



LOCATING LGBTQ PEOPLE IN DOMESTIC VIOLENCE LAWS IN ASIA



OUTRIGHT
ACTION INTERNATIONAL



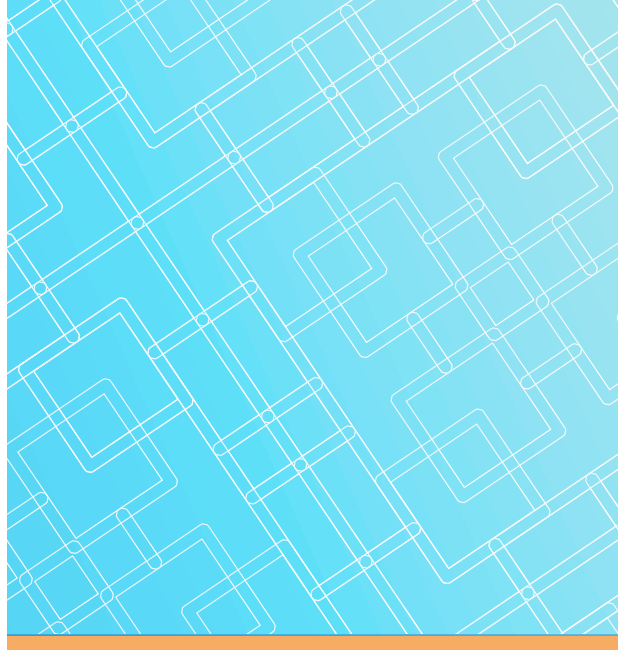
OutRight Action International works at global, regional and national levels to eradicate the persecution, inequality and violence faced by lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) people around the world. With staff in over 10 countries and headquarters in New York, OutRight builds capacity of LGBTIQ movements, documents human rights violations, advocates for inclusion and equality, and holds leaders accountable for protecting the rights of LGBTIQ people everywhere. OutRight was founded in 1990 and has recognized consultative status at the United Nations.

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September 2022



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Executive Summary

Asia is marked by diverse cultural, political, economic, and legal systems. Lesbian, gay, bisexual, transgender, and queer (LGBTQ) people in the region experience diverse forms of violence in the contexts of family and intimate partner relations.¹

As with cisgender heterosexual women, much of the domestic violence committed against LGBTQ people masquerades as customs and traditions. In countries where there are laws addressing domestic violence, redress and services do not adequately encompass LGBTQ survivors. As a result, they are often unable to seek justice and access institutional support.²

This report examines the domestic violence national legislation of ten countries in Asia – China, India, Japan, Malaysia, Nepal, Philippines, Singapore, Sri Lanka, Timor-Leste and Thailand – in order to locate LGBTQ survivors in these laws.

The report analyzes the provisions in each country’s domestic violence law in order to determine their responsiveness to the contexts and needs of LGBTQ survivors of domestic violence. To achieve this, the report plots the relevant components of the laws vis-à-vis the potential tensions and opportunities therein for LGBTQ-inclusive interpretation and implementation.

A significant number of studies have been conducted for the purpose of mapping the legal frameworks of domestic violence legislation in Asia, but none of these studies substantively

1 While this report does not discuss the specific forms and extent of domestic violence experienced by intersex people, activists and NGOs in Asia have reported that intersex people suffer from harmful practices such as infanticide, child abandonment, intersex genital mutilation (IGM), and forced marriage. See Esan Regmi and Parsu Ram Ra, *Intersex Genital Mutilations (Human Rights Violations of Children With Variations of Reproductive Anatomy): NGO Report to the 6th Report of Nepal on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, October 2018, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NPL/INT_CEDAW_CSS_NPL_32600_E.pdf (accessed 8 August 2022).

2 In this report, domestic violence is used to refer to intimate partner violence, or acts of violence that occur between people who are or were in an intimate relationship with one another, as well as family violence, or acts of violence committed by one family member to another. OutRight recognizes that some activists working to address gender-based violence find the term “domestic violence” too limiting, as it can be understood as violence by a perpetrator who lives in the same home as the victim. A more expansive articulation of the types of violence captured in this report is “intimate partner violence and family violence.” OutRight intends the term “domestic violence” to be a more readable but equally inclusive encapsulation of these forms of violence, not limited to individuals who share a home.

reference the situation of LGBTQ people. This situation contributes to the further invisibilization of LGBTQ people in discourses on domestic violence and reform efforts to institute or strengthen legal mechanisms to address it.

The legal information on existing Asian domestic violence legislative frameworks, as well as the commentary and recommendations included in this report, aim to contribute to the array of resources that can be used in advocating for legal remedies for LGBTQ survivors of domestic violence. It is hoped that this report will be used by LGBTQ rights and gender-based violence activists and by policymakers to:

1. Gain a better understanding of the unique legal obstacles that LGBTQ survivors of domestic violence face in accessing justice and in seeking assistance;
2. Champion the need for domestic violence legislation that is inclusive of, and responsive to, LGBTQ people; and
3. Develop legal mechanisms that address specific challenges and barriers faced by LGBTQ survivors in accessing domestic violence redress and services.

This review of the domestic violence laws of the ten countries reveals that, except for Singapore, all the countries have specific legislation tackling domestic violence. These laws are not primarily criminal in nature. Only the laws of Nepal, the Philippines, and Thailand specifically attach criminal liability to acts of domestic violence that is separate from liabilities sanctioned by other penal statutes. The laws of China, India, Japan, Malaysia, Sri Lanka, and Timor-Leste only provide a legal basis for the issuance of protection and similar forms of orders to ensure the safety and rights of domestic violence victims, and for compelling governments to establish mechanisms to prevent and address domestic violence. The

majority of these laws have gender-neutral definitions of victims and perpetrators, such that, if interpretation were only based on these definitions, anyone, regardless of sexual orientation or gender identity, would be entitled to the remedies and services provided in the laws.

