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Wing Cheong CHAN

Singapore Management University, wchan@smu.edu.sg

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A Review of Civil Protection Orders in Six Jurisdictions

Wing-Cheong Chan*

ABSTRACT

Traditional criminal and civil remedies are inadequate responses against the problem of domestic violence. The criminal justice system requires allegations to be proven beyond reasonable doubt, the focus is on punishment for past acts instead of prevention of violence from recurring, and the existing criminal offences do not fully cover the range of undesirable conduct. As for the civil justice system, the court processes take too long and are often incomprehensible to litigants-in-person, and there are no clear penalties imposed by the law even if an injunction is awarded by the court. In order to provide victims of domestic violence with the protection that is needed, jurisdictions from around the world have sought to fill the gap by enacting a separate scheme of protection orders to prevent acts of domestic violence from occurring. This article surveys the laws in six different jurisdictions (Singapore, Malaysia, Hong Kong, India, Taiwan, and New South Wales) to discern the different scope of the orders in these jurisdictions, the criteria for application and penalties for breach, and so on. Some key issues are identified in this comparative review of the protection order legislation which hopefully can be considered in future law reform.

INTRODUCTION

Even though some groups of women may be at a higher risk of domestic violence, it is well known that violence against women by their husbands or intimate partners occurs in all parts of the world, regardless of age, religion, socio-economic background, culture, and ethnicity.¹ In a World Health Organization survey of over 24,000 women carried out in 15 sites across 10 different countries, it was found that between 15 and 71 per cent of ever-partnered women reported physical or sexual violence, or both, by an intimate partner at some point in their lives. Most sites reported prevalence rates between 30 and 60 per cent. One of the conclusions made by the authors of the survey

* Associate Professor, Faculty of Law, National University of Singapore. I wish to thank Anne Scully-Hill (Faculty of Law, The Chinese University of Hong Kong) and Sam Garkawe (School of Law and Justice, Southern Cross University) for their encouragement and comments on an earlier draft of this article. I am also grateful to Norbani Mohamed Nazari (Faculty of Law, University of Malaya) for information on points of Malaysian law. Their comments have helped to improve the final product immensely. All errors which remain are mine.

¹ EG Krug, LL Dahlberg, JA. Mercy, AB. Zwi and R Lozano *World Report on Violence and Health* (World Health Organization 2002).

is that the results ‘confirm that violence by an intimate partner is a common experience for a large number of women in the world.’²

This article aims to give a broad overview of the civil protection order³ developed in response to domestic violence in six different jurisdictions. The jurisdictions chosen are at different levels of social and economic development, with corresponding differences in terms of gender equality in those jurisdictions. Five of these jurisdictions are common law jurisdictions [Singapore, Malaysia, Hong Kong, India, and New South Wales (NSW) in Australia] and one is a civil law jurisdiction (Taiwan).

Table 1 summarizes the rankings of these countries compared with the rest of the world using a variety of indicators⁴:

Table 1: Profile of the six jurisdictions

Jurisdiction	GDP per capita 2014 (in USD) ⁵	Human Development Index 2013 ranking ⁶	Gender Inequality Index 2013 ranking ⁷	Global Gender Gap 2014 ranking ⁸	State of the World’s Mothers 2015 ranking ⁹	The Third Billion Index 2012 ranking ¹⁰
Australia	61,219.16	2	19	24	9	1
Singapore	56,319.34	9	15	59	14	37
Hong Kong	39,871.10	15	*	*	*	32
Taiwan	22,597.73	*	*	*	*	*
Malaysia	10,803.53	62	39	107	71	82
India	1626.98	135	127	114	140	115

² C Garcia-Moreno, HAFM. Jansen, M Ellsberg, L Heise and C Watts *WHO Multi-Country Study on Women’s Health and Domestic Violence Against Women* (World Health Organization 2005) at 41.

³ The orders are known by different names in different jurisdictions. In the case of Singapore, they are known as ‘personal protection orders’ and in New South Wales, they are known as ‘apprehended domestic violence orders’. The generic term ‘protection orders’ is used in this article to describe this category of civil orders.

⁴ The asterisk (*) denotes that no information was available for that jurisdiction.

⁵ International Monetary Fund *World Economic Outlook Database*, available online at <https://www.imf.org/external/pubs/ft/weo/2015/01/weodata/index.aspx> (accessed 9 October 2015).

⁶ United Nations Development Programme *Human Development Report 2014* (United Nations Development Programme 2014). This index takes into account life expectancy at birth, education, and gross national income per capita. A total of 187 countries were ranked.

⁷ United Nations Development Programme *Human Development Reports* (Table 5), available online at <http://hdr.undp.org/en/content/table-4-gender-inequality-index> (accessed 9 October 2015). This index is a composite measure reflecting inequality between women and men in reproductive health, empowerment, and the labour market. A total of 151 countries were ranked.

⁸ Hausmann, Tyson, Bekhouche and Zahidi *The Global Gender Gap Report 2014* (World Economic Forum 2014). The Global Gender Gap Index focuses on gender equality in economic, political, education, and health spheres. This index is designed to measure gaps in access to resources and opportunities rather than actual levels of resources and opportunities which are dependent on the state of development of a country. A total of 142 countries were ranked.

⁹ Save the Children *The Urban Disadvantage* (Save the Children 2015). This index uses five criteria: lifetime risk of maternal death, under-5 mortality rate, expected number of years of formal schooling, gross national income per capita, and participation of women in national government. A total of 179 countries were ranked.

¹⁰ Aguirre, Hoteit, Rupp and Sabbagh *Empowering the Third Billion: Women and the World of Work 2012* (Booz & Company 2012). This index measures women’s progress in achieving their full economic potential. A total of 128 countries were ranked.

While Singapore, Malaysia, Hong Kong, India, and Taiwan share many similarities in terms of their Asian background and traditional family structures, they are also different from each other in many different ways, for example in terms of their colonial heritage, religious and ethnic mix, and level of political and social development. Australia may have closer affinities with some of these jurisdictions than the other five jurisdictions among themselves. For example, Australia, Singapore, Hong Kong, Malaysia, and India were once British colonies and many of their laws can be traced to earlier English enactments. The criminal justice system in Taiwan, on the other hand, is based on the German legal system. The central query dealt with in this article is how diverse jurisdictions—represented by the six jurisdictions chosen—have developed the ‘protection order’ to tackle domestic violence.¹¹

For the purposes of this article, the laws examined are:

1. *Women’s Charter* (Cap 353) (Singapore) (‘Women’s Charter’);
2. *Domestic Violence Act 1994* (Act 521) (Malaysia) (‘Domestic Violence Act 1994’)¹²;
3. *Domestic and Cohabitation Relationships Violence Ordinance* (Cap 189) (Hong Kong) (‘Domestic and Cohabitation Relationships Violence Ordinance’);
4. *The Protection of Women from Violence Act 2005* (No. 43 of 2005) (India) (‘Protection of Women from Violence Act 2005’);
5. *Domestic Violence Prevention Act* (Taiwan) (‘Domestic Violence Prevention Act’)¹³; and
6. *Crimes (Domestic and Personal Violence) Act 2007 No. 80* (New South Wales) [‘Crimes (Domestic and Personal Violence) Act 2007’].¹⁴

As will be seen below, there are many similarities in the legislative responses in these different jurisdictions which may not be surprising considering the growing worldwide recognition of domestic violence as an infringement of women’s basic rights and personal safety.¹⁵ What is interesting are the *differences* which remain despite the convergence in the legal remedy chosen.

