

Comparative Analysis on Domestic Violence in the United Kingdom and Japan: A Reasonable Legal Scheme for Myanmar

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要 旨

日本と英国では、配偶者間暴力は犯罪であると認知することが、犯罪の統制において重要であると位置づける動きが顕著になってきた。社会文化構造が異なっている日英社会において共通するものは男性優位である。ただ、英国は日本に先立って被害者の権利を守る一歩を踏み出していた。英国は被害者を保護する諸法を制定し、事後救済のみの仕組みがある日本と異なり予防的な被害者保護の実効を挙げてきている。そして、配偶者間暴力事件を処理する特別法廷まで設置されるようになり被害者救済を適切かつ迅速に行う体制がある程度整備されるようになった。しかし、日英両国では、人々は配偶者間暴力を数少ない特殊な事件として見なしており、また、被害者が警察やその他の関係諸機関に通報して救済を求めることも稀なために、問題の重大性の認識や社会的対応が十分になされないという問題が依然として残されている。こうした問題を論じることは、ミャンマーにおける配偶者暴力に関する法制度の検討にとって有益である。

Keywords: Domestic Violence, United Kingdom, Japan, Legislative Response, Civil Remedies

Introduction

I. Historical Perspective of Domestic Violence in the United Kingdom and Japan

II. Extent of Domestic Violence in the United Kingdom and Japan

III. Responses to the Problem in the United Kingdom

3.1. Legislative Responses

3.2. Police Responses

3.3. Prosecution

3.4. Specialist Domestic Violence Courts

3.5. Civil Remedies

IV. Responses to the Problem in Japan

4.1. Legislative Responses

4.2. Police Responses

4.3. Prosecution and the Courts

4.4. Civil Remedies

V. Comparison of the Legal Responses between the United Kingdom and Japan

VI. Reasonable Legal Scheme for Myanmar

Conclusion

Introduction

Across the world, women are beaten, tortured, mentally abused, burned, and killed by their intimate partners on a regular basis. Until now, authorities in many countries have ignored or even condoned this type of violence. In some cultures, domestic violence remains an acceptable means for a husband to discipline his wife, e.g. “rule of thumb” that allows a husband to punish his wife with a small cane or stick. Why do such dreadful acts occur and why have they gone unpunished? Experts generally agree that domestic violence is used to keep women in a subordinate position within the household. Men use physical abuse against women in order to ‘keep them in their place’ and to exert their dominant power. Although perpetrator or batterer in domestic violence can be male or female, most domestic violence is committed against women by their male partners.¹ Therefore, this study only focuses on male perpetrators and female victims. Compared with many other violent crimes, the legal and social dimensions of domestic violence present several complications for effective legal control.

In these current years, the domestic violence issue has been moved from the private realm to the public in many states. In the past, domestic violence has been considered a family matter and, except in cases of extreme injury, the law was not involved in its management. It is sometimes said that domestic violence is a private matter and that it is inappropriate for outsiders to become involved. However, the growth of legislative measures to deal with the specific problem of domestic violence in the home is not a private matter. Consequently, practices regarding the problem are changing and violence in the home is becoming a criminal matter. Yet the degree of protection women receive varies tremendously across states. It is necessary to have a legal remedy which is more effective to deal with domestic violence. What extent the law can solve the problem of violence. What problems existed in other advanced countries and what solution they have found

would also be relevant.

In this paper it is mainly discussed with legal control and practice between two countries, the United Kingdom and Japan especially after enacting the respective legislation of domestic violence law. Historical aspects or view over domestic violence in these countries has been touched in some points in its first chapter. It then studies the extent to which what is currently happening under empirical data in chapter two. Chapter three and four deal with the responses to the problem of domestic violence in these countries: mainly on legislative response, police response, and prosecutorial and court responses and which kinds of remedies are available for victims. In the court response, some feature of special circumstances, such as setting up the Specialist Domestic Violence Courts, are added in the United Kingdom chapter. A comparison of facts under the responses practicing in these two countries is mentioned in the chapter five. In the chapter six or last chapter, according to the findings from comparing these two countries, international legal standards and the UN model legislation for domestic violence protection, a reasonable legal scheme for Myanmar is mentioned which aims at the needs of suitable legislation to Myanmar, stating the facts about what should include and what are the possibilities for new legislation.

I. Historical Perspective of Domestic Violence in the United Kingdom and Japan

Although domestic violence has been recognized as a pervasive social problem fairly recently, its cultural bases are deeply embedded in history and culture. Even a cursory review of that history reveals the extent to which law and society have traditionally served to implicitly support and perpetuate the subordination of women to their husbands. In some parts of Latin America and Asia, especially in the upper classes, killing a wife for an indiscretion has usually been acceptable, although the same privilege generally is not extended to women as perpetrators. Various cultures and societies have permitted or tacitly encouraged some degree of family violence as a means to maintain that subordination.²

As with other countries, there is a history of violence against women in the United Kingdom. Historic English common law sanctioned two major roles for husband: first, husbands were to act as their wives' disciplinarians and, second, husbands were to be their wives' protectors. This responsibility, along with the desire to maintain family discipline and order, and the influence of Christianity, brought about the doctrine of "chastisement". Thus, the common law sanctioned women's subordination and inferiority. Wives were the property of their husbands. They could be beaten with a stick (although no wider than the husband's thumb), raped, sold, and apprehended by husbands. Chastisement was "necessary" because the husband was

legally responsible for his wife's behavior. Hence, as Sir William Blackstone commented, "it is reasonable to entrust him with this power of chastisement in the same moderation that a man is allowed to correct his apprentices or children. The only limits placed on a husband's right to beat his wife were that he does so in a moderate manner. Unless a wife's life was threatened, courts had no right to interfere with the exercise of this right, and women had no *locus standi* contest."³ It was believed that what happens between or among family members is a "private" matter. If a husband hit his wife or child, it was not a crime, but rather, business as usual within the family structure. It was acceptable for a husband to keep his wife in line by using force.

Like the United Kingdom, domestic violence in Japan rooted in a male-dominated society and the right of the husband to hit his wife was recognized. Japan's democratization essentially started after World War II. Although the Emperor System collapsed after the war, the idea of a male-dominated society, a vestige of feudalism, was not immediately swept away. In fact, the idea of the male-dominated society accounted in Japanese society as an ethic of feudal society, although it has been weathered over time. In other word, a husband is still implicitly allowed to hit his wife as a means of discipline. Before World War II, women were regarded as inferior to men and women submitted themselves quietly to ill-treatment, while carrying the hard burden of domestic jobs and caring for family members. It was widely accepted that wives should always obey their husbands, and even if a husband hit his wife, most people were not concerned about it. They rarely accused her husband of violence because his wife belonged to him. No other person was allowed to say anything about the husband's behavior, no matter how violent or unreasonable it may be. Marital or domestic violence was considered as a mere quarrel between husband and wife, rather than a crime. Unless marital violence causes fatal consequences, women had to endure the violence and it was not considered as a social problem.⁴ This belief that men may abuse women perpetuated offensive situations. It is said that once this kind of relationship is established, people tend to become conditioned to accepting violence as a reasonable means of settling conflicts inside the home, which creates a vicious cycle of domestic violence.

Therefore violence itself went generally unrecognized and underreported. It was considered a private matter so the actual state of domestic violence cases went on behind the paper screen and was not brought into the open.

II. Extent of Domestic Violence in the United Kingdom and Japan

The extent to which the problem of domestic violence still exists is not fully understood. Formal statistics on the prevalence of domestic violence are difficult to collect for a variety of reasons. First,

institutional hurdles impede the assessment of the size of the problem. For instance, police departments and service agencies in the past have had ineffective and inconsistent systems for record-keeping. Further complicating the issue, instances of domestic violence are not always categorized as such by law enforcement or health care providers. Additionally, some victims use multiple services after an altercation and are documented by each agency, making it difficult to compare statistics from the police, hospitals, and shelters to determine how many individual disturbances actually took place.

