

PROVOCATION AS A DEFENCE IN INTIMATE PARTNER VIOLENCE AGAINST WOMEN

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Preface

The prevalence of intimate partner violence (IPV) is a serious phenomenon as it happens all over the world, irrespective of race, religion and place. The same phenomenon occurs in Malaysia. To address the issue, in Malaysia, the Government has enacted the Domestic Violence Act 1994 (Act 521) (DVA 1994) to provide legal protection for victims of domestic violence. Under Section 2 of the DVA 1994, victims of domestic violence may comprise a spouse, his or her former spouse, a child, an incapacitated adult, or any other member of the family who suffer harms which include physical, psychological, emotional, sexual, financial abuse and abuse of victim's dignity. When viewed in the context of domestic violence in Malaysia, it has a broader meaning than IPV, since the former is not limited to victims of IPV. IPV against women is complex as there are factors that restrain female victims of IPV from leaving their abusive relationship and being trapped in such a relationship that causes them to be subjected to continuous abuse and violence. The pain and trauma suffered by female victims of IPV is rarely a one-time experience; the violence is so regular and continuous that some female victims of IPV reach a point where they cannot take it any longer, and respond to the abuse by hurting or even killing their abusive partners because of provocation and for preserving their lives. In this situation, the female victims of IPV, who were originally victims of domestic violence, now become the suspect or accused when they are charged in court. At present, there is no specific defence for female victims of IPV who kill their abusive partners in provocation in the context of domestic violence in Malaysia. That said, they may rely on the general defence of provocation as provided in Exception 1 to Section 300 of the Malaysian Penal Code. The defence however appears does not provide sufficient protection for female victims of IPV in the unfortunate event they lose control and kill their abusive partners. In this context, the provision does not define the term "loss of self-control", nor does it explain the legal position of cumulative provocation, has a prerequisite for suddenness that must be fulfilled, and provides no explanation on the attributes that should be ascribed to a reasonable man. Thus, this book aims to analyse the application of the defence of provocation raised by female victims of

IPV in Malaysia by comparing the position of the defence in England and Wales and propose reforms to improve such defence. The book adopted legal research in analysing the application of the defence in the context of IPV against women. The book found that female victims of IPV face difficulties in fulfilling several conditions laid down in the provision which resulting in insufficient legal protection for them. England and Wales in contrast provides better protection for female victims of IPV who rely on the defence. Therefore, the book proposes that the law on the defence of provocation in Malaysia should be amended by taking into account the unique circumstances of female victims of IPV.

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