

Evaluating the Efficacy of the Existing Policy and Framework for Safeguarding Women's Social Rights in the Prevention of Domestic Violence

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Abstract

In recent times, a surge in domestic violence cases, has been observed in Malaysia. Consequently, a comprehensive understanding of current Malaysian and international policies/frameworks becomes imperative for safeguarding women's social rights and preventing domestic violence. Employing qualitative research methods, including content analysis, this paper aims to identify the efficacy of the existing policy and framework based on Malaysian and International law for safeguarding women's social rights in the prevention of domestic violence. The findings reveal that, despite numerous policies/frameworks established by international and Malaysian law to address domestic violence against women, instances continue to rise, and women persistently endure as victims. As a recommendation, it is proposed that the government enhances the efficacy of available mechanisms and frameworks, enabling women to realize their rights, responsibilities, and the protection afforded to them, ultimately addressing the issue of domestic violence in Malaysia.

Keywords: Malaysian law, International law, women's social rights, prevention domestic violence.

1. Introduction

The issue of domestic violence against women is widespread and influenced by cultural norms, religious beliefs, and socio-economic factors (Oram et al., 2017). Women in societies dominated by patriarchy and rigid gender norms often find themselves lacking the necessary means to protect against violence from their partners (Mshweshwe, 2020). In numerous instances, perpetrators of domestic violence perceive their actions as the exercise of rights and the maintenance of familial order (Mshweshwe, 2020). Recognized as a violation of fundamental human rights, domestic violence implicates rights such as the right to life, physical and mental well-being, equal protection under the law, and freedom from discrimination. International law, as represented by instruments like the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Beijing Declaration and Platform for Action, and the 2030 Agenda for Sustainable Development, plays a crucial role in addressing this issue.

An essential aspect is understanding the current policies and frameworks designed to protect women's social rights in preventing domestic violence, as various governmental measures have been implemented to address this problem (Ackerson & Subramanian, 2008). Additionally, an exploration of the alignment of these policies with principles of gender equality and human rights, including the Islamic legal principle emphasizing the right to love and affection within the family, is necessary. This examination will also shed light on the need for

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further discussions and guidelines to address psychological and emotional abuse, which fall within the broad spectrum of domestic violence but lack clear parameters for evaluation (Htun& Weldon, 2012). Consequently, this paper aims to assess the effectiveness of the existing policies and frameworks based on Malaysian and International law in safeguarding women's social rights in preventing domestic violence, particularly in the context of Malaysia.

2. Research Methodology

This qualitative research employs a combination of content analysis and non-doctrinal analysis, commonly known as social-legal research. The non-doctrinal analysis, drawn from diverse disciplines, is utilized to gather empirical data that addresses research inquiries, encompassing issues related to problems, policies, or reform within the current legal framework. This approach enables researchers to analyze the law through the lens of other scientific disciplines, integrating these perspectives into the evolution of legal frameworks. Conversely, content analysis entails a comprehensive review of relevant literature, while doctrinal analysis concentrates on the examination of materials, including statutory provisions.

3. Literature Review

The pervasive issue of domestic violence against women necessitates effective policies and frameworks to safeguard their rights and prevent harm. This literature review seeks to assess the effectiveness of existing policies and frameworks in protecting women from domestic violence, focusing specifically on Malaysian and international law.

Several relevant references provide valuable insights into this topic. For instance, Ahmad et al. (2022) emphasize the importance of examining the economic empowerment of women in Malaysia to preserve their social rights in the face of domestic violence. This aligns with the need to assess the effectiveness of policies in protecting women's economic and social rights. One notable source, Hirschel&Buzawa (2002), delves into the context of dual arrest in domestic violence cases and provides guidance for future research. They emphasize the national trend towards arrest as the preferred police response, influenced by political pressure and legal actions from women's groups. Mears (2003) contributes a conceptual framework for practitioners and policymakers to comprehend and evaluate efforts aimed at reducing revictimization in domestic violence cases, emphasizing the significance of evaluation research and improved data. Levendosky (2003) explores the impact of domestic violence on the maternal-child relationship and preschool-age children's functioning, revealing positive direct effects on parenting effectiveness and attachment.