¹¹ For comparative reviews of the protection order in ‘Western’ jurisdictions, see LG Lerman ‘A Model State Act: Remedies for Domestic Abuse’ [1984] 21 *Harvard Journal on Legislation* 61; P Finn ‘Statutory Authority in the Use and Enforcement of Civil Protection Orders Against Domestic Abuse’ [1989] 23 *Family Law Quarterly* 43; E Schollenberg and B Gibbons ‘Domestic Violence Protection Orders: A Comparative View’ [1992] 10 *Canadian Journal of Family Law* 191; Note, ‘Legal Responses to Domestic Violence’ [1992] 106 *Harvard Law Review* 1498.

¹² Even though Muslims in Singapore and Malaysia are regulated by their own personal law in family matters, the protection order regime in both countries are available to both Muslims and non-Muslims.

¹³ The English version used is the one available on the Laws and Regulations Database of the Republic of China at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0050071> (accessed 9 October 2015). This law is said to have been heavily influenced by US law: X Zhang ‘Taiwan Legal Research Guide’, available online at <http://www.nyulawglobal.org/globalex/Taiwan.htm> (accessed 9 October 2015).

¹⁴ In Australia, married couples are also able to obtain an injunction under the federal *Family Law Act 1975*, but owing to its limitations and difficulties in enforcement, victims prefer to resort to the state or territory legislation.

¹⁵ See, e.g., the *Convention on the Elimination of All Forms of Discrimination Against Women* (UN Doc A/34/46); the *Beijing Platform for Action of the UN Fourth World Conference on Women* (available online at <http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm> accessed 9 October 2015); UN General Assembly Resolutions 61/143 (19 December 2006), 63/155 (18 December 2008) and 64/137 (11 February 2010) ‘Intensification of efforts to eliminate all forms of violence against women’; and *Convention on the Rights of the Child* (UN Doc A/44/49).

One word of caution is that if there are two or more laws dealing with the same subject matter, only the main law dealing with domestic violence will be analysed. For example, in the case of Singapore, the provisions in the *Women's Charter* are now supplemented by the newly enacted *Protection from Harassment Act 2014*¹⁶ where protection orders may also be obtained, but only the former are considered in this article. Another example is that acts of sexual harassment and stalking in India are now recognized as criminal offences¹⁷ as well a basis for an application for a protection order. This approach of examining the jurisdiction's main law only is supportable on the basis that victims and advocates working in this field need a ready resource to turn to rather than provisions scattered in different statutes.

This article takes a 'law on the books' rather than a 'law in practice' approach. What I mean is that regardless of what is stated in the legislation, the local practice may not reflect what is explicitly stated or authorized in the law. For example, the legislation may not specifically state that the court can issue an order to prohibit the respondent from approaching within a certain distance of the victim, but a court may in fact grant this order if it is required in the circumstances to protect the victim. On the other hand, the legislation may in fact grant this power, but the courts may not utilize it. However, it is hoped that this review of the laws will nevertheless identify some key issues in protection order legislation which need to be considered in future law reforms as well as indicate where gaps need to be overcome.¹⁸

FROM PRIVATE TO PUBLIC

The traditional view was that men's violence against their wives and children could be justified on the basis of their disobedience. Blackstone's *Commentaries on the Laws of England* discussed the 'ancient privilege' among the 'lower rank of people' where:

The husband ... might give his wife moderate correction. For, as he is to answer for her misbehaviour, the law thought it reasonable to intrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentices or children; for whom the master or parent is also liable in some cases to answer.¹⁹

¹⁶ No. 17 of 2014. For the operation of this Act, see WC Chan 'The New Offence of "Unlawful Stalking" in Singapore' [2014] 26 Singapore Academy of Law Journal 333; Y Goh and M Yip 'The Protection from Harassment Act 2014' [2014] 26 Singapore Academy of Law Journal 700.

¹⁷ *Indian Penal Code* (Act 45 of 1860), sections 354A and 354D inserted by *Criminal Law (Amendment) Act 2013* (No. 13 of 2013).

¹⁸ For recommendations for 'model' legislation, see R Coomaraswamy *A Framework for Model Legislation on Domestic Violence*, a report by the UN Special Rapporteur on Violence Against Women, its Causes and Consequences (2 February 1996) (Economic and Social Council, E/CN.4/1996/53/Add.2) (available online at <http://www1.umn.edu/humanrts/commission/thematic52/53-add2.htm> accessed 9 October 2015); UN Women *Handbook for Legislation on Violence Against Women* (UN Women 2012). It is unfortunately beyond the scope of this article to deal with the extra-legal factors which may influence a person's decision to seek help. For example, it was found in the WHO survey that between 55% and 95% of women who had been physically abused by their partners had never sought help from formal service providers (such as the police, hospitals, social service agencies or shelters) or persons in a position of authority (such as local or religious leaders), see n 2 above, ch. 9. Hence, even if good laws are passed, effort must be made to overcome barriers to victims seeking help.

¹⁹ W Blackstone *Commentaries on the Laws of England*, Book 1 (Clarendon Press 1765) 432.

Attention to domestic violence gathered pace in the 1970s and 1980s in the West with the rise of feminism. The traditional view was challenged as were other forms of gendered inequality and oppression.²⁰ However, the process of change takes time. For example, the English Court of Appeal ruled as long ago as in 1891 that a husband was not entitled to imprison his wife,²¹ but it was not till 1973 that the same court finally established that a husband can be guilty of the offence of kidnapping his wife²² and 1992 when the House of Lords reversed a long standing common law rule that a husband had immunity from prosecution for rape of his wife.²³ Unfortunately, many forms of violence against women continue to exist around the world, for example female infanticide, honour killings, marital rape, and genital mutilation.

Violence against women is increasingly seen as a public matter as well in other parts of the world. In the case of India, specific offences were created in 1983 and 1986 to focus attention on certain acts of violence committed against a woman by her husband via amendments to the *Indian Penal Code*.²⁴ Section 498A of the *Indian Penal Code* makes cruelty to a married woman by her husband or his family members a criminal offence punishable with imprisonment up to three years and a fine²⁵; while section 304B of the *Indian Penal Code* deems a death of a woman in certain circumstances related to dowry demands to be caused by her husband or his relatives and punishable with imprisonment of between seven years and life imprisonment.²⁶ However, despite these legal provisions, the number of cases classified as ‘dowry deaths’ remains high and had in fact risen in recent years. In 2013, a total of 8083 ‘dowry deaths’ were recorded, as compared to 6208 in 2003.²⁷ ‘Crimes against Women’ such as rape, ‘dowry deaths’, abduction, and molest increased by 26.7 per cent in 2013 from a year ago.²⁸ The true extent of violence against women in India is likely to be far greater, considering that such crimes are known to be under-reported.

Another point to note is that even though Singapore, Malaysia, and India expressly allow Muslim law (and in the case of India, other religious laws as well) to govern some family issues such as marriage and divorce in those religious communities, the

²⁰ K Amirthalingam ‘Women’s Rights, International Norms, and Domestic Violence: Asian Perspectives’ [2005] 27 Human Rights Quarterly 683, 697–98.

²¹ *R v. Jackson* [1891] 1 QB 671.

²² *R v. Reid* [1973] 1 QB 299.

²³ *R v. R* [1992] 1 AC 599.

²⁴ Amended by Act 46 of 1983 and Act 43 of 1986. See also the new offences of sexual harassment and stalking inserted to the *Indian Penal Code* in 2013, see n 17 above, which were passed in the aftermath of the 2012 Delhi gang rape case. The provisions on rape and how sexual allegations are handled were also amended in 2013.

²⁵ It must be noted that ‘cruelty’ is narrowly defined in this section as situations likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb, or health; or harassment with a view to coercing her or persons related to her to provide property or valuable security. See also the corresponding presumptions in sections 113A and 113B *Indian Evidence Act* (Act 1 of 1872) relating to dowry deaths.

²⁶ Subsection (1) provides that:

Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called ‘dowry death’, and such husband or relative shall be deemed to have caused her death.

