, it is hoped that with the Domestic Violence (Amendment) Act 2017 the older person's right as to emotional injury could be protected against domestic violence.

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