Stevenson and Wolfers (2006) examine the influence of divorce laws on family distress, including domestic violence, suggesting that changes in divorce laws can contribute to a decline in domestic violence. Robinson &Spilisbury (2007) conduct a systematic review on the perceptions and experiences of adult victims of domestic violence when accessing health services. Parson (2009) provides insights into the relationship between intimate violence and governmental structures, shedding light on the complexities of addressing domestic violence.

Douglas & Walsh (2010) explore the intersection of domestic violence, mothers, and child protection, emphasizing women's active pursuit of safety for themselves and their children. Colombini (2011) analyzes the development and national scale-up of the One Stop Crisis Centre (OSCC) policy in Malaysia. Htun& Weldon (2012) examine the role of feminist mobilization in shaping policy development to combat violence against women, emphasizing the need for progressive policy change.

Dichter&Gelles (2012) examine women's perceptions of safety and risk following police intervention for intimate partner violence, revealing the complex dynamics of women's experiences. Ramsay (2012) highlights the insufficient skills of healthcare professionals in identifying and responding to women experiencing domestic violence, emphasizing the need for improved training.

Othman (2013) examines barriers faced by women when discussing abuse with healthcare providers, emphasizing the importance of creating a safe and supportive environment for victims. Arnold & Slusser (2015) explore the impact of nuisance property laws on battered women. Barrow (2016) investigates the relationship between gender, violence, and the state in Asian societies.

Kuskoff&Parsell (2020) critically analyze representations of gender in "progressive" domestic violence policy, highlighting the limitations of gender-neutral policies. Ahmad (2021) explores the application of reconciliation in Muslim divorce cases caused by domestic violence within the framework of Islamic and Malaysian law. Chernikov&Goncharenko (2021) conduct a comprehensive international legal review of approaches to qualifying acts of violence against women and domestic violence. Furthermore, Abashidze &

Goncharenko (2022) discuss different approaches to understanding the term “gender” in protecting women from violence and domestic violence, shedding light on international legal acts in this area. This is crucial in evaluating the alignment of existing policies with international legal standards.

Moreover, Caragnano (2017) analyzes a convention that creates a comprehensive legal framework to protect women against all forms of violence, including domestic violence. This provides a basis for evaluating the adequacy of existing policies in addressing various forms of violence against women. Additionally, Onyemelukwe (2018) highlights the gaps in extant legislation aimed at protecting women within domestic relationships, indicating the need for a thorough evaluation of the current legal framework (Arowolo, 2020). argues for the enforcement of anti-discrimination laws to adequately protect women from violence, emphasizing the importance of legal enforcement in safeguarding women's rights.

Furthermore, Demir (2021) discusses the European Court of Human Rights' engagement with international human rights instruments in cases of domestic violence, offering insights into the legal aspects of protecting women from domestic violence (Sopacua, 2021). provides a definition of domestic violence and the corresponding legal regulations, which can be used as a benchmark for evaluating the effectiveness of existing laws in addressing domestic violence.

Turning to the Malaysian legal landscape, the examination of recent literature reveals a complex interplay of legislative measures aimed at curbing domestic violence. The Domestic Violence Act and other relevant legislations have been scrutinized in studies assessing their implementation and efficacy in safeguarding women's social rights. Mohammed (2021) reflects on domestic violence during the Movement Control Order in Malaysia, examining media reports. Yusof (2022) examines the impact of the COVID-19 pandemic on domestic violence crises and women's health. Suprobowati (2023) examines the implications of policy implementation, emphasizing the importance of addressing sexual violence within the context of gender studies.

The importance of studying the efficacy of existing policies and frameworks for safeguarding women's social rights in preventing domestic violence in international and Malaysian law lies in the critical need to address the pervasive issue of domestic violence and its impact on women's well-being. On the other words, the assessment of the effectiveness of existing policies and frameworks for safeguarding women's social rights in preventing domestic violence, within the realms of both international and Malaysian law, constitutes a critical inquiry in contemporary legal scholarship. International legal frameworks, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Istanbul Convention, underscore the importance of comprehensive strategies in addressing domestic violence against women. Research has shown that lower socioeconomic status and stressful life events are associated with domestic conflict (Ceballo, 2004). Additionally, domestic violence has been linked to adverse reproductive, psychosocial, and child health outcomes, highlighting the urgency of effective policy interventions (Krishnan et al., 2012). Understanding the factors influencing policy outcomes, such as macro-level institutional features and political factors, is crucial in shaping effective domestic violence policies (Franceschet, 2010). Furthermore, the relationship between domestic violence and organizations sustains gender inequality, emphasizing the need for policies that address this intersection (Wilcox et al., 2020). The implementation of policies and laws, such as one-stop crisis centers, can significantly impact the response to intimate partner violence, underscoring the importance of policy guidance and financial resources (Colombini et al., 2011). Moreover, international feminist scholarship has emphasized the benefits of approaching domestic violence policy through a gendered lens, highlighting the need for gender-sensitive policy frameworks (Kuskoff&Parsell, 2020). The legal and human rights discourse has also played a significant role in addressing violence against women, emphasizing the importance of international standards and legislative resolutions (Onyemelukwe, 2018). Additionally, the COVID-19 pandemic has brought to light the correlation between lockdown measures and domestic violence, necessitating preventive measures and legal frameworks to address this issue (Danyal& Mujtaba, 2021).