²⁷ National Crime Records Bureau *Crime in India 2013* (Ministry of Home Affairs 2014) and *Crime in India 2003* (Ministry of Home Affairs 2004).

²⁸ National Crime Records Bureau *Crime in India 2013* (Ministry of Home Affairs 2014).

protection order is still available to those married under religious laws too. No distinction is made in law on the availability of protection orders.

PROTECTION ORDERS

The development of protection orders has been due to recognition that, although much of the behaviour encompassed by the term ‘domestic violence’ may be criminal in nature, the criminal law is unable to satisfy the needs of victims of domestic violence. The adversarial nature of criminal proceedings and requirement of proof ‘beyond reasonable doubt’ make convictions very difficult and thus make such a course of action undesirable to victims. Even where criminal proceedings do result in a conviction, the end result of such proceedings—typically a fine or imprisonment sentence as punishment for past acts—simply does not specifically cater to the victims’ wish for the violence to stop. In fact, making a police report may lead to greater retaliation for the victim. Moreover, if the respondent were charged in court or given a criminal record, he²⁹ may lose his job and be unable to provide for the victim and her family. Police perception of domestic violence as a ‘private’ matter may also lead to a less rigorous enforcement of the criminal law.

Protection orders were developed to remedy this gap.³⁰ They are legally binding orders, which are civil in nature, to grant immediate protection to victims of domestic violence by placing various restrictions on the respondents with the object of preventing any further violence. The primary aim of protection orders is therefore to protect the victim from future harm rather than to punish for past behaviour.

As a civil order, the standard of proof required for obtaining these orders is on a ‘balance of probabilities’. To enhance the accessibility and responsiveness of these orders, it is also possible to apply for these orders *ex parte* on an urgent basis and further protection may be provided to the victim by evicting the respondent from a shared residence or requiring the respondent to attend mandatory counselling. Subsequent reforms have extended the scope of protection to persons who may not be in an existing spousal relationship, included non-physical forms of conduct in its prohibitions, and made consequences of breach of such orders clearer.

The protection order in Singapore can be used to illustrate the evolution of these orders. When the personal protection order was first enacted as an amendment to the *Women’s Charter* in 1980,³¹ it was only available to a husband or wife against *physical* violence and threats of such violence from his or her spouse. Although the order can protect ‘a child of the family’ as well, only the husband or wife could apply for it. Criticisms of the early provisions included the failure to explicitly state the standard of proof required to obtain the order, failure to include psychological abuse as a form of violence which the victim should be protected from, failure to protect other persons

²⁹ The male gender is used in this article in recognition that the perpetrator is predominantly male and the victim female.

³⁰ But see the ambivalent support to the protection order regime given by M Hor ‘Relatively Criminal: Spouses and the Criminal Process’ [2011] *Singapore Journal of Legal Studies* 37.

³¹ *Women’s Charter (Amendment) Act 1980* (Act 26 of 1980) which came into operation on 1 June 1981. The provisions dealing with domestic violence were taken almost verbatim from the UK *Domestic Proceedings and Magistrates’ Courts Act 1978* (c 22) and were only included during the second reading of the amendment Bill, see L D’Souza ‘Tears or Fears—A Look at Section 65A of the Women’s Charter’ [1987] 1 *Malayan Law Journal* clxxxiii, n 43 cited therein.

living in the same household such as parents and relatives, and failure to specify the consequences on breach of the orders.³²

Subsequent amendment to the *Women's Charter* in 1996 extended the protection order to former spouses as well as the abuser's parents, parents-in-law, siblings, and others regarded as a member of the family. In the case of children and incapacitated persons, other persons are now empowered to apply on the victim's behalf. The range of prohibited conduct has also been extended to non-physical ones, including 'continual harassment with intent to cause or knowing that it is likely to cause anguish.'³³ The penalty for breach of the protection order was also stated in the legislation, with greater severity for repeat offenders.³⁴

Developments in other areas, which are beyond the scope of this article, include changes in police and prosecutorial practice from considering domestic violence as a 'private' dispute to mandating a policy of arrest and prosecution for criminal offences; alerting domestic violence victims of impending release of the abuser from prison; enhancing education and outreach efforts on what is acceptable behaviour between spouses and other family members; inter-agency co-operation for government departments dealing with law enforcement, health and welfare services; funding of non-governmental organizations which provide counselling, legal assistance, shelters, and other forms of help; and reforms to the court processes to make it easier, faster, and cheaper for victims to apply for a protection order.

While the development of *civil* protection orders against what is obviously criminal behaviour may be criticized as downplaying the seriousness of the conduct which would not have been tolerated if it happened between total strangers, there is nevertheless evidence that the system *prevents* future abuse, particularly physical forms of violence. A study conducted by the Subordinate Courts in Singapore in 2001 found that more than 80 per cent of the victims felt that there had been an improvement in their lives and they felt safer just one month after the issue of the protection order and this positive assessment continued even after 22 months.³⁵ These findings are supported by similar studies in Australia³⁶ and the United States³⁷ which found the protection order effective in preventing domestic violence. The US study further concluded that the protection order was a cost-effective method to tackle domestic violence when compared to the costs incurred by victims in seeking medical treatment, time lost from work and family responsibilities, legal costs, costs of incarcerating offenders, and so on.

ANALYSIS

The protection order schemes in each of the six jurisdictions are compared below.

³² For comment on the earlier law, see L D'Souza, *ibid*.

³³ *Women's Charter*, section 64 (definition of 'family violence').

³⁴ *Women's Charter (Amendment) Act 1996* (Act 30 of 1996). See WC Chan 'Latest Improvements to the Women's Charter' [1996] *Singapore Journal of Legal Studies* 553, 559–73.

³⁵ *Subordinate Courts Study of the Effectiveness of Protection Orders* (Research Bulletin Issue No. 28) (available online at <https://www.statecourts.gov.sg/TBD/Documents/issue28.pdf> accessed 9 October 2015). However, note that issues such as harassment, being stalked, and other forms of psychological abuse remain.

³⁶ L Trimboli and R Bonney *An Evaluation of the NSW Apprehended Violence Order Scheme* (NSW Bureau of Crime Statistics and Research 1997) (available online at <http://www.bocsar.nsw.gov.au/Documents/111.pdf> accessed 9 October 2015).

³⁷ TK Logan, R Walker, W Hoyt and T Faragher *The Kentucky Civil Protective Order Study* [2009] (available on-line at <https://www.ncjrs.gov/pdffiles1/nij/grants/228350.pdf> accessed 9 October 2015).

Persons Protected

The term ‘domestic violence’ or ‘family violence’ is the one more commonly found in legislation which does not limit protection to abuse sustained by wives at the hands of their husbands only. However, the issue remains as to whether the protection should be extended beyond those who are, or have been, married and their children.

In all six jurisdictions examined, the protection order regime covers spouses, former spouses, and their children.³⁸ In the case of Singapore and Malaysia, other persons are covered only if they come within certain defined relationships or be regarded by the court as a ‘member of the family’. For example, in both Singapore and Malaysia, a father or mother, and a brother or sister of the person alleged to use violence is automatically covered, but any other relative or incapacitated person must be living as a member of the offender’s family.³⁹ On the other hand, a protection order is available in Hong Kong to a comprehensive range of persons defined as being a ‘relative’⁴⁰; and in the case of Taiwan, persons in a ‘dependent relationship’, are related as a ‘lineal-blood or a lineal-blood-by-marriage’ or related as a ‘lateral blood or a lateral-blood-by-marriage falling within the Relation Rank 4’ are covered.⁴¹

Except for Singapore and Malaysia, persons living or have lived as de facto spouses are also allowed to apply for a protection order.⁴² In India, for example, the protection order may be applied by ‘any woman who is, or has been, in a domestic relationship with the respondent ...’⁴³ The term ‘domestic relationship’ is in turn defined as ‘a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related ... through a relationship in the nature of marriage ...’⁴⁴ In the case of Hong Kong⁴⁵ and NSW,⁴⁶ cohabitants may be of opposite or the same sex, living as a couple in an intimate relationship.