Perhaps the most significant obstacle to understanding the pervasiveness of domestic violence is the nature of the victim and the crime itself. Many women choose not to report incidents of abuse because of social embarrassment or fear of retribution from their abusers. Additionally, victims may avoid reporting an incident because they do not want to subject their abusers to the criminal justice system, or because they cannot afford to have their abusers incarcerated for financial or practical reasons. Under-reporting of domestic violence prevents the collection of reliable data about the frequency with which family violence occurs. Furthermore, because the rate of recidivism for abuse is particularly high with domestic violence, some victims become "regulars" in the eyes of the police. Unlike victims of other forms of violent crime, the risk of retaliatory abuse is increased for battered individuals because of the nature of their relationship with their abusers. Victims of assault perpetrated by a stranger rarely encounter their assailant again, while domestic violence victims are typically involved in a relationship, live with, or are economically and emotionally dependent upon their abuser. Thus, in trying to ascertain the number of households afflicted by domestic violence, it is difficult to accurately assess the number of victims based on statistics of requests for service because many of the requests are made by repeat callers.⁵

Despite uncertainty about how many people are affected by domestic violence, it is certain that this problem is pervasive. Victims of intimate partner abuse can be found in all social, ethnic, and racial groups. Although both women and men are victims of abuse, the rates of victimization are significantly higher for women. Domestic violence causes more death and disability worldwide amongst women aged 15-44 than war, cancer, malaria or traffic accidents.⁶ It is estimated that one in every five women faces some form of violence during her lifetime, in some cases leading to serious injury or death.⁷ Violence against women and girls is a problem of pandemic proportions. At least one out of every three women around the world had been beaten, coerced into sex, or otherwise abused in her life by someone known to her.⁸ It is estimated that worldwide, one in five women will become a victim of rape or attempted rape in her life time.⁹

In the **UK**, according to the British Crime Survey 2008/09, women were more likely to have

experienced intimate violence more than any other type of abuse. Over all 3 in 10 (30%) women and 2 in 10 (20%) men have experienced some domestic abuse since the age of 16. 1 in 4 women and 1 in 6 men will be a victim of domestic violence in their life time. 89% of those suffering four or more incidents are women. On average, every week 2 women are killed by a current or former male partner. Every year, a million women suffer from domestic violence. In fact, intimate partner violence has been credited as the leading cause of serious injury to women. Over half (52%) of all violent incidents resulted in injury to the victim. The violent incidents were minor bruising or a black eye (34%), followed by cuts (15%) and severe bruising (13%). In 15 per cent of violent incidents the victim received some form of medical attention; in ten per cent of incidents victims received attention from a doctor and around two per cent of all violent incidents resulted in an overnight hospital stay. Additionally, in homes where intimate partner abuse occurs, children are also likely to be victims. At least 750,000 children a year witness domestic violence. Children who live with domestic violence are at increased risk of behavioral problems and emotional trauma, and mental health difficulties in adult life. Nearly three quarters of children on the 'risk' register live in households where domestic violence occurs and 52% of child protection cases involve domestic violence.¹⁰

In abusive relationships, incidents of battery often recur frequently, monthly or even daily. Research suggests that around one-third of the victims have experienced abuse for relatively short periods of time. Another third of the victims also reported having experienced partner abuse for relatively long periods of time. The majority (64%) of victims of partner abuse since the age of 16 suffered abuse caused by only one partner. Women were more likely than to have experienced longer period of partner abuse, repeat victimization and injury or emotional effects as a result of the abuse. The injuries incurred by victims of intimate partner abuse are usually greater than injures inflicted by strangers. Domestic violence disturbances also tend to become more violent and dangerous over time. Economically, domestic violence is also devastating. Overall 6% of victims had lost their job or had to give up working as a result of having experienced serious sexual assault. Domestic violence accounts for around 16% of all violent crimes in the United Kingdom at a cost in excess of £ 23 billion a year.¹¹

In **Japan**, domestic violence has gradually been accepted as a significant issue by the general public because of consciousness-raising movements, such as United Nations activities concerning violence against women. However, victims of domestic violence or acts of violence by acquaintances tend to sustain them, because the abuse is usually kept secret among the parties concerned.¹² In 2008 Survey on Violence between Men and Women” by the Cabinet Office, showed that 10.8% women and 2.9% men has “on many

occasions” experienced either “physical assault”, “mental harassment of frightening threats,” or “sexual coercion” by their spouse. And 33.2% women and 17.7% men have experienced “at least once” while 22.4% of women and 14.9% of men victims experienced one more than.¹³ WHO’s Multi-Country Study on Women’s Health and Domestic Violence against Women (2005) found that the percentages of women had been physically abused 41% or sexually abused (23%). 15% of injured women have lost consciousness at least once as a result of their beatings. 19% reported that someone other than a partner had been physically violent towards them since the age of 15. About 10% reported sexual abuse before the age of 15.¹⁴ One out of twenty women feels critical danger from domestic violence.¹⁵ About 12% of couples experienced violence every year and one-third of physical assaults are serious.¹⁶ Moreover, Shelter interviews indicate that self-defense is often a motive when battered women are themselves violent toward their partners. Women who murder their spouses often claim self-defense, but genuine self defense is infrequent, less than 10% of the time. However, women who kill their male partners are more likely to have previously experienced physical assaults against them. Approximately 25% to 30% of all intimate partner assaults lead to injury. Women incur injuries two to three times as frequently as men. The vast majority of injuries are minor or moderate, but women who have been injured are 3% to 33% more likely than men to have sustained a serious injury. About 78% of homicides are perpetrated by a male upon his female partner.¹⁷ The court data also show the extent of domestic violence which women suffer. When wives file divorce requests, the husband’s domestic violence is usually cited as a major reason for the action, second only to “personality incompatibility.” The exact number of domestic violence remains unidentifiable, but it may be more widespread than people commonly think. The nature of the problem cannot be more easily visible than other social issues because it mostly outbreaks within a family or the victims are not much willing to disclose their situations.¹⁸

The above figures in both countries show that domestic violence is a crucial social problem for society. A victim may suffer from minor injury to death or from temporary harm to disability. It becomes the front line issue because it harms not only to family concerned but also to society. The States may also have financial and manpower lost. Therefore the States must seek the ways to develop policies for domestic violence, and they must design to address the prevention and intervention programs.

III. Responses to the Problem in the United Kingdom

Although the recognition of domestic violence began during the 1800s, no laws were enacted to

criminalize violence against wives even though such assaults could be included within the 1861 Offences against the Person Act. In practice, judges did little to challenge the patriarchal privilege of legitimate chastisement of wives. In 1857 the first Matrimonial Causes Act (which is entered into force in 1st January 1858) offered a civil remedy to women. They could obtain a separation order if their husband was convicted of aggravated assault and if they were considered in grave danger. Domestic violence itself was treated with ambivalence. When women tried to do something about it, they could be seen as provoking the attack or taking advantage of the new laws to bring malicious complaints or disgrace to their husbands. Violence within the home was seldom regulated, if at all, via the use of civil legal proceedings rather the use of criminal law. Even if the police do not use the criminal law against a violent person, the civil law can still be used to get protection and to allow people to live in safety.¹⁹

3.1. Legislative Responses

The latter part of the 1970s brought three significant pieces of legislation: the Domestic Violence & Matrimonial Proceedings Act 1976, the Domestic Proceedings & Magistrates' Courts Act 1978, and the Housing (Homeless Persons) Act 1977. Although the acts were intended to provide legal remedies, the ways in which they were interpreted and implemented have meant that battered women continue to be inadequately protected. The legislative responses were concerned with civil law remedies, leaving criminal law largely untouched in terms of the protection of victims and the punishment of the perpetrators of domestic violence. The Domestic Violence & Matrimonial Proceedings Act 1976 paved the way for further legislation, the Domestic Proceedings & Magistrate's Courts Act 1978. The latter new provisions included giving magistrates power to issue orders for the protection of married women who had been subjected to physical violence. The two acts, specifically concerned with domestic violence, required the support of other legislation concerned with clarifying and increasing the statutory responsibilities of the local authorities housing departments. The Housing (Homeless Persons) Act 1977 included specific terms for persons who had become homeless as a result of domestic violence. The Matrimonial Home Act 1983 provided another option of relief for persons sharing a home.²⁰