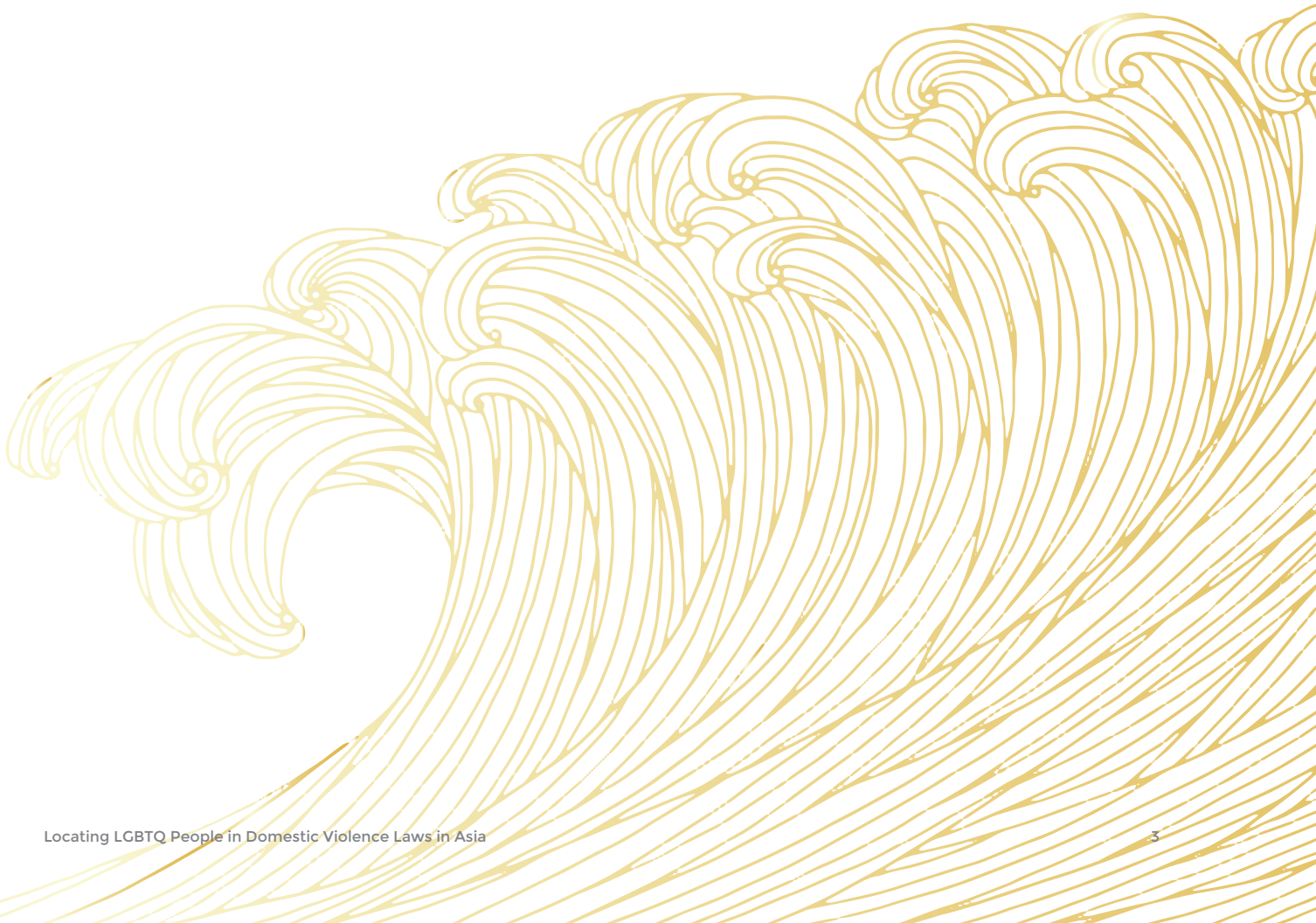
However, as reported by LGBTQ individuals and activists who were interviewed for this report, the neutrality in the laws' language does not necessarily translate to inclusive implementation. OutRight's interviews with key informants suggest that LGBTQ people face difficulties in accessing the benefits and services that the domestic violence laws authorize. This is due, on one hand, to the lack of provisions that squarely decree LGBTQ inclusion, and on the other, the presence of language and provisions that could contribute to the exclusion of LGBTQ people from the coverage of the laws, as well as the prevalence of the culture of homophobia and transphobia in these countries that influences the interpretation and implementation of the domestic violence legislation. In some instances, it is LGBTQ people themselves who opt not to use the remedies and services under the laws due to the perception that the mechanisms provided therein are not tailored to their needs and contexts.

In India and the Philippines, the domestic violence legislation is gender-specific. This has resulted in LGBTQ people, who do not meet the sex requirements identified in the laws, being unable to access remedies and services available therein.

This report also presents several recommendations in order to address the aforementioned gaps in the domestic violence legislation. For domestic violence laws that provide gender-neutral definitions of victims and perpetrators, this report recommends, among others, the integration in the laws of mandate to conduct in-depth trainings on human rights and LGBTQ rights and issues

among professionals who execute domestic violence work. Where the country defines victims and survivors in a gender-specific way, the report raises the need to expand the definitions of victims and perpetrators in order to encompass LGBTQ domestic violence survivors. This report also advocates for the shift from violence against women framework to gender-based violence framework as a way of acknowledging that LGBTQ people are at a heightened risk for being subjected to violence in the domestic setting on account of their gendered marginalization.