The order in NSW is the broadest in that it allows application by unrelated persons, in addition to those who are present or former de facto partners, or have had an intimate personal relationship even if it is or was not sexual in nature. These people include those living or have lived in the same household as the other person, living or have lived

³⁸ *Women’s Charter*, section 64 (definition of ‘family member’); *Domestic Violence Act 1994*, section 2 (definition of ‘domestic violence’); *Domestic and Cohabitation Relationships Violence Ordinance*, section 3; *The Protection of Women from Domestic Violence Act 2005*, section 2 (definition of ‘aggrieved person’); *Domestic Violence Prevention Act*, Art. 3; *Crimes (Domestic and Personal Violence) Act 2007*, section 5(a), (g).

³⁹ *Women’s Charter*, section 64 (definition of ‘family member’, ‘incapacitated person’, and ‘relative’); *Domestic Violence Act 1994*, section 2 (definition of ‘domestic violence’, ‘incapacitated adult’, and ‘other member of the family’). The Singapore legislation covers parents-in-law too.

⁴⁰ *Domestic and Cohabitation Relationships Violence Ordinance*, section 3A, which covers persons such as a grandfather, step-grandfather, grandfather-in-law, grandson-in-law, uncle, step-brother, nephew, and cousin. A comprehensive list also exists in NSW [*Crimes (Domestic and Personal Violence) Act 2007*, section 6], but this is supplemented by the wide definition of persons in a ‘domestic relationship’.

⁴¹ *Domestic Violence Prevention Act*, Art. 3.

⁴² *Domestic and Cohabitation Relationships Violence Ordinance*, section 3B; *The Protection of Women from Domestic Violence Act 2005*, section 2 (definition of ‘domestic relationship’); *Domestic Violence Prevention Act*, Art. 3; *Crimes (Domestic and Personal Violence) Act 2007*, section 5(b).

⁴³ *The Protection of Women from Domestic Violence Act 2005*, section 2 (definition of ‘aggrieved person’).

⁴⁴ *Ibid* (definition of ‘domestic relationship’).

⁴⁵ *Domestic and Cohabitation Relationships Violence Ordinance*, sections 2 (definition of ‘cohabitation relationship’), 3B.

⁴⁶ *Crimes (Domestic and Personal Violence) Act 2007*, section 5(b), read with *Interpretation Act 1987*, section 21C. An ‘apprehended personal violence order’ may also be made for persons who are not in a ‘domestic relationship’: section 18.

as a long-term resident in the same residential facility as the other person at the same time, and have or have had a relationship of dependence involving care of the other person.⁴⁷ Hence, it is possible for an elderly victim under this law to get a protection order against his or her hired caregiver; or for a live-in domestic helper to get a protection order if she is abused by someone in the household that she is working in. In comparison, it is not possible in both Singapore and Malaysia to get a protection order in these situations since an unrelated victim must be incapacitated and be regarded as a member of the family⁴⁸; while in India, the woman must be in a 'domestic relationship' with the respondent.⁴⁹

Gender of the Respondent

In five of the six jurisdictions, there is no restriction on the identity of the respondent. However, in the case of India, the protection order may only be obtained against the victim's male partner or relative of the male partner.⁵⁰ Hence, a husband would not be able to obtain a protection order against his wife in India. This gendered view may be an accurate reflection of the power-relationship in existence in India but it denies protection to the occasional vulnerable husband.

Applications on Behalf of the Victim

A wide range of persons may apply on behalf of a child in most jurisdictions, such as:

- a next friend (Hong Kong⁵¹),
- a police officer (NSW⁵²),
- a blood relative or relative-by-marriage falling within Relation Rank 3 (Taiwan⁵³),
- a guardian, relative, person responsible for the care of the child or a person appointed by the Minister (Singapore⁵⁴),
- a guardian, relative, person responsible for the care of the child or an 'enforcement officer' (Malaysia⁵⁵).

In the case of NSW, the police are under an added obligation to explain in writing why they *did not* apply for the protection order for persons under 16 years of age in certain cases such as where a 'domestic violence offence' has been, is being or likely to be committed.⁵⁶

⁴⁷ *Crimes (Domestic and Personal Violence) Act 2007*, section 5. The broad scope of this legislation is probably meant to protect the elderly and persons who lack physical or mental capacity.

⁴⁸ *Women's Charter*, section 64 (definition of 'family member'); *Domestic Violence Act 1994*, section 2 (definition of 'incapacitated adult').

⁴⁹ *The Protection of Women from Domestic Violence Act 2005*, section 2 (definition of 'aggrieved person').

⁵⁰ *The Protection of Women from Domestic Violence Act 2005*, section 2 (definition of 'respondent'). The 'relative' of the male partner may of course be female, e.g. the husband's mother.

⁵¹ *Domestic and Cohabitation Relationships Violence Ordinance*, section 3A(3).

⁵² *Crimes (Domestic and Personal Violence) Act 2007*, section 27.

⁵³ *Domestic Violence Prevention Act*, Art. 10.

⁵⁴ *Women's Charter*, section 65(10).

⁵⁵ *Domestic Violence Act 1994*, section 15. An 'enforcement officer' is a police officer or a social welfare officer: see definition of 'enforcement officer' in section 2.

⁵⁶ *Crimes (Domestic and Personal Violence) Act 2007*, section 49.

In the case of adult applicants who are not incapacitated, the Singapore and Hong Kong legislation unfortunately does not allow for anyone else to apply on her behalf. It is well known that some victims of domestic violence who are caught up in the cycle of violence may not be able to extricate themselves from their predicament because they have lost their ability to fend for themselves (the condition of 'learned helplessness').⁵⁷ There may also be concerns that domestic violence complaints may not be treated with as much importance as they should be by the police. There is therefore a need to provide women with another avenue to seek help who may even make the application for a protection order on their behalf.

The wording of the Malaysian legislation is ambivalent in that an enforcement officer shall *assist* a victim to make the application,⁵⁸ rather than being able to apply on the person's behalf. The latter form of words, however, can be found in the case of *ex parte* applications where the victim's counsel and a social welfare officer may apply on behalf of the victim.⁵⁹

In the case of India, Taiwan, and NSW, other parties may apply on behalf of the victim in all cases such as the police (Taiwan,⁶⁰ NSW⁶¹), 'Protection Officers' (India⁶²), the public prosecutor and the municipal or city government authorities (Taiwan⁶³). The Indian legislation is the widest in allowing applications by 'any other person on behalf of the aggrieved person.'⁶⁴

Prohibited Behaviour

One issue is whether victims of less severe forms of physical harm (sometimes called 'non-arrestable', 'non-seizable', or 'non-cognizable' offences) which are not sufficient for immediate action by the police, such as threats, slaps or shoving, should be eligible for protection orders. All six jurisdictions do not make any such distinction in terms of the severity of the physical harm as determined in the criminal law. For example, a protection order may be applied for on the basis of hurt or fear of hurt in Singapore⁶⁵ even though only injuries classified as 'grievous hurt' are arrestable without a warrant, but those classified as 'hurt' are not, under the Criminal Procedure Code.⁶⁶

The law in Hong Kong, India, and Taiwan are worded widely. The Hong Kong law prohibits acts of 'molest',⁶⁷ which has been interpreted broadly to include not just physical violence but also harassment which affects the victim's mental health.⁶⁸ In the case of

⁵⁷ L Walker *The Battered Woman* (Harper & Row 1979).