The Family Law Act 1996 enables many people experiencing domestic violence to apply for court orders against their abusers, who they may or may not live with. These orders can stop the abusive behavior itself or, in some cases, prevent the abusive person from entering the home. Courts can attach a power of arrest so that if the order is not obeyed, the police can take the abuser to court, in contrast to the previous

legislation where the power of arrest was discretionary. Nevertheless, problems with the power of arrest remained, since the police were reluctant to enforce them, as breaches were not regarded as criminal offences and the courts were reluctant to make non-molestation orders against harassment unless this also included physical violence.²¹ The 1996 legislation as amended by the Domestic Violence Crime and Victims Act 2004 introduced new powers for the police and courts to deal with offenders, while bolstering support and the protection that victims receive. The law makes common assault an arrestable offence²². It signifies new police powers to deal with domestic violence including making it an arrestable, criminal offence to breach of non-molestation order, punishable by up to five years in prison²³. It strengthens the civil law on domestic violence to ensure cohabiting same-sex couples to have the same access to non-molestation and occupation orders as opposite sex couples, and extends the availability of these orders to couples who have never lived together or been married²⁴. The courts enable to impose restraining orders on acquittal for any offence (or if a conviction has been overturned on appeal) if they consider it necessary to protect the victims from harassment. This will deal with cases whether the conviction has failed but it is still clear from the evidence that the victims need protection²⁵. The law put in place a system to review domestic violence homicide incidents, drawing in the key agencies, to find out what can be done to put the system right and to prevent future deaths²⁶. It provides a code of practice, binding on all criminal justice agencies, so that all victims receive the support, protection, information and advice they need. The victims of mentally disordered offenders are given the same rights to information as other victims of serious violent and sexual offences. The victims have the right to recover money in compensation from the offenders through the Criminal Injuries Compensation Authority²⁷. The law closes a legal loophole by creating a new legal offence of causing or allowing the death of a child or vulnerable adult²⁸. The offence establishes a new criminal responsibility for members of a household where they know that a child or vulnerable adult is at significant risk of serious harm.

Violence against women has to be seen in the context of the patriarchal family system and the subordinate status of women: the law alone cannot change attitudes. However, with legislation in place and recognition of the fundamental attitudes toward the position of women in society, it has become more clear how best to combat the problem. The interpretation and application of the law is influenced by two public policy principles at every stage of the process. One is that the family is private and that is sanctity takes precedence; and the other is that violence within the family by men toward women is not to be equated with public violence. It is possible to interpret these stances as indicating that the state – through its laws, legal process, and personnel – symbolically condones male violence against partners unless it is of the most

appalling gravity. Indeed, the law and the courts have been seen to reluctantly protect women in this family dilemma. One significant factor has been evident: the police are reluctant to prosecute. However, growing awareness of the need for this to change is how readily accepted. Since the initial legislation in the 1970s, there have been various approaches to dealing with domestic violence. Today the government in the United Kingdom is committed to tackling domestic violence on every front. There are two areas of strategy to combat the problem: prevention, and support for those who are already victimized. Violence and abuse in a close relationship or domestic situation are now treated seriously by the criminal justice system; unfortunately, the effectiveness of the strategies differs around the country.²⁹

3.2. Police Responses

The police are the primary agency charged with maintaining civilian law and order, and protecting the public by preventing and fighting crime. They are one of the most visible, widely recognized, geographically comprehensive agencies, with powers of arrest and detention and a gate-keeping role in respect of law enforcement and access to justice. This include the power to define an incident as a crime or not, and to decide on whether and what action to take against suspected perpetrators. They can also facilitate access to other voluntary sector and statutory services, thereby playing an enabling role in respect of community domestic violence, housing and health services.³⁰

Police responses to domestic violence have traditionally been variable, depending on the attitudes and approach of the individual officer. Until the late 1980s the criminal justice system paid little attention to the needs of women and children experiencing domestic violence. Domestic violence was frequently seen as a private matter, not 'real' violence, and the sympathies of a predominantly male police force were often with the violent man/husband. Much domestic violence still goes unreported to the police. While many women have sought help from the police in an emergency, for others calling the police is not the first option, and is often only a last resort after repeated attacks. Every minute in the UK, the police receive a call from the public for assistance for domestic violence. This leads to police receiving an estimated 1,300 calls each day or over 570,000 each year.³¹

Many abused women have been ambivalent about calling the police: they fear they will not be believed or taken seriously; they may believe that the police can only respond to actual physical assault; they may fear it will provoke further or greater violence by challenging the man; and they may not want their partner or ex-partner to be taken to court.³²

From 1986, onwards, the need for changes in police practices to both domestic violence and rape was accepted by the Home Office, and domestic violence is now viewed as a crime both by practitioners in the criminal justice system and by government itself. These changes started with a Circular to Chief Constables in 1990, updated in 2000. These circulars urged the police to develop explicit force policies on domestic violence, and to establish dedicated units with specially trained officers. They also specified the central features that should be included in any force policy statements, including:

- the overriding duty to protect victims and any children from further abuse;
- the need to treat domestic violence at least as seriously as other forms of violence;
- the use and value of powers of arrest;
- the dangers of conciliation between victim and offender;
- the need to establish effective recording and monitoring systems.

The primary duty of the police was to protect the victim and any children and then consider what action should be taken against the offender. Immediate protection could include referring or taking her to a refuge, as well as liaison with statutory and voluntary agencies for long-term support. Chief Constables were also urged to liaise on the development and implementation of these policies with a wide range of agencies, and particular consideration was given to the need for good liaison with the Crown Prosecution Service (CPS), for the discussion of evidential and other matters to ensure consistency of aims and approach in the prosecution of domestic violence.³³

As domestic violence is a crime, the police acting on a case must first protect the victim and anyone else who may be at risk. Second, to investigate the offender, officers have a duty to secure evidence and take positive action to bring offenders to justice. The concern of the police in domestic cases is the retraction of statements made by the complainant, thereby denying the process to the court system. Research has shown that this denial lacks an understanding of what abused women go through. They often fear and shame for themselves and their children and for the lack of financial resources. Moreover, women are often at risk of further violence while waiting for a case to come to court and when complainants retract their statements the police may be unwilling to acknowledge that domestic violence is a criminal offense, and subsequently they may withdraw vital support for the victim.³⁴

By its nature, however, domestic violence cannot be dealt with effectively under the criminal law alone. The criminal law and the courts perceive harm in terms of physical abuse and, in the absence of independent witnesses, usually require some evidence of physical injury or harm as proof that a crime has

been perpetrated. Nevertheless, the criminal justice system has an important role to play in preventing and challenging domestic violence, both symbolically and practically. Local and national attention within the past decade has focused on encouraging more women to seek help from the police and the criminal justice system and on encouraging this system to provide a better response for such women and their children.³⁵

3.3. Prosecution

The last several decades have been marked by careful scrutiny of criminal justice responses to domestic violence. The “traditional” response of prosecution to instance of domestic violence was similar to that of the police. Prosecutors often perceived domestic violence cases as family matters that did not belong in the court. Consequently, there are both low prosecution rates of domestic violence cases and high dismissal rates. Prosecutors often explain low rates of prosecution by emphasizing that victims of domestic violence tend to change their minds about pressing charges, often recanting their testimonies and/or becoming “non-cooperative witnesses”. Given that these cases rely heavily on the testimony of the victim, some prosecutors argue that they have no choice but to withdraw the charges when the victim does not cooperate. In an effort to reform such practice, some jurisdictions have adopted “no drop” prosecutorial policies. Such policies provide that once a complaint has been filed, the victim of intimate partner violence may not withdraw it, despite threats or intimidation from the batterer.³⁶

The Crown Prosecution Services (CPS) response to domestic violence, once heavily criticized, has improved in recent years. Since 1993 the CPS has had a domestic violence policy, revised on several occasions. The CPS policy and guidance is based on the knowledge that domestic violence can have a devastating effect not only on the victim but also on the victim’s family and especially on children who witness or are aware of the violence. Each of the 42 CPS regions has a domestic violence coordinator with extensive experience in prosecuting domestic violence and other cases. The CPS policy includes continuing with a prosecution against the victim’s wishes or requiring a witness to go to court against the witness’s wishes. This is because in some cases the violence is so serious, or the previous history shows such a real and continuing danger to the victim or the children or other person, that the public interest in going ahead with a prosecution has to outweigh the victim’s wishes. Section 23 of the Criminal Justice Act 1988 allows the CPS, in very limited circumstances, to use the victim’s statement as evidence without calling the victim to court. The CPS has to prove beyond reasonable doubt that the person who made the statement is afraid to give evidence or is being kept out of the way. The victim does not have to give evidence to prove that he or she is

afraid. This proof can come from someone else, for example a police officer or doctor, or sometimes can be seen from the victim's behavior in court. If the court decides that the statement can be used under Section 23, the court must then decide whether, in the interests of justice, the statement should be used in this way.³⁷