Although the domestic violence laws of the ten countries utilize distinct frameworks, they can be instructive for LGBTQ rights activists, gender-based violence activists, and policy makers in determining and working towards reforming or enriching some aspects and frameworks of legislation that hinder or enable LGBTQ-inclusive application.





Key Findings

1. The majority of the domestic violence laws in the ten countries use gender-neutral language in their definitions of victims and perpetrators.
2. Only two countries – India and the Philippines – have domestic violence laws that specifically identify the victim as a woman.
3. In India and the Philippines, any person who is assigned female at birth, regardless of their sexual orientation or gender identity, can technically seek remedies and services under the laws.
4. In countries where the laws use gender-neutral definitions for victims and perpetrators, LGBTQ people still face barriers in accessing remedies and services. The barriers arise from gaps in the laws themselves, compounded by the culture of homophobia and transphobia in societies and institutions of justice and help.
5. None of the laws specifically mention sexual orientation or gender identity or explicitly identify LGBTQ people as possible parties, whether as victims or perpetrators.
6. The majority of the laws contain relationship and cohabitation requirements that can potentially limit LGBTQ people's access to remedies and services.
7. None of the laws explicitly name the forms of domestic violence to which people may be particularly vulnerable on the basis of sexual orientation or gender identity, such as coercive conversion practices or forced marriage.
8. Some of the laws use the human rights framework, while others place family stability as central goal.
9. The issuance of a Protection Order is the key remedy provided in the majority of the laws, with the exception of the laws in the Philippines, Thailand, and Nepal where specific criminal penalties, such as imprisonment or fines, are imposed for the commission of an act of domestic violence. Except for the above-mentioned countries, a survivor of domestic violence who wants to file a criminal case against a perpetrator has to rely on the applicable provisions of the criminal code and other laws.



Methodology

This report uses two main methods for data gathering: desk review and key informant interviews. The report draws data from a desk review of the domestic violence legislation in the Philippines, Timor-Leste, Thailand, Singapore, Malaysia, Nepal, India, Sri Lanka, China, and Japan and of literature related to the topic. OutRight also conducted five key informant interviews with LGBTQ rights and gender-based violence activists in five countries to gather additional relevant information relating to the implementation of the laws and the actual experiences of LGBTQ people in accessing the mechanisms and services provided therein.

Scope and Limitations

Except for India and the Philippines, OutRight was unable to acquire relevant jurisprudence that could provide a clearer picture of how the courts and relevant institutions have interpreted and implemented the domestic violence legislation in relation to LGBTQ people. This is due to the lack of accessible research that identifies court decisions that relate to gender-based violence experienced by them. To compensate for this, activists were interviewed about cases of domestic violence against LGBTQ people made known to them in the course of their work. There is also a dearth of literature about domestic violence and LGBTQ people in Asia. For this reason, some of the resources used in this report refer to LGBTQ domestic violence in the global context. This situation further exposes the need to conduct studies that spotlight the experience of violence against LGBTQ people in Asia in the context of intimate partner and family relations.



Introduction

Domestic violence is a serious public health and social issue that prevents many women, children, elderly people, and other vulnerable populations, including LGBTQ people, from enjoying their fundamental rights to security, safety, and dignity. There is a growing body of evidence showing that LGBTQ people face various forms of domestic violence, including physical, sexual, psychological and economic violence. This evidence reveals that LGBTQ people not only have an increased vulnerability to domestic violence, but they also face unique forms of it due to their sexual orientation, gender identity, and expression.³ In most cases, the violence that LGBTQ people suffer from intimate partners or family members is intimately connected to homophobia and transphobia that translate to practices such as forced marriage, rape, beatings, economic deprivation, forced isolation from communities, persistent conversion practices aimed at changing or suppressing a person's sexual orientation or gender identity, manipulation, and threats to disclose sexual orientation and gender identity as well as HIV status.

LGBTQ individuals confront an elevated risk of sexual assault, physical and psychological harm, and other types of violent and abusive treatment.⁴ A *Reuters* article claimed that the violence that LGBT people in Asia face is often from their own family members.⁵ In the same article, the interviewees shared their experiences of getting beaten and forced into marriage by their own families. Despite LGBTQ people's vulnerability to domestic violence, discourse around such violence has traditionally centered violence committed by cisgender men against cisgender women in heteronormative relationships and family setups. Domestic violence experienced by LGBTQ people is invisible to lawmakers, government agencies, and even to some international, national, and community-based organizations working on gender-based violence.

3 Adam Messinger, *LGBTQ Intimate Partner Violence: Lessons for Policy, Practice, and Research* (Oakland: University of California Press, 2017).

4 A national study in the United States found that sexual minority groups have higher prevalence rates of childhood victimization compared to heterosexuals, including physical or sexual abuse and parental neglect. J.P. Andersen and J. Blossich, "Disparities in Adverse Childhood Experiences among Sexual Minority and Heterosexual Adults: Results from a Multi-State Probability-Based Sample," *PLoS ONE* 8(1): e54691, 2013, <https://doi.org/10.1371/journal.pone.0054691> (accessed 8 August 2022).

5 Alisa Tang, "Asia's LGBT People Migrate to Escape Violence at Home," *Reuters*, 8 April 2025, <https://www.reuters.com/article/us-gay-rights-asia-idUSKBN0N000D20150409> (accessed August 8, 2022).