⁵⁸ *Domestic Violence Act 1994*, section 19(1)(a). The other duties of the enforcement officer include providing or arranging transportation for the victim to an alternative residence or shelter or hospital; explaining to the victim the right to protection; and accompanying the victim to collect personal belongings.

⁵⁹ *Domestic Violence Act 1994*, section 12A.

⁶⁰ *Domestic Violence Prevention Act*, Art. 10.

⁶¹ *Crimes (Domestic and Personal Violence) Act 2007*, section 48(2)(b).

⁶² *The Protection of Women from Domestic Violence Act 2005*, section 12(1). 'Protection Officers' are appointed by the State Government: section 8.

⁶³ *Domestic Violence Prevention Act*, Art. 10.

⁶⁴ *The Protection of Women from Domestic Violence Act 2005*, section 12(1).

⁶⁵ *Women's Charter*, section 64 (definition of 'family violence').

⁶⁶ *Criminal Procedure Code* (Cap 68), First Schedule.

⁶⁷ *Domestic and Cohabitation Relationships Violence Ordinance*, sections 3, 3B.

⁶⁸ See the Hong Kong cases cited by A Scully-Hill 'Domestic Violence in Hong Kong' in P Hewitt (ed) *Family Law and Practice in Hong Kong* (Sweet & Maxwell 2011), para. [14.052].

India, injuries to the ‘health, safety, life, limb or well-being’ of the victim are covered⁶⁹; while in Taiwan, acts which involve ‘mocking, insulting words and/or actions, or any act of fabrication of situations that causes fears and terrors among family members’ are included.⁷⁰

In Malaysia⁷¹ and NSW,⁷² acts of property damage have also been specifically identified as a basis for a protection order.

Another issue is whether the protection order should extend to conduct that is not traditionally thought of as criminal at all. This could involve, for example, acts of psychological abuse, economic abuse (such as denying the victim maintenance), or social abuse (such as controlling contact by the victim with friends or family members).⁷³ In all six jurisdictions, acts of psychological abuse are within the scope of a protection order.⁷⁴ The law in India is the widest by specifically identifying acts such as coercion for dowry, sexual conduct that humiliates or violates the dignity of a woman, verbally ridiculing a woman for not having a child or a male child, and failure to provide maintenance as acts of ‘domestic violence’.⁷⁵

On the other hand, protection orders in Malaysia are specifically limited to acts which are in fact criminal offences under the existing law.⁷⁶ This approach severely limits the scope of the protection order, leaving out acts such as stalking which are not prohibited by the criminal law. In the case of non-consensual sexual intercourse, husbands in Malaysia still have a general immunity against marital rape other than in specified situations such as living separately under a decree of judicial separation or a decree *nisi*.⁷⁷ By an amendment to the Malaysian Penal Code in 2006, a new offence was created

⁶⁹ *The Protection of Women from Domestic Violence Act 2005*, section 3(a).

Domestic Violence Prevention Act, Art. 2.

⁷⁰ *Domestic Violence Act 1994*, section 2 (definition of ‘domestic violence’).

⁷¹ *Crimes (Domestic and Personal Violence) Act 2007*, section 16(3)(b).

⁷² The new offence announced in the United Kingdom for ‘coercive and controlling behaviour’ in intimate relationships would extend the reach of the criminal law much further, see A Travis ‘Domestic abuse charity criticises May’s law criminalising coercive behaviour’ *The Guardian*, 18 December 2014 (available on-line at <http://www.theguardian.com/society/2014/dec/18/theresa-may-domestic-abuse-offence-coercive-behaviour> accessed 9 October 2015).

⁷³ *Women’s Charter*, section 64 (definition of ‘family violence’); *Domestic Violence Act 1994*, section 2(f) (definition of ‘domestic violence’); in the case of Hong Kong, see n 68 above; *The Protection of Women from Domestic Violence Act 2005*, section 3; *Domestic Violence Prevention Act*, Art. 2; *Crimes (Domestic and Personal Violence) Act 2007*, sections 7(1)(a), 8, 16.

⁷⁴ *The Protection of Women from Domestic Violence Act 2005*, section 3.

⁷⁵ This is specifically provided in the *Domestic Violence Act 1994*, section 3. Before this section was amended by the *Domestic Violence (Amendment) Act 2012* (Act A1414), it read ‘The provisions of this Act shall be read together with the provisions of the Penal Code’. In *Ngieng Shiat Yen v. Ten Jit Hing* [2001] 1 Malayan Law Journal 289, it was held that the protection order was only available if there were criminal proceedings for an offence arising from the domestic violence complaint against the respondent; but see *Jennifer Patricia a/p Thomas v. Calvin Martin a/l Victor David* [2005] 6 Malayan Law Journal 728 which held that it was possible for the protection order to be issued provided that police reports of domestic violence were lodged even though there were no pending criminal charges. This latter interpretation is contrary to what has been opined by other commentators, see, e.g. Aini Bte Abdullah ‘Domestic Violence Act 1994: An End to a Nightmare?’ [1995] 1 Malayan Law Journal xli. After the 2012 amendments, the provision now reads ‘This Act shall be read with the Penal Code [Act 574] or any other written law involving offences relating to domestic violence’. By section 18A, added by the 2012 amendments, ‘[o] ffences involving domestic violence shall be deemed to be seizable offences’. Unfortunately, even after the 2012 amendments, the prohibited act must still amount to an offence under some law before it can be a basis for a protection order application. Hence, there could still be wrongful conduct such as stalking—which does not amount to an offence under the current law in Malaysia—for which a protection order cannot be obtained even though the definition of ‘domestic violence’ under *Domestic Violence Act 1994*, section 2(f), has now been expanded to include ‘psychological abuse’ and ‘emotional injury’.

⁷⁶ *Penal Code* (Act 574), section 375.

against a husband who ‘causes hurt or fear of death or hurt to his wife or any other person in order to have sexual intercourse with his wife.’⁷⁸ However, non-consensual sexual intercourse in other situations are still not covered. For example, a married woman who is forced into having sex with her husband by threats of having her children taken away or having her secrets revealed publicly will not be able to apply for a protection order against marital rape.⁷⁹

In the case of Singapore, acts ‘by way of correction to a child below 21 years of age’ are excepted from the scope of the protection order even though there is no explicit exception of such acts from the criminal law.⁸⁰

Standard of Proof

The standard of proof in protection order applications is explicitly stated in only three of the six jurisdictions: Singapore,⁸¹ India,⁸² and NSW.⁸³ In the case of Malaysia,⁸⁴ the standard of ‘balance of probabilities’ that the order is necessary for the protection of the victim is stipulated only for the application of additional orders such as exclusive occupation of the shared residence and prohibition from making contact with the victim. Since protection orders are civil orders in nature, it may be assumed that the ‘balance of probabilities’ standard will apply, but it is also possible for a court to demand a higher level of proof in view of the severity of the restrictions to be imposed and the overlap between the prohibited conduct and criminal offences if the required standard is not explicitly stated.

Relief Available

The ambit of restrictions in a protection order can be very wide. For example, in Singapore and Malaysia, the court may make ‘any such direction as is necessary ... to the proper carrying into effect of any order made’⁸⁵; in India, the court may prohibit the respondent from ‘committing any other act as specified in the protection order’,⁸⁶ and in NSW, the court may impose orders ‘as appear necessary or desirable ... to ensure the safety and protection of the person ...’⁸⁷

⁷⁸ *Penal Code (Act 574)*, section 375A, inserted by *Penal Code (Amendment) Act 2006 (Act A1273)*.

⁷⁹ This follows from the definition of ‘domestic violence’ as ‘compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a *right to abstain*’ (emphasis added): *Domestic Violence Act 1994*, section 2. In the case of Singapore where there is still the marital rape immunity other than in specified situations where the immunity is lifted, the Select Committee considering amendments to the *Women’s Charter* suggested that protection orders are possible under the heading of ‘continual harassment with the intent to cause anguish’ to the respondent: see *Report of the Select Committee on the Women’s Charter (Amendment) Bill [Bill No. 5/96]* (Parl 3 of 1996), para. 5.3.7.