Recent research found a heavy reliance on the evidence of victims and a failure to consistently adhere to the policy for handling victim withdrawals. The CPS faces evidential barriers in cases where the victim does not want to testify. The rules on the admission of hearsay evidence have been relaxed by Sections 114–121 of the Criminal Justice Act 2003. Hearsay evidence can be admitted where the victim is unable to attend for physical or psychological reasons, where there is a previous inconsistent statement and where the incident has been reported to a third party. Whether prosecutors will be more willing to consider these provisions as offering a viable route to proceeding with a prosecution in absence of the victim's support remains to be empirically investigated.³⁸

The advantages of victimless prosecution are clear: it involves less invasion of the victim's autonomy if the victim is opposed to litigation; it means that victims can avoid the pressures placed on them giving evidence in these kinds of cases; and it can prevent threats or other pressures being put on victims not to be involved in litigation. Of course none of this should be seen as not seeking to prosecute with the victim's consent and doing much more to enable and encourage the victim to support the litigation. The use of specialist domestic violence police, prosecutors and courts might assist in these procedures.³⁹ The practice of soft 'no drop' policies has however received some support and might play a role in reducing attrition.

3.4. Specialist Domestic Violence Courts

Establishing specialized courts or court process for domestic violence cases is another way to increase the judiciary's responsiveness to domestic violence. In the UK, the Government National Action Plan includes the provision of more specialist domestic violence courts to be rolled out over several years in an attempt to improve case outcomes and bring more offenders to justice. Significantly, other goals have been to reduce the costs of prosecuting domestic violence cases through speeding up the process and increasing efficiency by hearing all domestic violence cases on the same day.⁴⁰

Two types of specialist court system are being set up across England and Wales: *cluster courts*, where all cases are grouped into one court session in order to deal with pre-trial hearings – bail variation, pleas, pre-trial reviews, pre-sentence reports and sentencing and *integrated courts*, which bring together criminal and civil proceedings.⁴¹ By the beginning of 2004 there were seven specialist domestic violence

courts or fast track systems for domestic violence operation in England and Wales. In these courts domestic violence cases are clustered so that all the pre-trial hearings, and sometimes the trials, can be dealt with on the same day or days of the week in a dedicated court often by specialist personnel including a victim's advocate.⁴² There are four main benefits of domestic violence courts. Compared to the prosecution of domestic violence cases in other courts, a domestic violence court offers greater consistency in sentencing. Secondly, victim assistance/ witness support has greater efficiency and benefits to its services users to the confinement of cases into a specialist court. Thirdly, there is a potential for a domestic violence court to deal with the complexity of cases and be responsive to civil and criminal cases. Finally, domestic violence courts can offer fast track access to programmes for perpetrators intended to control their violent behavior and with proven efficacy.⁴³

One of the main issues with the prosecution of domestic violence within the traditional court setting is the high rate of attrition. Leaving aside attrition in the early stages of the prosecution process, which is in itself substantial, only about half of the cases brought into the judicial process resulted in conviction. One of the main obstacles to successful prosecution is the heavy reliance that the criminal justice agencies have placed on victim participation in domestic violence cases. Where victims withdraw their support for the prosecution, cases are normally terminated. Thus the challenge for specialist domestic violence courts in bringing more perpetrators to justice involves either ensuring that fewer victims retract their complaints, or finding other ways to successfully pursue cases where victims withdraw. In terms of enhancing perpetrator accountability finding ways to continue with a prosecution when the victim withdraws requires the criminal justice agencies to gather and use evidence besides the victim's testimony in appropriate cases. Evaluation of seven courts in England and Wales show that victim retraction is not significantly reduced within the specialist court setting. Thus, perhaps a better measure of success is to look at whether specialist domestic violence courts handle retraction appropriately, for example ensuring victims are properly supported through that process. Court specialization is beneficial in this respect because it facilitates the provision of independent advocacy support for victims.⁴⁴

In terms of enhancing perpetrator accountability finding ways to continue with a prosecution when the victim withdraws requires the criminal justice agencies to gather and use evidence besides the victim's testimony in appropriate cases. Enhanced evidence gathering is crucial to the success of victimless prosecutions. Evaluation of seven domestic violence courts found that they can be a focus for enhanced evidence gathering i.e. obtaining evidence such as photographs of the victim's injuries, medical statements,

999 tapes and statements from other witnesses. The impact of better evidence gathering has seen an increase in the conviction rate, which has in turn led to fewer victim withdrawals and more guilty pleas.⁴⁵ The rate of ‘successful’ prosecutions in some SDVCs is reported to be as high as 80%, with the same provisos in 2008.⁴⁶

The fact that there is little evidence that the domestic violence courts increased the proportion of defendants convicted overall could clearly be viewed as a failure when one the goals of the courts, at least from the government’s perspective, is to bring more perpetrators to justice.

3.5. Civil Remedies

Protection from domestic violence under civil law is provided by means of an injunction or court order requiring the abuser to do, or not to do, something. Since the mid 1970s, many jurisdictions worldwide have passed civil laws designed to protect women suffering domestic violence through the provision of civil protection orders. In UK between 1976 and 1997, injunctions and protection orders could be obtained under three different statutes:

- Domestic Violence and Matrimonial Proceedings Act (DVMPA) 1976
- Domestic Proceedings and Magistrates’ Courts Act (DPMCA) 1978
- Matrimonial Homes Act (MHA) 1983.

Thereafter the better protection for domestic violence was Part IV of the Family Law Act 1996, which consolidated these remedies and superseded the previous legislation. Likewise, the Domestic Violence Crime and Victims Act (DVCVA) 2004 should also provide further improved protection for sufferers of domestic violence.⁴⁷ There are two forms of injunctive relief available to victims of domestic violence under Part IV of the Family Law Act 1996, (FLA). A victim of domestic abuse can apply for a non – molestation injunction under s.42 of the FLA and/or an occupation order under s.33- 38. The DVCVA has made a number of changes to this area of the law.⁴⁸

A **non- molestation order** is an injunction aimed at preventing a partner or an ex-partner from causing or threatening violence to a victim or from molesting a victim or a victim’s child. Under the law molestation includes intimidation, pestering, threats and harassment. An order is granted to ensure the health, safety and well being of the applicant or any relevant child. The applicant must prove that there is a genuine need for protection. A non-molestation order can be made for a specified period or until a further order is introduced or the order may be varied or revoked. There is no limit on the length of time that non-molestation orders can be extended.⁴⁹

An **occupation order** regulates who is allowed to occupy the home and can direct a person to leave the home. If a victim does not want to live with her partner anymore, or if she wishes to exclude the abuser from occupying the residence, she may apply for an occupation order.

The court can order the following;

- The abuser to move out of the home or part of it.
- The abuser to stay away from the home or keep a certain distance away from the home.
- Regulation of the occupation of the home.
- The abuser pays the mortgage or rent.

Eligibility and the type of order depend on whether a victim has a legal right to occupy the property. If she is a sole or joint tenant, or owner or co-owner of her home, or she is married to someone who is, then she has a legal right to occupy and she can apply for an occupation order. If she does not have an existing legal right to occupy the home, then she can only apply for an occupation order.

When considering whether an order is granted the court will consider the housing needs and financial resources of both parties, the likely effect on the health, safety and well being of both parties and their behavior towards each other. They will apply a 'balance of harm test' which is test to determine whether victim or victim child is likely to suffer significant harm from the abuser if the order is not made.

There are time limits in regards to occupation orders dependent on victim's eligibility;

- Where victims have legal right to occupy – no limit.
- Where victims have no legal right to occupy – 6 months with one possible further extension of 6 months.