The impact of abuses in the contexts of the family and intimate relations is compounded by the lack of acknowledgment that LGBTQ people face domestic violence. The dearth of national legislation that addresses LGBTQ people's vulnerability to domestic violence attests to the lack of recognition of the severity and prevalence of the issue.

In all the domestic violence laws that are covered in this report, none specifically mention LGBTQ people or violence that might be carried out on the basis of the victim's sexual orientation or gender identity.

In all the domestic violence laws that are covered in this report, none specifically mention LGBTQ people or violence that might be carried out on the basis of the victim's sexual orientation or gender identity. Despite studies and testimonies demonstrating that the home is one of the central sites where violence against LGBTQ people occurs, and that families are among the main perpetrators, this dynamic is not recognized in the ten countries' domestic violence laws.

In countries where the domestic violence legislation is gender-specific, only women and girls who fit the definition of a victim are able to seek remedies and services. None of the ten countries have a simple, rights-respecting procedure by which transgender people can change their gender markers on documents, leaving most trans women unable to access the available remedies.

Where the national legislation is gender-neutral, LGBTQ victims often opt to waive the available remedies for fear of persecution or re-traumatization and re-victimization. Barriers faced by LGBTQ survivors in accessing remedies and services include the criminalization of same-

sex relations, the prevalence of anti-LGBTQ stigma in institutions and societies at large, and economic and social disempowerment.

On the other hand, there are positive examples of LGBTQ people and advocates being able to successfully access some provisions of their domestic violence laws by utilizing the

generality and neutrality of the language through which the laws' mandates are expressed. However, the lack of explicit recognition in the existing legal mechanisms and frameworks that LGBTQ people are vulnerable to domestic violence makes the laws susceptible to

arbitrary implementation.

The Purpose and Key Components of Legislation on Domestic Violence

Domestic violence legislation does not only concern itself with constituting domestic violence as a crime that is distinct from crimes identified in penal codes and other laws or with providing a legal basis for punishing perpetrators. International guidelines stress that domestic violence legislation should also integrate mechanisms to ensure that victims are provided with services and support and are able to seek civil remedies and other remedial measures such as the issuance of a protection and restraining order. It can mandate that government authorities implement programs aimed at preventing the occurrence of domestic violence through training and community engagement, conduct institutional research and gather data, and coordinate between relevant agencies. It can also provide protocols to ensure that implementers uphold the rights, wellbeing, and security of the survivors.

Thus, the continued invisibility of LGBTQ people in domestic violence mechanisms will also deprive them of the other mantles of protection and support that the laws enable. The failure to recognize LGBTQ people as key stakeholders in domestic violence can also potentially forestall the emergence of a more comprehensive analysis of domestic violence and the institution of mechanisms that address its multi-dimensional and structural foundations.

The Gender Dimension of Domestic Violence Experienced by LGBTQ People

Domestic violence has conventionally been conceptualized as a form of violence against women; for example, violence committed by a cisgender man against a cisgender woman intimate partner and her children. The centrality of the male-female violence in domestic violence discourse is based on cis-heteronormative assumptions about gender and power relations. The gender dimension of violence may be easier for authorities and members of the public to recognize when an act of violence is committed by a man against a woman.⁶ In fact, the term “gender-based violence” is, for the most part, used interchangeably with “violence against women” in international human rights texts, global campaigns, and national legislation. The prevalence of cis-heteronormative assumptions and binary frameworks in anti-domestic violence research and responses has real-life consequences, and LGBTQ survivors have identified these assumptions as material barriers in access to justice and seeking help in cases of domestic violence.

6 Hilde Jakobsen, “What’s Gendered about Gender-Based Violence?: An Empirically Grounded Theoretical Exploration from Tanzania,” *Gender & Society* 28 (2014), doi:10.1177/0891243214532311 (accessed 8 August 2022).

Gender is central to the violence LGBTQ people experience. While violence against women within intimate partner relations with men is an important issue that requires an urgent response, more LGBTQ survivors are opening up about their experiences of violence, resulting in a growing understanding of how bias based on sexual orientation and gender identity produces added risks and vulnerabilities to violence within the home and in intimate partnerships. Interviewees for this report mentioned gender inequality, patriarchy, and power imbalance as factors that motivate the commission of domestic violence directed towards LGBTQ people, notwithstanding the fact that some of these incidents happened within non-heteronormative partnerships and family setups. Conceptualizing gender-based violence from the lens of LGBTQ people provides an opportunity to establish an analysis of patriarchy, power, and gender inequality that accounts for the myriad channels through which they are produced and reproduced.

Additionally, the principle of intersectionality makes it imperative to look at how one’s experience of gender-based violence is tied with, and affected by, the interlocking identities that the survivor inhabits. Domestic violence policies and legal mechanisms should take into account the multiple ways in which gender becomes central to the violence experienced by different marginalized groups, and how sexual orientation and gender identity, along with other characteristics, compound a person’s vulnerability to violence.

Lastly, surfacing the experience of LGBTQ people of domestic violence may also provide conditions for a more general interrogation and criticism of legal systems that erase LGBTQ people, their relationships, and their experiences, effectively disqualifying them as legitimate holders of legal rights and deserving of social protections.