⁸⁰ *Women’s Charter*, section 64 (definition of ‘family violence’). The defence of consent may arguably cover cases of corporal punishment inflicted as a form of discipline if it is for the person’s ‘benefit’ (*Penal Code (Cap 224)*, sections 88, 89) but note that the *Women’s Charter* provision does not explicitly require the punishment to be moderate and reasonable which are limits placed by the common law on acts of reasonable chastisement.

⁸¹ *Women’s Charter*, section 65(1) (‘balance of probabilities’).

⁸² *The Protection of Women from Domestic Violence Act 2005*, section 18 (‘prima facie satisfied’).

⁸³ *Crimes (Domestic and Personal Violence) Act 2007*, section 16(1) (‘balance of probabilities’).

⁸⁴ *Domestic Violence Act 1994*, section 6(1).

⁸⁵ *Women’s Charter*, section 65(5)(c); *Domestic Violence Act 1994*, section 6(1)(f).

⁸⁶ *The Protection of Women from Domestic Violence Act 2005*, section 18(g).

⁸⁷ *Crimes (Domestic and Personal Violence) Act 2007*, section 35(1).

An exclusive occupation order is possible all six jurisdictions.⁸⁸ This order is limited to 12 months duration in Malaysia,⁸⁹ Taiwan,⁹⁰ and NSW⁹¹; and 24 months in Hong Kong.⁹² In the case of India, this order is not available against a woman to remove her from a shared household.⁹³ This restriction is to prevent a woman, who are usually more economically disadvantaged, from being displaced from her own home and rendered homeless.

The exclusion order in India and Taiwan are most advanced because not only is it possible for the victim to obtain occupation of a shared residence, but the respondent can also be prohibited from disposing of the residence.⁹⁴ This is important considering that in many jurisdictions, a married woman does not have a legal right to the property itself but only a personal right to reasonable accommodation,⁹⁵ which may lead her to think twice before lodging a case against her husband or partner. In the case of Malaysia, the contest between property rights and protection of the victim is heavily weighted in favour of the former in that the exclusive occupation order terminates if the respondent is able to provide alternative accommodation to the victim.⁹⁶

An order for mandatory counselling for the parties is possible in Singapore,⁹⁷ Malaysia,⁹⁸ Hong Kong,⁹⁹ India,¹⁰⁰ and Taiwan.¹⁰¹ In NSW, it would appear that the parties may be referred to mediation, but not counselling.¹⁰²

Special orders are also specifically provided for in some jurisdictions, for example:

- Prohibit going to the victim's place of employment, school (in the case of a child victim) or any other place frequented by the victim (India,¹⁰³ Taiwan,¹⁰⁴ NSW¹⁰⁵);

⁸⁸ *Women's Charter*, section 65(5)(a); *Domestic Violence Act 1994*, section 6(1)(a), (b), (c); *Domestic and Cohabitation Relationships Violence Ordinance*, sections 3(1)(c), (d), 3A(4)(b), (c), and 3B(1)(c), (d) (in the case of cohabitantes, the court must be persuaded as to the permanence of the relationship, section 6(3)); *The Protection of Women from Domestic Violence Act 2005*, section 19(b), (c); *Domestic Violence Prevention Act*, Art. 14; *Crimes (Domestic and Personal Violence) Act 2007*, section 35(2)(b).

⁸⁹ *Domestic Violence Act 1994*, section 6(1).

⁹⁰ *Domestic Violence Prevention Act*, Art. 15.

⁹¹ *Crimes (Domestic and Personal Violence) Act 2007*, section 79 (unless the court specifies a longer duration).

⁹² *Domestic and Cohabitation Relationships Violence Ordinance*, section 6(1).

⁹³ *The Protection of Women from Domestic Violence Act 2005*, section 19(1). Section 17(1) emphasizes that 'every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same'. Since the protection order in India is not available against female respondents (see text accompanying n 50 above), this limitation will only be applicable to female relatives of the male respondent.

⁹⁴ *The Protection of Women from Domestic Violence Act 2005*, section 19(1)(d), (e); *Domestic Violence Prevention Act*, Art. 14. But note that the Supreme Court of India has ruled that in the case of the Indian legislation, the right to reside is only available against the property belonging to, or rented by, her husband: *S. R. Batra v. Smt. Taruna Batra* AIR 2007 Supreme Court 1118.

⁹⁵ For example, in Hong Kong, an exclusive occupation order is not an interest which can be registered in the *Land Registration Ordinance* (Cap 128): *Domestic and Cohabitation Relationships Violence Ordinance*, section 10; and in Singapore, it is specifically provided that the exclusive occupation order 'shall not affect any title or interest that the person against whom the order is made or any other person might have in the residence': *Women's Charter*, section 65(6).

⁹⁶ *Domestic Violence Act 1994*, section 6(4)(a).

⁹⁷ *Women's Charter*, section 65(5)(b).

⁹⁸ *Domestic Violence Act 1994*, section 11.

⁹⁹ *Domestic and Cohabitation Relationships Violence Ordinance*, sections 3(1A), 3A(5), 3B(3).

¹⁰⁰ *The Protection of Women from Domestic Violence Act 2005*, section 14.

¹⁰¹ *Domestic Violence Prevention Act*, Art. 14 ('relocation program' and 'offender treatment program').

¹⁰² *Crimes (Domestic and Personal Violence) Act 2007*, section 21.

¹⁰³ *The Protection of Women from Domestic Violence Act 2005*, section 18(c).

¹⁰⁴ *Domestic Violence Prevention Act*, Art. 14.

¹⁰⁵ *Crimes (Domestic and Personal Violence) Act 2007*, section 35(2)(a), (c).

- Prohibit communication with the victim (Malaysia,¹⁰⁶ India,¹⁰⁷ Taiwan¹⁰⁸);
- Permit the victim to use vehicle which has previously been ordinarily used (Malaysia,¹⁰⁹ Taiwan¹¹⁰);
- Compensation for injury, damage to property, or financial loss as a result of the violence (Malaysia,¹¹¹ India¹¹²). In the case of India, the compensation extends to instances of mental torture and emotional distress occasioned by the domestic violence¹¹³;
- Prohibit alienating the parties' joint or sole financial assets (India¹¹⁴);
- Access and rights over children (Hong Kong,¹¹⁵ India,¹¹⁶ Taiwan¹¹⁷);
- Payment of maintenance for the victim and children (India,¹¹⁸ Taiwan¹¹⁹).

As can be seen, a range of other orders going beyond the basic protection order are possible in each of the six jurisdictions in order to fully protect women from domestic violence. Orders relating to child custody, access arrangements for the noncustodial parent, and maintenance payments may not at first sight seem germane to the main issue of protection from domestic violence but early and fast resolution of such issues is often critical. One of the reasons why women return to their abusive partners is due to loss of income support or because they have been denied the right to see their children. Violence may also recur during times when access to children is exercised which can be prevented by detailing the places and times for such access.

Ex Parte Orders

Ex parte orders, allowed under procedures for 'expedited', 'provisional', or 'interim' orders, are available in all six jurisdictions.¹²⁰ Such orders may be valid for a maximum of 28 days (Singapore¹²¹), or provision is made for the respondent to apply to set aside the order within a certain time frame (Malaysia¹²²) or, which is the more usual case, till the application of the protection order is heard. An interim protection order in Malaysia,

¹⁰⁶ *Domestic Violence Act 1994*, section 6(1)(d).

¹⁰⁷ *The Protection of Women from Domestic Violence Act 2005*, section 18(d).