Therefore, it can be concluded that the evaluation of the efficacy of existing policies and frameworks for safeguarding women's social rights in the prevention of domestic violence in international and Malaysian law requires a comprehensive analysis of economic empowerment, gender perspectives, legal enforcement, and international legal standards.

4. Result and Discussion

Domestic violence, as recognized by international organizations and national laws, encompasses a range of behaviors aimed at exerting power and control within intimate relationships. The United Nations defines it as “a pattern of behavior that includes physical, sexual, emotional, economic, or psychological actions or threats to influence another person.” This definition underscores that domestic abuse can affect anyone, irrespective of race,

age, sexual orientation, religion, or gender, and it occurs in various relationship settings, including marriage, cohabitation, and dating. Victims can include not only intimate partners but also children, other relatives, or household members, reflecting the pervasive nature of this issue. Domestic violence often escalates in frequency and severity, potentially resulting in serious physical harm or even death.

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, serves as the cornerstone of international human rights law. It asserts the universality of basic rights and freedoms inherent to all individuals, irrespective of their background. Article 2 of the UDHR emphasizes equality, emphasizing that no distinctions should be made based on race, color, sex, religion, or other factors. Additionally, Article 3 underscores the right to life, liberty, and security of the person. Importantly, Article 6 outlines the right to marry and found a family, emphasizing equality within marriage and recognizing the family as a fundamental unit of society.

The United Nations has been at the forefront of promoting gender equality and women's rights since its inception. The Commission on the Status of Women, an intergovernmental body, and landmark agreements such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Beijing Declaration and Platform for Action have been instrumental in advancing this cause. The Convention's definition of discrimination encompasses violence directed against women because of their gender, including acts causing physical, mental, or sexual harm. Articles 2 and 3 of CEDAW obligate states to eliminate discrimination and take measures for the advancement of women in all fields.

The Beijing Declaration and Platform for Action, adopted in 1995, reinforces the principle that "women's rights are human rights." Paragraph 23 of the Declaration highlights the commitment to ensuring the full enjoyment of human rights for women and taking effective action against violations, including violence against women and girls.

The 2030 Agenda for Sustainable Development, adopted in 2015, presents a comprehensive framework for sustainable development. Under SDG-5, the 'gender goal,' the aim is to eliminate all forms of violence against women, including trafficking and exploitation. SDG-16 addresses violence against women indirectly by promoting peaceful and inclusive societies. Specific targets, such as 5.2, 5.3, 16.1, and 16.2, explicitly target violence against women, recognizing its detrimental impact on development and well-being. The SDGs give prominence to the prevention of violence against women, recognizing it as a multifaceted issue with economic, social, political, and ecological dimensions. The SDGs offer a holistic framework to address and mitigate violence against women and acknowledge the preventability of gender-based violence.

In the context of Malaysia, legislative measures have been put in place to address this grave concern and protect the rights of women. This article delves into the Malaysian legal framework for preventing domestic violence, focusing on the Domestic Violence Act 1994 (Act 521) and the Islamic Family Law (Federal Territory) Act 1984 (Act 303). It is essential to understand how these laws operate, their implications, and how they contribute to the broader international efforts to combat gender-based violence.

According to the Malaysian Women's Aid Organisation, domestic violence in Malaysia is similarly described as a pattern of violence, abuse, or intimidation used to control or maintain power within intimate relationships. The organization highlights various forms of domestic violence, including physical, emotional, psychological, sexual, social, and financial abuse. Abusers frequently employ multiple forms of abuse to instill fear and coerce their partners into compliance. This can manifest as physical beatings or mental torment, with battered spouses often suffering at the hands of their enraged partners.