Some Debates Related to Domestic Violence Legislation

Shifting Framework from Violence Against Women to Gender-Based Violence

An area of contention around legislation on domestic violence involves expanding the violence against women framework to gender-based violence. At the core of the violence against women (VAW) framework is the understanding that women disproportionately suffer from domestic and intimate partner violence and that men predominantly perpetrate the violence directed against women.⁷ This report does not question this premise. However, the VAW framework does not go far enough to recognize that violence rooted in patriarchy affects a broader spectrum of people whose gender and sexuality do not conform to the gender binary and/or heterosexual norms, which limits or denies remedies and services to some people who are LGBTIQ. Using a gender-based violence framework in policies and legislation extends domestic violence protections for LGBTIQ people facing violence from same-sex partners, from family members, and in gender diverse relationships. Shifting to a gender-based violence lens would not take away protections already in place for cisgender and heterosexual (non-LGBTQ) women who are victims of partner violence, family violence, and other forms of misogyny,

7 Anne-Marie Slotboom and Janine Janssen, “Gender neutrality and the Prevention and Treatment of Violence – A Dutch Perspective,” *Women & Criminal Justice* 31 (2019), doi:10.1080/08974454.2019.1661934 (accessed 8 August 2022).

and would not detract from an understanding of these forms of violence as manifestations of the culture of patriarchy.

Another chief concern among some women’s rights advocates is the possibility that giving gender-neutral definitions for survivor and perpetrator of domestic violence would expose women to malicious charges by perpetrators and undermine victories achieved in institutionalizing legal protections for domestic violence on grounds of sex and gender.⁸ However, this concern rests on the assumption that the only way to recognize the central role that sex and gender play in domestic violence as well as the greater vulnerability of women and girls to it is by providing a gender-specific definition of survivor and perpetrator in domestic violence legislation. This report forwards the argument that gender-neutrality in definitions does not always equate to gender-blindness. Defining the survivor and perpetrator of domestic violence in a gender-neutral way will not work to temper the special protections already

Using a gender-based violence framework in policies and legislation extends domestic violence protections for LGBTIQ people facing violence from same-sex partners, from family members, and in gender diverse relationships.

afforded to women and girls in a domestic violence legislation if the latter also notably highlights women and girls by categorically mandating domestic violence programs that make them key stakeholders. These special protections will be further secured by putting in place protocols and mechanisms aimed

8 “Violence that is Not Gender Neutral,” Center for Law and Policy Research, 18 November 2016, <https://clpr.org.in/blog/violence-that-is-not-gender-neutral> (accessed 8 August 2022).

at protecting their rights and wellbeing in processes of justice and help-seeking, including the institution of safeguards to prevent malicious filing of cases and retaliatory complaints.

One good example is the law of Japan that provides a gender-neutral definition of parties to a domestic violence incident but emphasizes the need to safeguard human rights and eradicate violence against women.⁹

Rethinking Criminalization of Domestic Violence

Activists have long debated the value of enhanced criminal legal responses in addressing domestic violence and other forms of gender-based violence. People who are in favor of criminalizing domestic violence assert that to categorize domestic violence as a crime is to give a public character to a problem which has, for a long time, been relegated to the private sphere.¹⁰ This assertion is based on the criminalization thesis which, in sum, posits that the symbolic power of the law and the criminal justice system will help deter domestic violence.¹¹ A counter argument is that criminalization, especially hyper-incarceration, has not been proven to be successful in addressing domestic violence, and that in certain respects, it has impacted survivors' justice and help-seeking attitudes.¹² Research

9 Japan, *Act on the Prevention of Spousal Violence and the Protection of Victims* (Act No. 31 of April 13, 2001), Preamble, https://www.gender.go.jp/policy/no_violence/e-vaw/law/pdf/sv.pdf (accessed 8 August 2022).

10 Deborah Tuerkheimer, "Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence," *Journal of Criminal Law and Criminology* 94: 4 (Summer 2004), doi:10.2307/3491414 (accessed 8 August 2022), p. 1023.

11 Lucy Williams and Sandra Walklate, "Policy Responses to Domestic Violence, the Criminalisation Thesis and 'Learning from History,'" *Howard Journal of Crime and Justice* 59: 3 (2020), doi:10.1111/hojo.12378 (accessed 8 August 2022), pp. 305-316.

12 Leigh Goodmark, "Should Domestic Violence Be Decriminalized?" *Harvard Journal of Law and Gender* 40 (2017), University of Maryland Legal Studies Research Paper No. 2017-15, <https://ssrn.com/abstract=2985139> (accessed 8 August, 2022).

has found that some survivors decide not to report domestic violence for fear that their family members and intimate partners may be jailed for committing domestic violence, and that engaging with criminal legal systems may also end up revictimizing people, especially those whose sexual orientation and/or gender variance are criminalized or stigmatized.¹³ Domestic violence laws should focus on systemic prevention and resist an over-emphasis on individual accountability. On closer scrutiny, the domestic violence law of Timor-Leste reflects the kind of framework that focuses on prevention and that puts the survivor at the forefront of its statutory mechanisms. Article 1 of the law's general provisions states that it seeks to establish a legal regime applicable to prevention of domestic violence and protection and assistance to victims.¹⁴ This approach further manifests in the succeeding provisions that require the informed consent of the victim in any domestic violence intervention.¹⁵ Albeit instituting domestic violence as a public crime, the law of Timor-Leste puts heavy emphasis on the obligations of the governments to provide programs for public education and research on domestic violence.¹⁶ It also contains a number of provisions decreeing the provision of psychological, medical and shelter

13 A report about barriers to reporting sexual assault in Canada cited several instances where a survivor opted not to file a domestic violence report with the police due to fear that the perpetrator would be put behind bars or would suffer disproportionate consequences. Alana Prochuk, *We Are Here: Women's Experiences of the Barriers to Reporting Sexual Assault*, West Coast Leaf, November 2018, <https://www.west-coastleaf.org/our-publications/we-are-here-womens-experiences-of-the-barriers-to-reporting-sexual-assault> (accessed 8 August 2022).