In order to apply for a non – molestation or occupation order applicant must be an 'associated person'. This means that applicant must be associated with each other in one of the following way. 'Associated persons' as people who:

- are or have been married to each other
- are or have been in civil partnership with each other
- are cohabitants or former cohabitants (includes same sex couples)
- non-cohabiting couples who 'have or have had an intimate personal relationship with each other that was of significant duration'
- live or have lived in the same household other than by reason of being the other's employee, tenant, lodger or boarder

- are relatives (e.g. parents, grandparents, in-law, brothers, sisters)
- have formally agreed to marry each other (even if the agreement has now ended)
- have a child together
- are parties to the same family proceedings (e.g. child contact or divorce)⁵⁰

The Family Law Act (Part IV, Section 47) states that a power of arrest shall be attached to one or more provisions of a non-molestation or occupation order where the respondent has used or threatened (physical) violence against an applicant or any relevant child unless the applicant or child is protected adequately without a power of arrest. This means that a copy of the order must be held on record at the police station and the police can arrest the abuser, without a warrant, immediately if the order is broken. The police must reasonably suspect that the perpetrator breached some of the provisions in the order.

Under the Domestic Violence Crime and Victims Act 2004 a breach of a non-molestation order is a criminal offence so a power of arrest does not need to be attached to this part of the order. However, the consequences of breaching an Occupation order will remain the same, so a separate 'power of arrest' will still need to be requested from the court. Where there is no power of arrest attached to the occupation order, and the abuser is in breach of the order, the victim can apply for a warrant for the abuser's arrest and they could then be convicted for contempt of court. The possible sentence for the breach of an order under the civil court is a maximum of 2 years or a fine in civil contempt proceedings.

The Domestic Violence Crime and Victims Act 2004 has strengthened the law in respect to the non-molestation order. Under the DVCVA 2004 a breach of a non-molestation order is a criminal offence punishable by up to 5 years imprisonment.⁵¹ The Act means that a breach of any terms under the non molestation order will constitute a criminal offence and so the police can arrest him immediately if the order is broken, even if a specific criminal offence has not been committed.

There is some uncertainty as to the standard of proof that should be applied in cases involving a breach of a non – molestation order. In '*Manchester CC v McCann*'⁵² the House of Lords considered the evidential burden of proof that should be applied in a case involving a breach of an Anti Social Behavior Injunction (ASBO) under s.1 of the Crime and Disorder Act 1998. It was acknowledged that breach of an ASBO constituted civil proceedings and ordinarily the standard of proof applicable in civil proceedings was the balance of probabilities. However, breach of an ASBO entailed serious criminal consequences and as such the criminal standard of proof should apply. In '*Hipgrave v Jones*'⁵³ the Court of Appeal considered the standard of proof to be applied in making restraining orders under the Protection from Harassment Act 1997

(PHA), which have potential criminal sanctions for breach. The court draws a distinction between ASBOs sought by public authorities and aimed at preventing crime and disorder, and injunctions under the PHA which are concerned with the protection of the rights of an individual. In relation to injunctions under the PHA it was asserted that the civil standard of proof applied, despite the fact that breach could be treated as a criminal offence.⁵⁴

However, a major advantage of civil protection orders is that they bring the domestic violence victim into contact with the legal system. Seeking a civil protection order is often a battered woman's first step toward obtaining legal assistance to stop the violence. Civil protection orders thus serve as a gateway through which the victim gains access to various types of resources and support. Moreover, civil protection orders make it easier for victims to avail themselves of the criminal justice system later if they choose to do so, since police are often more willing to arrest a batterer for abuse if a protection order is in place. Moreover, civil protection orders can help accomplish many goals, including stopping the violence, protecting the abused woman as well as children and other family members, holding the offender accountable, providing financial support for the victim and her children.

With new legislation in the United Kingdom, law enforcement agencies have now developed strategic risks models links to police forces for domestic violence projects in order to prevent future harm to potential victims. Domestic violence can no longer be ignored, least of all by legislators and those who have to deal with the daily consequences, such as the police and other criminal justice agencies. Under new legislation, the police have power to arrest a perpetrator of domestic violence for his common assault or for his breach of non-molestation order. While provisions such mandatory arrest are meant to increase accountability and protection, tradeoffs inherent in such stringent policies include safety and autonomy of the victim. Although the domestic violence is not acceptable and cannot be tolerated, on the other hand, it is necessary to take attentive measures on the needs and rights of a victim and preempt or punish abusers.

While the United Kingdom is using tough policy against perpetrators of domestic violence, it may be said that Japan seems to be handling the domestic violence cases more mildly than the United Kingdom. To compare with their legal responses, the practice of legal response for domestic violence in Japan is to be analyzed.

IV. Responses to the Problem in Japan

Recognition of a phenomenon as a social problem is a necessary precursor for the development of

social policy and services to address it. In Japan, domestic violence was for the most part neither recognized nor addressed prior to 1992, and it has gradually been acknowledged as a serious social problem. National and local governments' responses have only just begun. This increase in public awareness is largely attributable to the efforts of grassroots women's organizations that paralleled the rise of international movements against gender-based violence during the early 1990s. Action-oriented research projects on domestic violence conducted by these organizations have played an important role in shaping public discourse on the issue in Japan.⁵⁵

Following the 'Declaration on the Elimination of Violence against Women' at the UN General Assembly in 1993, tackling 'violence against women' was also discussed as one of the most prominent issues that needed an urgent response at the forth World Conference on Women held in Beijing, China in 1995. At the same time, in Japan, eliminating violence against women was mentioned as one of the eleven priorities of the 'Joint Participation Plan of Men and Women for 2000'. In the process, lawyers' groups and women's organizations have consistently criticized the substantive and procedural deficiencies of the proposed law. The first legislation to counter domestic violence in Japan finally passed the national legislature in April 2001, and went to effect nationally in October 2000.⁵⁶ Based on this law, prefectural authorities have established Spousal Violence Counseling and Support Centers. Beginning in 2002, the government also began to provide funding for shelters for abuse survivors in every prefecture in Japan. Currently, there are about 117 shelters. They offer counseling services, temporarily protect victims and provide information. The Law also has provisions for protection orders to be issued by the court against the perpetrator on the petition of the victim.

The Cabinet Office has been implementing various types of public information and enlightenment activities, including the promotion of the Campaign for Eliminating Violence against Women advocated by the Headquarters for the Promotion of Gender Equality.⁵⁷ To support victims of spousal violence who are not sure whom to consult, the Cabinet Office established the "DV Counseling Navigation" dial hotline to introduce the nearest counseling counters, such as Spousal Violence Counseling and Support Centers, through an automated voice guidance system in January 2009. The Ministry of Health, Labour and Welfare itself provides temporary protection to victims and their accompanying family members by taking them into protective custody through women's consulting offices, and also entrusts privately-run shelters that meet the standards stipulated by the Minister of Health, Labours and Welfare to provide temporary protection to such people.⁵⁸

4.1. Legislative Responses

Domestic violence is increasingly emerging from obscurity to be a serious issue in Japan. There is growing recognition that a number of Japanese women are victims of domestic violence. As a result of this awareness the Prevention of Spousal Violence and Protection of Victims Act (also known as DV Law) was enacted in April 2001. Under this law, violence by a spouse was regarded as a crime for the first time and it was determined that each local government should run more than one public shelter as a minimum requirement. Shelters were set up nation wide as temporary evacuation centers for victims of domestic violence. The significance of this law is the introduction of protection of victims and at the first time legal grounds were provided to cases of domestic violence. In the past, due to the ambiguity of domestic violence between the civil and criminal boundaries, it was difficult to gain police cooperation as a criminal offence and was not common to receive an interim order under the civil law.⁵⁹

The law was revised for the first time on June 2004, which was implemented on 2 December 2004. The new revisions made widening of the definition of violence by a spouse and made expansion of the protection order system, such as against a former spouse. This law made an order for prohibiting a spouse from approaching the victim's child or children and also prohibiting on wandering about in the vicinity of the dwelling that is the principal base for daily life of the victim. The term of validity of the eviction order was lengthened. Improvements in the procedures for re-application for a restraining order and protection order. Municipal authorities can establish spousal violence counseling and support centers within their jurisdiction. The new revisions have made clarification of support for victims of spousal violence striving to achieve self-reliance, etc.