Notably, Malaysia ratified CEDAW with reservations to certain articles, citing compatibility issues with Shari'ah law and the Federal Constitution of Malaysia. However, the withdrawal of some reservations in 1998 and 2010 demonstrates a commitment to aligning national laws with international standards.

In Malaysia, the Domestic Violence Act 1994 (Act 521) legally defines domestic violence. Prior to the enactment of the Domestic Violence Act 1994, victims of domestic violence in Malaysia had limited legal recourse. This Act marked a significant shift in legal protection for individuals facing domestic violence. It applies to all persons in Malaysia and falls under the jurisdiction of the Ministry of Women, Family and Community Development. The Act introduced several critical provisions to safeguard victims' rights and punish offenders.

This Act outlines various acts that constitute domestic violence, including causing physical injury, compelling victims through force or threat to engage in unwanted conduct, confining or detaining victims against their will, causing property damage, and inflicting psychological abuse. The Act extends its protections to children, incapacitated adults, and other family members, emphasizing the all-encompassing nature of domestic violence.

Under the Domestic Violence Act 1994, offenses related to domestic violence are deemed seizable. This means that the law treats domestic violence as a criminal case, allowing for the prosecution of offenders. Offenders can be held liable under specific sections of the Penal Code, such as:

Section 323: Voluntarily causing hurt.

Section 324: Voluntarily causing hurt using dangerous weapons.

Section 325: Voluntarily causing grievous hurt.

Section 326: Voluntarily causing grievous hurt with dangerous weapons.

Section 334: Voluntarily causing hurt on grave and sudden provocation.

Section 335: Voluntarily causing grievous hurt on grave and sudden provocation.

Furthermore, an amendment to the Malaysian Penal Code in 2014 introduced stricter penalties for individuals who cause harm within domestic settings. Section 326A empowers the court to impose double the maximum term of punishment for such offenses.

The Domestic Violence Act 1994 provides a range of remedies for victims. These include:

Emergency Protection Order (EPO): Issued swiftly, this order aims to provide immediate protection for victims without requiring a police report.

Interim Protection Order (IPO): Issued by the court during investigations of domestic violence offenses.

Protection Order (P.O.): Restrains the perpetrator from using violence against the complainant, child, or incapacitated adult. Additional orders: May include provisions for exclusive occupation, restraining the offender from specific areas, or permitting the victim to collect personal belongings. Compensation and Counseling: Section 10 of the Domestic Violence Act 1994 allows victims of domestic violence to claim compensation for personal injuries, property damage, or financial loss incurred as a result of the violence. This compensation considers factors such as medical expenses, loss of earnings, and necessary expenses incurred when separating from the offender. Encouraging Reporting:

The Act encourages individuals who suspect domestic violence to report it to enforcement officers. Reporting is safeguarded against defamation claims when done in good faith. However, in 2017, the Domestic Violence (Amendment) Act 2017 (Act A1538) expanded the definition of domestic violence under the principal Act. This amendment introduced new elements, such as dishonestly misappropriating the victim's property, threatening the victim with the intent to cause fear for safety or property, and using electronic means to insult the modesty of the victim. These additions reflect the evolving nature of domestic violence, which now includes financial exploitation and electronic harassment as recognized forms of abuse.

Apart from that, Islamic law governs family matters in Malaysia, including marriage, divorce, maintenance, and related issues. Section 127 of the Islamic Family Law (Federal Territory) Act 1984 stipulates that ill-treatment or cheating of a wife is an offense punishable by fines or imprisonment. Section 52(1)(h) further grants women the right to seek dissolution of marriage or fasakh due to cruelty or mistreatment by their husbands. This legal framework is consistent with Islamic legal principles emphasizing the right to love and affection within families, particularly for women who should be treated with respect and protected from aggression. However, the inclusion of psychological and emotional abuse within the Act highlights the need for further discussion. Guidelines and parameters for evaluating psychological and emotional abuse against women are currently lacking, indicating the importance of ongoing efforts to address this multifaceted issue comprehensively.