¹⁰⁸ *Domestic Violence Prevention Act*, Art. 14.

¹⁰⁹ *Domestic Violence Act 1994*, section 6(1)(e).

¹¹⁰ *Domestic Violence Prevention Act*, Art. 14.

¹¹¹ *Domestic Violence Act 1994*, section 10.

¹¹² *The Protection of Women from Domestic Violence Act 2005*, section 20.

¹¹³ *Ibid*, section 22.

¹¹⁴ *Ibid*, section 18(e).

¹¹⁵ *Domestic and Cohabitation Relationships Violence Ordinance*, section 7A.

¹¹⁶ *The Protection of Women from Domestic Violence Act 2005*, section 21.

¹¹⁷ *Domestic Violence Prevention Act*, Art. 14.

¹¹⁸ *The Protection of Women from Domestic Violence Act 2005*, section 20(1)(d).

¹¹⁹ See n 117 above.

¹²⁰ *Women's Charter*, section 66; *Domestic Violence Act 1994*, section 12A; *Domestic and Cohabitation Relationships Violence Rules*, r 3 (Rules of the High Court (Cap 4A) apply to proceedings under the Ordinance. Under Order 29, rule 1, of the Rules of the High Court applications for an injunction may be applied for ex parte); *The Protection of Women from Domestic Violence Act 2005*, section 23; *Domestic Violence Prevention Act*, Art. 16; *Crimes (Domestic and Personal Violence) Act 2007*, section 22.

¹²¹ *Women's Charter*, section 66(2). The expedited order may terminate earlier on the commencement of the hearing of the application for the expedited order.

¹²² *Domestic Violence Act 1994*, section 12B (application to set aside the interim order must be made within 14 days from the date the order is served).

available only if there is a pending investigation by the police following a complaint of domestic violence, is potentially the shortest in that it lasts only till the end of the police investigations into the criminal offences disclosed or, at most, till criminal proceedings are instituted against the respondent for the acts of domestic violence.¹²³

The conditions for granting an ex parte order are stricter than the usual protection order in order to safeguard the respondent from deprivation of his right to be heard as well as possible hardship since it may be granted on the applicant's word alone. The usual requirement is proof of an emergency situation such that any delay may endanger the victim. For example, it is available in Singapore only on showing to the court's satisfaction that 'there is imminent danger of family violence being committed',¹²⁴ and in the case of NSW, on showing that 'it is necessary or appropriate to do so in the circumstances'.¹²⁵

Penalties for Breach

To underline the seriousness of violations of the terms of the order, breach of a protection order is considered a criminal matter even though the protection order itself is considered a civil order. Such breaches must also be effectively enforced by the police to ensure that protection orders are not merely pieces of paper that a perpetrator can ignore with impunity.

The level of punishment for breach of the protection order has been specifically provided for in five of the six jurisdictions, with the exception of Hong Kong.¹²⁶ The term of imprisonment ranges from six months (Singapore¹²⁷) to three years (Taiwan¹²⁸) or fine or both. In the case of Malaysia, the severity of the sentence increases if the violation involves use of violence: the maximum term of imprisonment goes up to one year from six months, and for a second or subsequent conviction involving violence again, the maximum term of imprisonment goes up to two years, with a mandatory minimum of 72 hours imprisonment.¹²⁹ Similarly, in the case of NSW, a term of imprisonment is usually mandatory if personal violence is committed.¹³⁰ Even if the actual sentences imposed by a court are less than the maximum provided for in the statutes, the maximum sentences still indicate the gravity that the different jurisdictions view such breaches.

In terms of police action in the case of breach of a protection order, the laws in Malaysia¹³¹ and Hong Kong¹³² are the weakest in that the respondent may only be

¹²³ *Domestic Violence Act 1994*, section 4.

¹²⁴ *Women's Charter*, section 66(1).

¹²⁵ *Crimes (Domestic and Personal Violence) Act 2007*, section 22(1).

¹²⁶ No provision is made for the consequence of breach in the *Domestic and Cohabitation Relationships Violence Ordinance*. The authority to make a committal for breach of injunctions generally can be found in the rules of court applicable in Hong Kong, and the courts have imposed custodial sentences for breach of a protection order, see, e.g. *S v. L* [2009] HKFAMC 10 at [12].

¹²⁷ The term of imprisonment goes up to 12 months for a second or subsequent breach of a protection order [*Women's Charter*, section 65(8)]. But note that if the breach is a failure to attend mandated counselling, the punishment is not expressly stipulated [*Women's Charter*, section 65(9)].

¹²⁸ *Domestic Violence Prevention Act*, Art. 61.

¹²⁹ *Domestic Violence Act 1994*, section 8.

¹³⁰ *Crimes (Domestic and Personal Violence) Act 2007*, section 14(4). If the court chooses not to impose a sentence of imprisonment, reasons for not doing so must be given: section 14(6).

¹³¹ *Domestic Violence Act 1994*, section 7.

¹³² *Domestic and Cohabitation Relationships Violence Ordinance*, section 5. In the case of Hong Kong, this authorization to arrest is only valid for up to 24 months [section 6(2)] and is more restricted in the case of cohabittees who need to persuade the court as to the permanence of the cohabitation relationship [section 6(3)].

arrested if there is a power of arrest added to the order in the first place. This additional requirement is not needed in the other four jurisdictions.¹³³

On the other hand, in the case of NSW, the discretion of the police *not* to take action against the respondent is closely circumscribed.¹³⁴ Rather than merely permitting an arrest without warrant, the police in NSW are required to give reasons in writing if a decision *not* to initiate criminal proceedings for breach of the protection order is made. In the case of Taiwan, the police are also required to ‘forthwith make an arrest’ for breach of a protection order.¹³⁵

Mandatory Reporting and Protection of Informers

Mandatory reporting provisions can only be found in India and Taiwan. In India, the Protection Officer is under a duty to make a domestic violence incident report to the Magistrate on receipt of a complaint of domestic violence and forward copies to the police.¹³⁶ The duty in Taiwan is even more extensive in that:

... medical, social, psychological, educational and nursing professionals, police, staff of immigration service, and all personnel involved in the enforcement of control and prevention of domestic violence shall report any suspicion of domestic violence to local regulating authorities within 24 hours.¹³⁷

In the case of India, a ‘police officer, Protection Officer, service provider, or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or where the incident of domestic violence is reported to him’ is also under a duty to provide certain information to the victim such as her right to apply for a protection order and availability of services.¹³⁸

Those who report incidents of domestic violence in Malaysia¹³⁹ and India¹⁴⁰ are protected from all civil and criminal liability if carried out in good faith. Jurisdictions

¹³³ Attachment of a power of arrest used to be required in Singapore as well till amendments were made to the *Women’s Charter* in 1996, see n 34 above; *The Protection of Women from Domestic Violence Act 2005*, section 32(1) [breach is considered automatically ‘cognizable and non-bailable’ which means that the police may arrest without a warrant: *Code of Criminal Procedure 1973* (Act 2 of 1974), section 41(1)]; *Domestic Violence Prevention Act*, Art. 29; in NSW, the *Law Enforcement (Powers and Responsibilities) Act 2002*, section 99, grants power to arrest a person without a warrant if the police officer suspects on reasonable grounds that the person has committed an offence.

¹³⁴ *Crimes (Domestic and Personal Violence) Act 2007*, section 14(8).

¹³⁵ *Domestic Violence Prevention Act*, Art. 29. This may be compared to the situation, e.g. in Singapore, where the police ‘may’ arrest without a warrant [section 65(11) *Women’s Charter*]; while in India the breach is ‘cognizable and non-bailable’ meaning that the police ‘may’ arrest without a warrant [*The Protection of Women from Domestic Violence Act 2005*, section 32(1), *Code of Criminal Procedure 1973* (Act 2 of 1974), section 41(1)].