To be in line with the efforts taken by the international community to eradicate violence against women, the law was revised a second time in 2007 which is effective on 11 January 2008. The last revision on the DV law clarified on the fact that municipal authorities are obliged to make efforts to formulate their own basic plans and to offer the services of spousal violence counseling and support centers in their own appropriate facilities. The scope of the protection order was also expanded for victims who have received life-threatening intimidation and also to the establishments of orders prohibiting phone calls or other behaviors. The abuser is prohibited from the victim's relatives or others. With a view to promotion of the victims, the expert committee also proposes the expansion of supportive measures, such as securing immediate living costs and housing, as well as improved collaboration of relevant bodies. It also points out that medical personnel, who may report to support centers or the police when they find suspected victims and

who seek to provide them with information on support centers, are not performing their duties in an appropriate manner.

4.2. Police Responses

The police play a central role in society's response to domestic violence. They are the first agency to contact for victims and offenders. Their interventions address domestic conflict at several levels. They help prevent physical conflict in the first place, can respond when it has already occurred, and can attempt to prevent or suppress its recurrence in the future. Their actions form the basic for all subsequent prosecutorial and judicial intervention in domestic violence cases. Given the importance of their role, it is not surprising that police action or non-actions attract a good deal of public scrutiny and critique.

One criticism concerns the approach to what the police call "domestics". Officers have traditionally used counseling and calming techniques designed to reestablish the "domestic peace" within a family instead of treating the violence as a crime and collecting evidence necessary to indict the batterer. Police have also been criticized for the way they treat domestic violence victims. They are often not sufficiently sensitive to victim's needs. The police have responded to these criticisms by developing strategies designed to improve their handling of domestic violence.⁶⁰ For example, in 1999, "The Outline of the Implementation of Measures to Protect Women and Children" was made by the National Police Agency. With regard to cases that violate penal laws, the police will arrest suspects of domestic violence and take other appropriate steps on behalf of the female victims. In addition, with regard to the cases that do not violate penal laws, the police will provide victims with anti-crime guidance and refer them to appropriate municipal departments and bar associations.⁶¹ In October 2001, the DV law became effective. These new guidelines led to the changes in how the police investigate domestic violence cases. According to statistics from the National Police Agency, the rate of arrest clearances for cases in which husbands have injured or assaulted their wives has greatly increased since 2000. In 2008, there were 200 cases of murder, 1339 cases of injury, and 1045 cases of assault in which the perpetrator was the husband and victim was his wife. Of the victims, 91%, 7% were female, underlining that the majority of victims by a spouse are women.⁶²

Moreover, according to the DV law, the court, when issuing a protection order, must notify the Superintendent General of the Metropolitan Police Department or the Chief of the Prefectural Police Headquarters. Once they have been notified, police become responsible for protecting the victims. They need to promptly contact victims and, if the victim wishes, meet with them and advise them on how to immediately

report to police in case of an emergency. The police also need to ensure that perpetrators fully understand what a protection order means and that it is a criminal offense to violate protection orders. Police must clearly warn and instruct perpetrators so that they will follow the protection orders. Immediately after the issuance of a protection order, the police officer in authority checks on the perpetrator's whereabouts and contact victims to check where they live and to learn about their life circumstances. When deemed necessary, they also conduct safety patrols in victim's neighborhood. Where a protection order also stipulates that a perpetrator must leave a residence shared with the victim, police officers confirm whether the perpetrator has actually left. Officers also accompany victims when they enter their residences to remove their belongings.⁶³ In 2009, the National Police Agency handled 2,429 serious cases where courts issued restraining orders against spouses or other family members under the domestic violence law.⁶⁴ The police response to domestic violence has improved noticeably in the last few years. Cases are now taken seriously, and victims are treated with the same respect accorded to victims of other crime.

4.3. Prosecution and the Courts

A person who has committed a criminal offence, such as assault, will often be arrested and then released on bail, either by the police or by a magistrate. Then the criminal case will be heard and the accused, if found guilty, will be punished. A protection order, which is of particular importance in a domestic violence case, does not, in the initial stages, involve a criminal prosecution. A person seeking protection goes to a court and asks the court to make a protection order, the effect of which is to tell the defendant not to engage in certain conduct again. That is, criminal proceedings generally punish for past behavior whereas civil proceedings provide protection for the future. The standard of proof in the civil proceedings is different from the criminal standard – on the balance of probabilities rather than beyond reasonable doubt. It is therefore much easier to obtain a protection order than it is to secure a conviction in criminal proceedings. Once a protection order has been made, it is a criminal offence to breach it. Therefore, it is only at this stage – when a protection order is breached – that a criminal prosecution can arise out of the protection order legislation.⁶⁵

Many instances of domestic violence constitute criminal offences. Some types of behavior, such as emotional or verbal abuse, do not and are therefore beyond the reach of the criminal law. Despite the fact that criminal assaults, and worse, occur frequently in domestic situations, one of the main problems associated with family violence has been the already noted lack of criminal prosecutions. Historically, police and magistrate have shown a marked reluctance to bring the full force of the criminal law to bear within the

family. Others point to community attitudes which silence or condone family violence. On the other hand, the victim may not want a criminal prosecution. This may be for reasons which are understandable: the parties may have made up or the victim does not want to risk her partner being imprisoned or fined which will impact financially on the family. Or it may be simply because the victim fears her partner's reaction. If she does not co-operate with the prosecuting authorities then the prosecution will almost certainly fail. In some jurisdictions a spouse is not a compellable witness, that is, cannot be forced to give evidence in criminal proceedings. Therefore, a lot of domestic violence incidents occur without witnesses. In addition, even if the case comes to court and is successfully prosecuted, magistrates and judges have tended to treat offenders leniently.⁶⁶

Although the criminal law looks back to past behavior it also looks forward in attempting to control future behavior. The punishment is supposed to deter a recurrence of the violent conduct.

4.4. Civil Remedies

In most countries women have a choice of three legal strategies to protect themselves against domestic violence (1) divorce or legal separation from the abusive husband, (2) a civil protection order that requires the batterer to stop abusing, threatening, or harassing the woman (3) criminal prosecution of the batterer.

In Japan, under the Prevention of Spousal Violence and Protection of Victims Act, a Judge in District Court may issue a civil protection order when a battered woman applies in a written petition. The order usually commands the abusive partner (a spouse, former spouse) to stop abusing, harassing, or threatening the woman and to stay away from her. It can also contain other provisions, such as rules governing child custody and visitation, eviction of the abuser from the family home, prohibition of the battered from contacting the woman at her residence, school, or place of employment and other forms of relief that the court deems appropriate.⁶⁷ If the protection order is violated, the court shall be punished by imprisonment with work for not more than one year or a fine of not more than one million yen.⁶⁸ The remedies provided by protection orders are separate from divorce and separation procedures. Even if the woman plans to file for divorce, she may still need a civil protection order because her only recourse if the batterer violates the divorce decree would be to return to court.

Upon a petition from the victim, the Court shall render a judicial decision promptly.⁶⁹ This order comes into effect when it was sent to the opposite party or when the decision has been rendered on his

appearance. The order may oblige the spouse for a six-month period to refrain from approaching the victim's domicile and two-month period leaving from loitering in the vicinity of the victim from the day the order comes into effect.⁷⁰ Although they offer many potential benefits, protection orders have had several limitations. First of all, it may be difficult for a woman to obtain an order. In some situations, it may take several weeks for a woman to obtain a protection order. In emergencies, the Court may issue an order to violent spouses without a hearing by submitting notarized affidavits to support the victims' claims.⁷¹ Generally, there is a cumbersome bureaucratic process to obtain an order of protection, which requires the victim to come forward after the violence has occurred and places the burden of proof on her. In addition, it is necessary to petition the District Court providing notarized evidence to prove a considerable threat of significant harm to life, evidence from the Spousal Violence Counseling Center, police or physicians and certification of marital status.⁷² Moreover, domestic violence frequently occurs during evenings or on weekends, when most courts are not in session. Not the court provides for issuing emergency protection orders after hours. One of the greatest limitations in the effectiveness of civil protection orders is that they have not always been consistently enforced.⁷³

The police response to domestic violence cases has also been improved since the enforcement of the Spousal Violence Law in 2001, but the violation of protection orders is not rare. Only or may be 3 percent of those with protection orders taken out against them were arrested in 2006.⁷⁴ In many cases, the police merely give warnings to violators without arresting them, and arrests are made only in cases of repeat violations or when violators ignore warnings.⁷⁵ Other limitations in the effectiveness of protective orders include inadequate funds for training the respective personnel who assist battered women seeking an order; difficulty in serving protection orders, thereby placing women in danger during the days or (sometimes) weeks until service has been made; and ineffective or nonexistent monitoring to determine whether batterers are complying with the term of the order.⁷⁶

Despite these limitations, obtaining protection orders seems to have a positive impact on battered women's sense of personal control and self-confidence, gaining a sense of control, reducing their fear, and beginning the process of divorce, reducing their feelings of helplessness, using the legal system, and sending a strong message to the batterer that abuse would not be tolerated.⁷⁷

The DV law in Japan defines violence as illegal attacks that threaten the spouse's life or physical condition. It is suggesting that Japan is now conforming to other efforts undertaken by the international community. The actual provisions in the law more tends to give assistance for victims rather than the rights.