It is asserted that numerous policies and frameworks, both from international and Malaysian legal perspectives, aim to address the challenges of domestic violence against women. Despite these efforts, the incidence of domestic violence continues to rise, with women persistently experiencing its detrimental effects. While various international legal instruments are in place, their effective implementation remains uncertain, particularly in terms of empowering individual communities and considering local and regional history, political structures, administrative systems, and traditions (Morgaine, 2007). Although specific global statistics on domestic violence during the COVID-19 pandemic are unavailable, the World Health Organization (WHO) (2022) asserts that domestic violence levels have increased worldwide, particularly in the Eastern Mediterranean Region, parallel to the surge in Covid-19 cases. WHO estimates that one in three women globally experiences physical or sexual abuse, often at the hands of an intimate partner, making it the most pervasive and underreported human rights abuse.

The prevalence of violence against women in the region has escalated to the second-highest globally (37%) due to the influx of refugees and political and socio-economic instability. Notably, in Colombia during the lockdown, reported domestic violence incidents increased significantly (150%), leading to the tragic murder of 169 women for the same reason. This distressing trend is not confined to specific regions but is also evident in

advanced countries like the United States, Canada, United Kingdom, France, China, and Australia (Almeron, 2020; Taub, 2020). In the period from 2000 to 2018, Malaysia recorded a substantial total of 153,507 cases encompassing family abuse, assault, mistreatment of domestic help, maltreatment of children, disrespect for decency, and sex crimes (Suprami, 2023). Notably, police statistics reveal a reported total of 19,268 cases of domestic violence between 2020 and 2022 (MalaysiaKini, 2023). During the Covid-19 pandemic, the former Women, Family, and Community Development Minister Datuk Seri Rina Harun disclosed in Parliament that there were 5,657 reported domestic abuse cases in 2019, increasing to 5,260 in 2020, followed by 7,468 cases in 2021 and 6,540 cases in 2022 (MalaysiaKini, 2023). Notably, there was a concerning 57% surge in reported domestic violence cases from January 2020 up to March 26, 2020 (TharanyaArumungam, 2020). Additionally, between March 1 and 17, 2020, the Women's Aid Organisation (WAO) received an average of 10.5 calls and inquiries daily, increasing to 12 cases per day from March 18 to March 31, 2020. The Women's Centre for Change (WCC) in Penang extended its crisis counseling hours, receiving 14 calls during the first week of the Movement Control Order (MCO) (March 18–24, 2020), escalating to 36 cases during the second week (Mohammed, Uddin, Saidi, 2021).

According to the Royal Malaysia Police (PDRM) statistics for January to December 2020, a total of 5,260 domestic violence cases were investigated. The Ministry of Women, Family and Community Development (MWFCD)'s Talian Kasih received 2,540 domestic violence cases during the same period. Additionally, for the first four months of 2021 (January to April), 902 domestic violence cases were reported (Arifin, 2021). Furthermore, in 2021, the police reported and opened investigation papers for 7,468 cases of domestic violence which showed an increase of 42% compared to the 5,260 cases reported in 2020. Additionally, Talian Kasih 15999 received a total of 3,028 calls related to domestic violence from January to December 2021, with 974 of them categorized as formal reports (Povera, 2022). Recently, Malaysia recorded a total of 3,640 domestic violence cases from January to August 2023. While this reflects a slight decrease from the previous year, Women, Family and Community Development Minister Datuk Seri Nancy Shukri emphasized that the number remains alarmingly high. According to statistics from the Royal Malaysian Police, the total cases of domestic violence in Malaysia from 2020 to August 2023 reached 22,908, with 6,540 cases reported in 2022 (Hady, 2023).