14 Timor-Leste, *Law No. 7/2010 on Domestic Violence*, 2010, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_179323.pdf (accessed 8 August 2022), art. 1.

15 Timor-Leste, *Law No. 7/2010 on Domestic Violence*, 2010, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_179323.pdf (accessed 8 August 2022) art. 5.

16 Timor-Leste, *Law No. 7/2010 on Domestic Violence*, 2010, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_179323.pdf (accessed 8 August 2022), art. 11 & art. 12.

support to victims.¹⁷ Article 27 of the law also directs the implementation of measures to raise the awareness of offenders.¹⁸ Domestic violence legislation should offer access to justice without forcing victim-survivors to choose between obtaining protections for themselves and shielding their partners or family members from prison. Domestic violence laws and policies should bolster public efforts to build communities of care and emphasize justice and healing programs as an alternative model for accountability and restitution to survivors.¹⁹ This does not mean

...in many instances a focus on prevention and restorative justice can more effectively address the structural roots of gender-based violence, meet the needs of survivors, and avoid giving rise to further human rights violations...

there is no place for the criminal legal system in responding to domestic violence, but that in many instances a focus on prevention and restorative justice can more effectively address the structural roots of gender-based violence, meet the needs of survivors, and avoid giving rise to further human rights violations through reliance on frequently abusive criminal legal systems.

17 Timor-Leste, *Law No. 7/2010 on Domestic Violence*, 2010, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_179323.pdf (accessed 8 August 2022), chapter 4.

18 Timor-Leste, *Law No. 7/2010 on Domestic Violence*, 2010, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_179323.pdf (accessed 8 August 20), art. 27.

19 LGBTQ activists in the Philippines emphasized the importance of restorative justice at an online convening of the Queering GBV Collective in the Philippines attended by OutRight, 4 March 2022.

The International Legal Framework for Domestic Violence

Decades of activism, primarily carried out by feminist activists, scholars and organizations, has led to a shift in social perceptions and legal frameworks according to which domestic violence has ceased to be seen as a private issue, and eradicating it has become a global agenda. Under international law, states, as duty-bearers, have the obligation to address

domestic violence, for instance by enacting legislation. As a response to the growing calls to action, and with the inclusion of violence against women as a key issue raised by UN human rights mechanisms and development agendas, many states have taken steps to pass

or revise legislation tackling domestic violence and have acknowledged the institution of anti-domestic violence mechanisms as a primordial component of good governance and as a public health measure.

There have been several efforts to develop model legislation on addressing domestic violence and violence against women more broadly. In 1996, the UN Special Rapporteur on violence against women released the Framework for Model Legislation on Domestic Violence, which defined domestic violence as “gender-specific violence directed against women” and recommended the enactment of specific laws prohibiting violence against women within interpersonal and family relationships.²⁰ In 2010, the United Nations

20 UN Commission on Human Rights, Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy, A Framework for Model Legislation on Domestic Violence, E/CN.4/1996/53/Add.2, 2 February 1996, (accessed 8 August 2022).

Division for the Advancement of Women published a Handbook for Legislation on Violence against Women, also framing domestic violence as a form of violence against women, although it recommends that the scope of persons protected in laws encompass “individuals who are or have been in an intimate relationship, including marital, non-marital, same sex and non-cohabiting relationships.”²¹ These frameworks influenced much of the domestic violence legislation across the globe.

The understanding of the scope of domestic violence in international human rights law is evolving along with the growing recognition and application of human rights protections to sexual orientation and gender identity among UN human rights mechanisms. The Committee for the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which all ten countries included in this report have ratified, has issued several general recommendations that affirm that the scope of the Convention extends to discrimination linked to intersectional factors including sexual orientation and gender identity.²² In

2011, the UN Human Rights Council adopted the first UN resolution that focuses on sexual orientation and gender identity, expressing “grave concern” about acts of violence and discrimination committed against individuals because of their sexual orientation or gender identity.²³

The growing recognition of and support for LGBTQ people’s human rights provide the momentum for consistent and organized efforts to influence governments to establish domestic violence mechanisms aimed at protecting LGBTQ people.

21 *Handbook for Legislation on Violence against Women*, UN Department of Economic and Social Affairs, Division for the Advancement of Women, ST/ESA/329, 2009, <https://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf> (accessed 8 August 2022).

22 These include, but are not limited to: Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 27 on Older Women and Protection of their Human Rights, CEDAW/C/GC/27 (2010), <http://hrlibrary.umn.edu/gencomm/CEDAW%20Gen%20rec%2027.pdf> (accessed 8 August 2022), para. 13; Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28 (2010), <https://www.refworld.org/docid/4d467ea72.html> (accessed 8 August 2022), Introductory Sentence of Article 2, para. 18; and Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on Gender-based Violence against Women, Updating General Recommendation No. 19, CEDAW/C/GC/35 (2017, Scope, Paragraph 12, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf (accessed 8 August 2022). See also ASEAN SOGIE Caucus, “Policy Brief on the Convention on the Elimination of All Forms of Discrimination Against

Women (CEDAW) and Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC) in Southeast Asia,” 2017, <https://aseansogiecaucus.org/images/resources/publications/ASC%20Policy%20Brief%20-%20CEDAW%20and%20SOGIESC.pdf> (accessed 8 August, 2022).