Although there were some insufficiencies in its original law 2001, it could be furnished more and more to meet the needs of it. Despite the problems, early reports of compliance suggest that the law is being utilized by victims because arrests for spousal abuse and requests for protection orders have increased. The law will be much developed in the future by assessing ways to strengthen the policy in the next reviews.

V. Comparison of the Legal Responses between the United Kingdom and Japan

Domestic violence is not a new problem, but one which has only attracted attention comparatively recently. Husbands have used violence against their wives for centuries as an assertion of their prerogative as a husband. Taking action against violent husbands was rarely in the past, if ever, taken against those husbands who were important members of a community and that in all cases the community would only react to particularly severe violence, lesser violence being condoned.

In the United Kingdom, for hundreds of years husbands have cited an old Common Law that made it legal for them to beat their wives for various offences such as lack of obedience to him.⁷⁸ Likewise, in Japan, the idea of a male-dominated society did not recognize the social status of women. Violence is used by men to satisfy their own desires, force others to be subordinate to them, or serve as an outlet for their feelings, ignoring the hardship and humiliation that the assaulted women experience.⁷⁹ Here, it may make an issue on the fact that the background of social status was the same in the situation which is recognized the men's power over their subordinate women.

In the United Kingdom, by 1860, the habit of legitimate chastisement of wives was made gradually unacceptable by the judges and in 1878 a civil remedy of separation order for women was offered for the action of aggravated assault. At that moment, Japan was in the silent period for such rights of women. In 1970s, the United Kingdom made some significant legislation for domestic violence in terms of protection of victims and the punishments of the perpetrators. Exactly saying, since 1976, the United Kingdom has given victims the right of applying for court orders, like a protection order, against the abusers living with victims or not. In Japan, however, it has only been in recent years that domestic violence has come to be recognized as a social problem.

There is a significant gap between Japan and Western societies, such as the United Kingdom, where domestic violence was put firmly on the social agenda by the women's movement of the 1970s and became an important issue on the policy agenda in the 1980s. Consequently, legal systems to tackle problem have been developed in the United Kingdom rather than Japan. This discrepancy cannot be attributed simply

to the characteristics of family relations in Japanese society.

It may be said that the DV law in Japan which was promulgated in 2001 is a little earlier than the DV Act 2004 in the United Kingdom. But the responses, such as the order to prevent the abusive person from entering the home or the power of arrest if the order is not obeyed, to domestic violence in the United Kingdom reached far more than Japan. The responses to domestic violence in Japan remain relatively limited at present. When victims of domestic violence seek help and assistance from the police, welfare offices, or women's centers run by local governments, the women are usually provided only temporary shelter within facilities run by the women's centers or at support facilities for single-mother households. Furthermore, in the current climate, both types of facilities inevitably play only a passive role by helping female victims and their children temporarily to flee from violent husbands and fathers.

With regard to the police response, according to the DV law in the United Kingdom, the police may arrest any perpetrator who has committed common assault including a breach of non-molestation or occupation order. In Japan, the police's response to the domestic violence becomes effective only after violating the protection order by the perpetrator or committing the cases that violate penal laws. Some police officers are still reluctant to open investigations in cases of domestic violence. For example, when the police receive emergency call from injured wife and inspect for inquiry, the offenders try to hide the real situations and explain with fake answers that the informant or injured wife is not in sound mind. Many times police officers accept these explanations and leave. In other cases, domestic violence victims go to the police to file a criminal complaint, but the police are not willing to accept their complaints and ask them to reconsider the situation and force the victims not to complain while disclosing the facts that the victims will be in trouble for their complaints. The Police also urge women who have received compensation through out-of-court settlements to withdraw damage reports.⁸⁰

In the prosecutorial and court response, in the United Kingdom, victimless prosecution can prevent threat or pressures on victims place on them giving evidence in domestic violence cases though the prosecutors face some evidential barriers in cases where the victim does not want to testify. The advantage of this prosecution makes less invasion of the victim's autonomy for withdrawal of the prosecution easily. In Japan, even though it is very easier to obtain protection order for a victim, the criminal prosecutions will not be much easy for criminal assaults or frequent commitment of domestic violence. Moreover, police and judges in Japan are not much eager to bring the full force of criminalization against domestic violence. One more step of the United Kingdom beyond Japan in the Court system is the establishing of the Specialist

Domestic Violence Court. In Japan, the victims may take remedies of suit for divorce from family court or applying a petition for protection order from district court. These courts handle the domestic violence cases as the nature of other ordinary cases. In the United Kingdom, the Specialist Domestic Violence Courts are set up in order to increase judiciary's responsiveness and to deal with domestic violence cases more effectively. Special training is given to those personnel such as police officers; prosecutor and judges who are handle such cases. Therefore, it speeds up the process of the trial and gives the prompt remedies to the victims.

Advocates in both nations are pleased with the gains made through legislation but retain a critical stance regarding some aspects of new law in each instance. In the United Kingdom, some feminists express concern with the decreasing the number of applying protection orders after enacting the new DV Act due to criminalization of the domestic violence. Most, however, applaud the gendered "naming" of the law and its inclusive nature as well the continued commitment of decision makers to supporting it. In Japan the new DV law, with its extremely modest outlay of public resources, is seen as a beginning first step and has been revised for twice. Its limitations are many, including the restriction to couples living together only. The failure to support adequate shelters and to provide for the training of police and judicial personnel means that the DV law lacks the multifaceted approach utilized in the landmark United Kingdom legislation.

VI. Reasonable Legal Scheme for Myanmar

Agencies and governments acknowledge that violence takes place in families. Yet all too often violence in families is considered as a 'misdemeanor' that takes place between adults at times of tension or stress. Many see it as being a matter of concern or action by those in the intimate relationships and family networks affected, and not by police or legal services. Until extreme acts of physical violence take place, that may indeed involve the police, many family members, neighbors and friends will look the other way. Perpetrators may be ignored as irredeemable, while those experiencing violence may be encouraged to leave regardless of their social, economic or psychological well-being.⁸¹

The recognition of domestic violence as a human rights violation gives rise to state obligations to address it. First, states are obligated to put in place zero-tolerance policies on domestic violence, thereby ensuring no impunity for perpetrators of violence. Second, states should revoke laws and policies that either perpetuate or condone domestic violence. Furthermore, they should enforce equality standards in all spheres, particularly with regard to equal entitlements within the family to reduce vulnerability to violence. Third, states are obligated to take special measures to prevent and respond to incidents of domestic violence. This

should also include measures to increase access to speedy and effective justice as well as access to support services. Access to support services is crucial in creating an enabling environment that sustains survivors of violence when navigating the justice system.

Although there is little information about the extent of domestic violence throughout the world, available research indicates that there is no country in which there is an absence of domestic violence. Like other countries, Myanmar is not escaped from the effects of domestic violence. Being aware of this danger, most of the countries have been trying to enact some laws and making legal reforms. Unlike them, Myanmar has no specific or particular law for the domestic violence. Conventional laws, such as penal code, customary law, criminal and civil procedure code, are running for it.

All countries in the ASEAN region have either acceded to or ratified CEDAW, hence they are obliged to treat domestic violence as violation of human rights and to incorporate international standards into domestic legislation. Until now, eight out of the ten countries in the ASEAN region have enacted special laws and provisions on domestic violence. The countries that do not have any laws on the issue are Brunei Darussalam, and Myanmar. Most countries have either enacted laws or effected amendments to existing laws in the period of 2004-05. Although Myanmar has signed the CEDAW since 1997, the specific law for domestic violence has not come out yet.