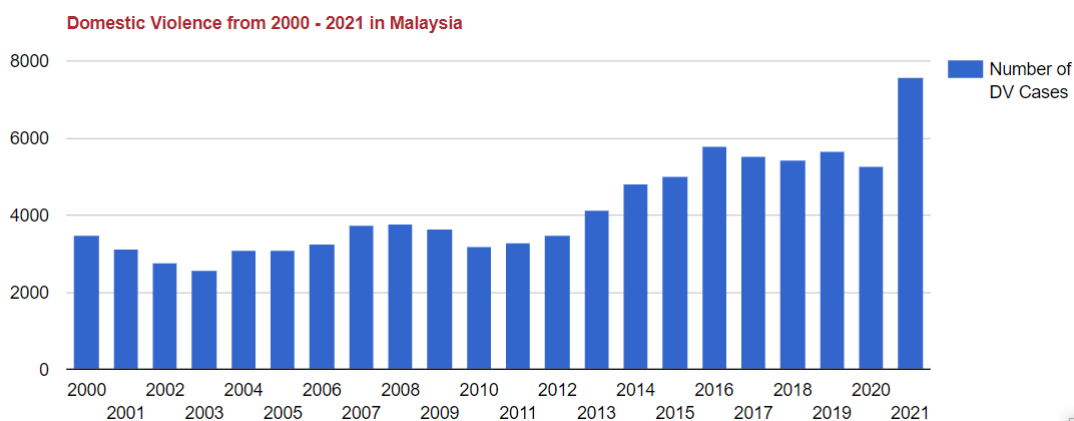


Figure 1: Number of Domestic Violence Cases from 2000 – 2021 in Malaysia (Sources from Women's Aid Organisation and Royal Malaysia Police)

Regrettably, with the announcement of the Movement Control Order (MCO) in March 2020, the MWFCD initially declared the termination of Talian Kasih hotline activities, along with other non-essential services. Subsequently, due to criticism, the Minister affirmed that the hotline services would continue. However, the status of government-run and non-government organization (NGO) shelters during the early MCO phase remained unclear. The Recovery Movement Control Order (RMCO), announced in June 2020, compelled some NGO shelters to either remain open or operate at reduced capacity.

Reports indicate that Emergency Protection Orders (EPO) and Interim Protection Orders (IPO) were still available, but survivors were sometimes advised to return after the MCO period or were turned away from police stations. Obtaining a court-issued IPO during reduced court activities posed challenges, and survivors received conflicting information about eligibility and the waiting period for an in-person court appearance. Consequently, Women's Aid Organisation (WAO) requested the Government to inform survivors about obtaining EPOs issued by the Department of Social Welfare (WAO, 2020). Furthermore, to address the issue of domestic violence in Malaysia, the Ministry of Women, Family and Community Development established the Waja Squad in 2021, which currently boasts a membership of 328,558 individuals. Among these, 253,973

members, or 77.3%, are women, while 74,585 members, constituting 22.7%, are men. The Waja Squad serves as a catalyst for change in combating violence against women within communities, fostering a society that promotes mutual assistance and harmony, raising awareness about violence against women, and imparting effective strategies for its prevention. Since its inception, the Waja Squad has organized a total of 1,012 psychosocial programs in communities across Malaysia, impacting a total of 72,942 participants positively (The Star, 2023). Additionally, findings from the National Health and Morbidity Survey 2022, conducted by the Institute of Public Health (IKU) under the Ministry of Health, indicate that over two-thirds of children in Malaysia have been exposed to violent punishment, and nearly 500,000 women in the country have experienced partner-inflicted violence (Ova, 2023).

In light of the aforementioned challenges and the persistent increase in domestic violence cases, it is imperative to strengthen the existing strategy for combating domestic violence, as there are no evident gaps or weaknesses in the current legal frameworks.

6. Conclusion and Recommendations

In summary, various manifestations of domestic violence primarily involve physical harm, such as threats of injury, causing physical harm, coercive engagement in sexual conduct, confinement or detention of the victim, and inflicting damage to property. Amendments to the Act have been proposed to encompass limited forms of psychological and emotional abuse as well as financial loss, ensuring a broader scope in addressing the complexities of domestic violence. Recognized in international law as a violation of human rights, domestic violence gained explicit attention through instruments like the Universal Declaration of Human Rights (UNDHR), CEDAW, the Beijing Declaration and Platform for Action, and the 2030 Agenda for Sustainable Development. Moreover, the Malaysian Government acknowledges domestic violence as a grave public concern, leading to the enactment of the DVA, which is complemented by the provisions of the Penal Code. Additionally, women's social rights in preventing domestic violence are enshrined in the Federal Constitution and the Islamic Family Law (Federal Territories) Act 1984. Numerous frameworks and legal policies are in place, yet instances of domestic violence remain persistently high, escalating each year. Since there are no evident gaps or shortcomings in the current legal frameworks, the conclusion is that the prevailing strategy to address domestic violence cases needs to be reinforced.

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6.2 Paper Contribution to Related Field of Study

This study presents a new finding related to the issue of women's domestic violence. The research reveals that there are numerous policies/frameworks outlined by international and Malaysian law to address the problem of domestic violence against women. However, despite the existence of these policies, the incidence of such cases continues to rise, and women persistently endure as victims of domestic violence.

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