23 Human Rights Council, Human Rights, Sexual Orientation and Gender Identity, Resolution 17/19, A/HRC/RES/17/19 (2011), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement> (accessed 8 August 2022).



Locating LGBTQ People in Asia's Domestic Violence Laws

This section provides a thematic discussion of the components of the national domestic violence laws in ten countries in Asia that have the most impact to LGBTQ people's access to domestic violence remedies and services. The themes are discussed in a manner that accounts for tensions in relation to sexual orientation, gender identity and expression as well as opportunities for inclusive implementation. For each of the themes, specific recommendations on addressing tensions and maximizing opportunities are provided. This section's objective is to plot and analyze the legal provisions that are relevant to the themes in a way that considers the LGBTQ dimension of domestic violence and that takes into account the barriers to LGBTQ people's access to the laws. The key themes are as follows:

- a. Legal Parties in the Domestic Violence Laws;
- b. Relationship and Cohabitation Requirements in the Domestic Violence Laws as Barriers to LGBTQ Access to Remedies and Services;
- c. Spotlighting the Types of Domestic Violence Experienced by LGBTQ People;
- d. Protection of the Family Framework vs. the Human Rights Framework;
- e. Queering Remedies for Domestic Violence Cases;
- f. Other Components of Domestic Violence Laws that Affect LGBTQ Inclusive Implementation.

Legal Parties in the Domestic Violence Laws

Recommendations

- a. Domestic violence laws should provide gender-neutral or gender-inclusive definitions of victim and perpetrator. They should explicitly stipulate that the category "victim" includes LGBTQ, intersex, and gender-diverse people as well as other historically marginalized groups.

- b. Domestic violence laws should include sex, gender, sexual orientation, gender identity, age, disability, race, ethnicity, economic status, and other vulnerabilities as risk factors for experiencing domestic violence.
- c. Domestic violence laws should be gender-sensitive, and should include mechanisms aimed at protecting the rights and wellbeing of groups most likely to be vulnerable to domestic violence, including women and LGBTQ people, in processes of justice and help-seeking.

The domestic violence laws of most of the countries covered in this report define the victims and perpetrators of domestic violence in a gender-neutral way. In these laws, domestic violence is seen as an act that any family member may perpetrate, experience and seek redress for. Some of these laws provide remedies and services to all persons in a familial or intimate relationship, without regard to specific vulnerabilities and historical marginalization, while others contain provisions that recognize and consider the greater vulnerabilities of women and other persons, such as the elderly, to domestic violence in the household.

In India and the Philippines, the domestic violence laws adopt gender-specific language that limits the definition of “victim” to women in an intimate or family relationship. Domestic violence is treated as generally equivalent to violence against women, in the case of India and, including a woman’s child, regardless of gender, in the case of the Philippines.

Gender-specific definitions of victim and perpetrator preclude LGBTQ people’s access to the remedies and protections that the domestic violence laws sanction.

India’s Protection of Women from Domestic Violence Act of 2005 covers domestic violence committed against any woman who is

or has been in a domestic relationship with the perpetrator, who has lived with the latter in a shared household, and who is related to the perpetrator by consanguinity (descent), marriage, or through a relationship in the nature of marriage, adoption, or who lives together with him in a shared household as a joint family.²⁴ The victim who is a wife or “a female living with her male partner in a relationship in the nature of marriage” may also file a complaint against a relative of the husband or the male partner. When first passed in 2005, the Indian law specifically defined the perpetrator as an adult male who is, or has been, in a family relationship with the victim. However, in 2016, the Supreme Court of India passed a ruling removing the phrase “adult male” from Section 2(q) of the domestic violence law.²⁵

India’s law does not specifically mention sexual orientation or gender identity as expanding or limiting elements. Thus, lesbian and bisexual women and trans men, in relation to a perpetrator who is a family member, may come under the coverage of the law. Consequently, male victims, including those in relationships with other men, do not come under the purview of the said law.

In the Philippines’ *Anti-Violence Against Women and Their Children Act of 2004*, intimate partner violence act is committed by any person against a) a woman who is the perpetrator’s wife or former wife, b) a woman with whom the perpetrator has or had a sexual or dating relationship, or with whom he has a common child, or c) the woman’s child, “whether legitimate or illegitimate, within or without the family abode.”²⁶ The law is first and foremost

24 India, *The Protection of Women from Domestic Violence Act, 2005*, <https://indiankanoon.org/doc/542601/> (accessed December 2021), paras. 2 (a), 2 (f), 2(q).

25 *Hiral P. Harsora v. Kusum Narottamdas Harsora* (2016) 10 SCC 165.

26 Philippines, *An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, And For Other Purposes, 2004*, [https://lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html#:~:text=\(a\)%20%22Violence%20against%20women,her%20child%20whether%20legitimate%20or](https://lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html#:~:text=(a)%20%22Violence%20against%20women,her%20child%20whether%20legitimate%20or) (accessed 8

an intimate partner violence law. Thus, it does not comprehend family violence committed by a member of the family against another unless it is one that is committed by one intimate partner to another or the latter's child.²⁷

Based on prevailing judicial interpretations in the country, when a law uses the word "woman," it refers only to people assigned female at birth.²⁸ Thus, since the domestic violence law uses the word category "woman," any person with a female gender marker, including lesbians, bisexual women, and trans men, may be afforded protection under the law. The law is applicable regardless of the gender of the victim's partner, referring to "perpetrators" as "any person." In contrast, gay and bisexual men "with male gender marker" and trans women are not protected under the law.