¹³⁶ *The Protection of Women from Domestic Violence Act 2005*, section 9(1)(b). A Protection Officer who fails to discharge his duties as directed by the Magistrate without sufficient cause is punishable with imprisonment up to one year or with fine up to 20,000 rupees or with both (section 33), but only if the State Government gives its sanction for the prosecution of the Protection Officer (section 34).

¹³⁷ *Domestic Violence Prevention Act*, Art. 50. Persons who fail to comply are liable to a fine of between 6000 and 30,000 New Taiwan Dollars: Art. 62. However, the sanction does not apply to medical personnel if the failure to comply is to avoid ‘any immediate hazard to the physical condition of the victim’.

¹³⁸ *The Protection of Women from Domestic Violence Act 2005*, section 5. A Protection Officer may, with the permission of the State Government, be penalized for failing to discharge his/her duties if done in bad faith: sections 33, 34, 35.

¹³⁹ *Domestic Violence Act 1994*, section 18.

¹⁴⁰ *The Protection of Women from Domestic Violence Act 2005*, sections 4(2), 35.

without such protections may consider such a provision even if it is not yet ready to consider mandated reporting of domestic violence.

CONCLUSION

From the discussion above on the protection order schemes in the six jurisdictions, the following key issues may be identified:

1. Should protection orders cover a wider range of persons such as relatives, de facto partners and those living in the same household (even if they do not share an intimate relationship)?
2. Should other persons (such as a friend, social worker, or police) be allowed to apply for a protection order on behalf of an adult victim?
3. Should the range of prohibited behaviour (for which a protection order can be sought) be extended to cases of economic abuse (such as failure to provide maintenance) and social abuse (such as controlling contact by the victim with her friends or family members)?
4. Should the standard of proof in protection order applications be expressly stated to be on a balance of probabilities?
5. Should the range of orders which a court can impose in a protection order application be more explicitly stated in the legislation rather than simply 'any such directions as is necessary/desirable? In particular, should there be orders to prevent a respondent from disposing a shared residence, permit access to children, pay maintenance, and require counselling of the parties or their children?
6. Should the penalty for breach of a protection order be explicitly provided for?
7. Should the police automatically have the power to make an arrest if there are reasonable grounds to suspect that the respondent has breached a protection order?
8. Should there be for mandatory reporting of domestic violence and if so, who should have this duty to report?
9. Should persons making reports of domestic violence in good faith be protected from all civil and criminal liability?

It is by no means to be suggested that the enactment of protection orders is a 'silver bullet' which will eradicate domestic violence completely. Constant evaluation of its implementation and possible gaps are needed, as well as action to change religious and social norms which allow domestic violence to be tolerated.¹⁴¹

After the protection order is obtained, active monitoring and swift punishment for those who breach the order are needed. There are complex issues to be resolved relating to resource allocation, level of state intrusion into the home environment and safeguarding of the victim's interests. For example, mandatory reporting and allowing police arrest on suspicion on reasonable grounds that breach has occurred tilt the balance towards state monitoring of protection orders rather than leaving it entirely to the victim, and sends a strong message of victim protection. However, there are obvious trade-offs in this approach with

¹⁴¹ E Fulu, X Warner, S Miedema, R Jewkes, T Roselli and J Lang *Why Do Some Men Use Violence Against Women and How Can We Prevent It?* (UNDP, UNFPA, UN Women, UNV 2013) (available on-line at http://unwomen-asiapacific.org/docs/WhyDoSomeMenUseViolenceAgainstWomen_P4P_Report.pdf accessed 9 October 2015).

victim autonomy and empowerment, use of resources, as well as how that policy fits in with the social, cultural, and religious background of the country to be considered.

An example of the difficulties preventing effective implementation of the law can be seen in the case of India. Although Protection Officers are vital to the success of the *Protection of Women from Violence Act*, there are no details on the salary, qualifications, and experience that such officers should possess, and no specification on the number of such officers to be appointed in each district. In the Northwest District of Delhi, only two Protection Officers have been appointed in 2007 to serve a population of over 1.4 million citizens¹⁴²; while another report notes that till 2010, only three areas (Andhra Pradesh, Delhi, and West Bengal) have appointed Protection Officers.¹⁴³ The *Protection of Women from Violence Act* has been in effect in India since October 2006.

Ultimately, each jurisdiction must find its own approach in assisting victims of domestic violence. What is shown from this article is that despite the possible differences in socio-economic backgrounds, culture, and gender relations in the six jurisdictions studied, which in turn affect help-seeking behaviour, the laws relating to protection orders are remarkably similar in approach (see Appendix A). The very presence of protection orders in these jurisdictions show a commitment to prevent domestic violence. It is hoped that the comparisons shown in this article will urge further law reforms to existing laws to truly make domestic violence a thing of the past.

¹⁴² A Hornbeck, B Johnson, M LaGrotta and K Sellman 'The Protection of Women from Domestic Violence Act: Solution or Mere Paper Tiger?' [2006–07] 4 *Loyola University Chicago International Law Review* 273, 291–92.

¹⁴³ B Ghosh and T Choudhuri 'Legal Protection Against Domestic Violence in India: Scope and Limitations' [2011] 26 *Journal of Family Violence* 319, 324. There are altogether 29 states and 7 union territories in India.

Appendix A:
Analysis of legal provisions relating to protection orders

	Singapore	Malaysia	Hong Kong	India	Taiwan	New South Wales
Persons protected						
Spouse	•	•	•	•	•	•
Former spouse	•	•	•	•	•	•
De facto spouse			•	•	•	•
Former de facto spouse			•	•	•	•
Same sex partner			•			•
Former same sex partner			•			•
Relative	* ¹⁴⁴	* ¹⁴⁴	•		•	•
Unrelated household member	* ¹⁴⁵	* ¹⁴⁵				•
Former unrelated household member						•
Minor child of one or both parties	•	•	•	•	•	•

¹⁴⁴ Only if they are considered as a 'member of the family' beyond certain categories.

¹⁴⁵ Only if they are 'incapacitated' and regarded as a 'member of the family'.

Appendix A: Continued

	Singapore	Malaysia	Hong Kong	India	Taiwan	New South Wales
Gender of respondent						
Male or female	•	•	•	•	•	•
Who may petition						
Victim	•	•	•	•	•	•
Adult on behalf of minor	•	•	•	•	•	•
Others		•		•	•	•
Types of abuse						
Physical abuse	•	•	•	•	•	•
Psychological abuse	•	•	•	•	•	•
Standard of proof						
Balance of probabilities	•		•			•
Types of relief						
No further abuse	•	•	•	•	•	•
Eviction from residence	•	•	•	•	•	•
Prohibit from disposing residence			•	•	•	

Appendix A: Continued

	Singapore	Malaysia	Hong Kong	India	Taiwan	New South Wales
Counselling	•	•	•	•	•	•
Prohibit going to places frequented by victim				•	•	•
Prohibit communication		•		•	•	
Permit use of vehicle		•			•	
Compensation		•		•		
Prohibit alienating assets				•		
Access to children			•	•	•	
Maintenance of victim and children				•	•	
Ex parte order						
Available	•	•	•	•	•	•
Penalties for breach						
Maximum jail sentence (months) on first conviction	6	6 (12 if violence is used)	* ¹⁴⁶	12	36	24
Maximum jail sentence on subsequent breach	12	24 (if violence is used again)	* ¹⁴⁶	12	36	* ¹⁴⁷

¹⁴⁶ Not specified.¹⁴⁷ Not specified.

Appendix A: Continued

	Singapore	Malaysia	Hong Kong	India	Taiwan	New South Wales
Police intervention						
Arrest without requiring further authorization	•		•	•	•	•
Mandatory reporting						
Required			•	•		
Protection of informers						
Available		•		•		