While the United Kingdom and Japan have striking differences, they also share many similarities. Therefore, we have to learn from these experiences on the most suitable legal scheme for Myanmar. Here, it has to be viewed whether the laws in the United Kingdom and in Japan are in conformity with “A Framework for Model Legislation on Domestic Violence”⁸², which provides valuable guidance on the provisions that should be included in domestic violence legislation.

First, the laws should be scrutinized in complying with international standards sanctioning domestic violence. Both the laws in the United Kingdom and in Japan fundamentally recognize the rights to equality provided in the Universal Declaration on Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The laws in both countries take account on domestic violence as gender-specific violence directed against women, occurring within the family and within interpersonal relationships and also recognize that domestic violence constitutes as a serious crime against the individual and society.

Secondly, whether these laws in the United Kingdom and in Japan create wide range of flexible and speedy remedies are also to be checked. The Act (the Domestic Violence, Crime and Victims Act 2004) in

the United Kingdom is intended to introduce reform to civil and criminal law in the areas of domestic violence by criminalizing the breach of non-molestation orders and restraining orders; by making common assault an arrestable offence. The Act also introduced a new offence of causing or allowing the death of a child or vulnerable adult. Likewise, in Japan, the law (Law on Prevention of Spousal Violence and Protection of Victims 2001, which was amended in 2004 and 2007) allows courts to issue restraining and evicting orders against abusers. The ones who violate these orders may be convicted both imprisonment and fine. Amended provisions also cover not only to victims but also to victim's relatives or others. Comparing these laws, the law in the United Kingdom more tends to give speedy or prompt action in criminalizing against abusers rather than Japan. Though the range of flexible is not much different from each other, the new provision relating to "causing or allowing death of a child or vulnerable adult" in the United Kingdom seems to be wider than the range of domestic violence.

Thirdly, in establishing departments, programmes, services, protocols, and duties to aid survivors, the Japan was found in making more efforts to offer the social services for spousal violence's victims while the government of the United Kingdom was trying to establish special courts for handling the domestic violence cases.

In the ability of law enforcement officers to assists complainants and to enforce the law effectively in both countries, the United Kingdom is a little more reached in the position than Japan. Likely, the practice in the United Kingdom seems to be more practical in training judges to be aware of this issue and in training counselors to support police, judges and the survivors of domestic violence to rehabilitate perpetrators of domestic violence. Both countries are found that they were ignoring the standing of rehabilitation for perpetrators while they are emphasizing for the protection of victims.

In developing the greater understanding within the community of the incidence and causes of domestic violence and encouraging community participation in eradicating domestic violence, the difference between the two countries are not much different. But one of the points to consider is that the amount of filing criminal cases for breach of protection orders was getting low after promulgating the DV law in the United Kingdom while the filing cases in Japan was increasing after enacting new law. But the research has to be made carefully for grounding of this issue.

Many ASEAN countries, formally linked to tradition and structured on patriarchy, have made significant progress in adopting an official policy of zero tolerance for domestic violence. These countries have demonstrated a commitment to equality and non-discrimination on the grounds of sex; however, this

guarantee is not necessarily reflected in legislation and special measures because the majority of the laws are not gender specific. The UN Framework for Model Legislation on Domestic Violence recommends the recognition of domestic violence as a “gender specific” form of violence “*directed against women, occurring within the family and within interpersonal relationships.*”

Myanmar certainly does need the new enactment for domestic violence. It does not mean that the current legal provisions are not effective. But these laws do not reach the scope of domestic violence at present. Myanmar has enacted the anti-trafficking in persons law for one part of protection for domestic abuse of women. Law for domestic violence has not been enacted yet. The future domestic violence law should include in the statement of objectives reference to international treaties and laws, which recognize explicitly that domestic violence constitutes a breach of human rights, particularly the right to equality and the right to life. Further, a comprehensive definition of “domestic violence” will provide a strong basis for the law. This will determine broader prevention and education programmes aimed at changing societal attitudes and behavior of individuals, including state and non-state actors.

Thus, the most suitable law for protection of domestic violence in Myanmar should address specific cultural manifestations of violence. Complain mechanisms should be easily accessible, provide immediate protection to the complainant and ensure access to support services. Pre-litigation measures should aim to immediately stop violence. Emergency orders should be available prior to the issuance of a court order to immediately prevent future acts of violence. Access to information on rights and assistance to initiate legal processes are essential to facilitating access to justice. Assisted alternative dispute resolutions at the pre- and post-litigation stages should be attempted only if there is a guarantee of non-violence. In court proceedings, it is advisable to elaborate on reliefs available under the law to aid to judges in deciding the nature of orders to be granted. Providing timelines for disposing complaints and applications filed under the laws will ensure speedy processes. Making the violation of court orders a punishable offence will aid their enforcement. The Law should mandate institutionalized, regular training and education of police officers, prosecutors, judiciary, social workers and public officials in protecting survivors of domestic violence and preventing further acts of violence. Public awareness campaigns of violence against women are an important measure to eliminate violence and change social attitudes.

While the United Kingdom and Japan including ASEAN countries have made progress in addressing domestic violence through their public policies, there is still an urgent need to implement Domestic Violence Response Systems in the region. The Domestic Violence Response System must be understood from

the perspective that a woman facing violence in intimate relationships is in need, not only of legal remedies, but of a multiplicity of services that provide her a support system. A clear focus on the woman and her safety must be the foundation of any good practice initiative. It can be concluded that not all laws provide specifications on the kind of orders that may be granted by courts. This gives wide discretion to those with the power to grant orders. It is better to include more specific provisions as it would assist the judiciary in making decisions.

Conclusion

Domestic violence is a particularly tragic affair for a number of reasons. First, it occurs between people who have had close intimacy at one time or another. Second, violence towards any human being is intolerable. Third, domestic violence damages the children in the family. Once it was considered as a family or private matter that is not much concerned with society. Due to extensive research in the field, domestic violence is now a recognized social problem in most of the countries in the world and become important issue on governments' agendas. Domestic violence can no longer be ignored, least of all by legislators and those who have to deal with the daily consequences, such as the police and other criminal justice agencies. The elimination of domestic violence requires the establishment of socioeconomic systems for women including revisions to the social security and legal system. No one can deny that legal responses take part a crucial role in preventing and taking action on the domestic violence.

A domestic violence victim now has a number of options within both criminal and civil law to pursue legal action against his or her abuser. Despite such advancement, the current shapes of domestic violence laws leave much to be desired. States must find the middle ground of measures targeting domestic violence that will both respect the needs and rights of a victim and preempt or punish abusers, while always conveying the message that domestic violence is not acceptable and cannot be tolerated.

Both the United Kingdom and Japan have enacted their respective domestic violence related laws just a decade ago. Although the titles of their laws are different each other, the main objective is almost the same aiming at giving the best protection for victims and taking action against perpetrators of the domestic violence. Several measures are being taken by these governments as far as they can. But to eliminate this problem in wiping out from the human society is still far from the victory. The governments need to watch out with caution all the time to implement fully the objective of the law.

In Myanmar, the present legal framework provides no specific measures to prevent domestic

violence or to render timely protection for battered women. Deficiencies in legislation, social responses and lack of public awareness have hindered the development of an effective campaign against domestic violence. The pervasive nature of the problem calls for urgent and effective steps to eliminate its incidence. It would be valuable to use the national inter-departmental domestic violence committees to scrutinize forthcoming and existing legislation for its likely impact on women experiencing all forms of violence. This may help to avoid the problems that have arisen in the past from introducing major pieces of legislation without considering their unintended secondary impact. To effectively control, prevent and eliminate the epidemic of domestic violence in Myanmar, it has to be built up a comprehensive legislative framework that incorporates criminal sanctions, civil remedies, administrative measures and preventive mechanism in accordance with guideline principles of international documents.

While it has to be argued that the legal system can provide some protection of women and challenge to men, we must be mindful of the limits of the law; only a small portion of men reach the courts, only a tiny proportion of violent incidents reach the courts. Complementary remedies are also essential and should be based in the community, where the offences occur, rather than relying solely on the formal, institutional power of the legal system. More consideration is needed of preventative strategies and the potential for informal, proactive, community responses to domestic violence that take the burden of responsibility away from women victims. There is scope for further research about the ways in which these communities interface with institutions to challenge and sanction men who use violence, and support and protect women who experience it. The legal system is just one aspect of this essential wider social response.

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