Gender-specific laws highlight the vulnerability of women to domestic violence but fail to consider other intersecting factors, such as gender identity and sexual orientation, in identifying risks and vulnerabilities.

The domestic violence laws of India and the Philippines both focus on the vulnerability of women to family or intimate partner violence. However, in doing so, they fail to recognize the multiplicity of the forms of power imbalances and gender inequalities at play in the commission of domestic violence. To solely focus on women in conceptualizing gendered violence may result in the dismissal of other manifestations of gendered power relations and hierarchy based on caste, age, race, economic power, and ethnicity that contribute to the occurrence of domestic violence. Expanding the understanding

August 2022), section 3 (A).

27 In the Philippines, adoption is only allowed for married couples. Thus, in the absence of a marriage equality law, same-sex partners do not have a legally recognized right to have a common child.

28 *Rommel Jacinto Dantes Silverio vs. Republic of the Philippines*, 2007, https://lawphil.net/judjuris/juri2007/oct2007/gr_174689_2007.html (accessed 8 August 2022).

of domestic violence, considering other factors and structural inequalities that give rise to it, can be helpful in crafting domestic violence legislation that can protect all individuals, who, because of their intersecting positionalities, become vulnerable to abuse and violence in the context of family and intimate relations.

The framing of legal subjects using an intersectional lens accommodates a wider range of stories about survivors' experiences of domestic violence, which will ultimately pave the way for more inclusive access to domestic violence-related remedies and services. An intersectional lens can also serve to introduce an alternative conception of domestic violence that does not one-dimensionally address sexuality and gender in discourses around it.

Women-specific domestic violence laws will remain inaccessible to trans women where legal systems view sex and gender using a binary framework.

In many legal systems, the terms "sex" and "gender" are used interchangeably. The binary orientation of legal systems and laws has resulted in the framing of legal subjects as either male or female or man or woman, both classifications referring to the sex assigned at birth of the person. In this binary legal framework, a person claiming to belong to either of the categories "man" or "woman" should possess certain characteristics without which the claim of womanhood or manhood evades legal recognition. By treating sex and gender as one and the same, static, and almost always referencing to one's sex assigned at birth, the laws impact LGBTQ people's access to remedies and services.

Most legal systems in the ten countries covered in this report mandate the registration of citizens with a "female" or "male" sex marker. Throughout Asia, the majority of transgender people are not able to secure identification documents that reflect their gender identity.²⁹

29 Nepal has a transgender category on citizenship

This binary orientation of the legal system is evident in the language used and the interpretation that authorities lend to the domestic violence legislation in the Philippines. While the gender category used in the law is “woman,” only people assigned female at birth are officially recognized as such, leaving out other women.³⁰

Gender-neutral definitions of victim and perpetrator do not translate to LGBTQ inclusion.

The domestic violence laws that define victim and perpetrator in a gender-neutral manner may be further categorized into those that use the *spousal violence framework* and those that employ the *family violence framework*.

The spousal violence framework addresses violence that is committed by one spouse or partner against another but excludes violence committed in the context of a relationship that is not similar to marriage. Japan’s **Act on the Prevention of Spousal Violence and the Protection of Victims** uses the spousal violence framework. The law is applicable only to a spouse and a de facto spouse, a former spouse and a former de facto spouse, and a person who has or has had a relationship with the perpetrator, provided that the relationship is one where the partners reside in the same place, excluding relationships where two persons do not live together in a manner akin to a marital relationship.³¹

certificates and India’s Supreme Court has recognized the existence of a third gender. “Countries that Allow Transgender People Easy Status Change,” *France24*, 29 June 2021, <https://www.france24.com/en/live-news/20210629-countries-that-allow-transgender-people-easy-status-change> (accessed 8 August 2022). See also Asia Pacific Transgender Network and UNDP, *Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia*, Executive Summary, 2017, https://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/legal-gender-recognition--a-multi-country-legal-and-policy-revie.html (accessed 8 August 2022), p. 1.

30 In the Philippines, there exists no legal basis to allow the change of a person’s gender marker.

31 Japan, *Act on the Prevention of Spousal Violence and the Protection of Victims* (Act No. 31 of April 13, 2001), https://www.gender.go.jp/policy/no_violence/e-vaw/law/pdf/sv.pdf, art. 1, paras. 1, 3; arts. 28-2.

Meanwhile, the family violence framework comprehends a situation where violence is committed by one family member against another.

Thailand’s **Domestic Violence Victim Protection Act, B.E. 2550** uses the family violence framework and affords protection to any family member subjected to domestic violence without regard to gender.³²

Singapore’s **Women’s Charter**, the law that contains a specific chapter that tackles domestic violence, and **Malaysia’s Domestic Violence Act, Act 521** use the family violence framework and provide protection and redress in cases of family violence committed to a person in the family.³³

Nepal’s **Domestic Violence (Offence and Punishment) Act, 2066** refers to the victim as any person with whom the perpetrator has or has had a domestic relationship and provides further that in order for the relationship to qualify as a domestic relationship, the victim should be living with the perpetrator in a shared household and be related to them by consanguinity, marriage, adoption or should be a family member of the perpetrator who lives with them as a joint family.³⁴

32 Thailand, *Domestic Violence Victim Protection Act, B.E. 2550, 2007*, <http://ilo.org/dyn/natlex/docs/ELECTRONIC/82853/91030/F1861648233/THA82853.pdf> (accessed 8 August 2022), section 3.

33 Singapore, *Women’s Charter 1961 (2020 Revised Edition)*, Part 7, <https://sso.agc.gov.sg/act/wc1961> (accessed 8 August 2022), para. 64; Malaysia, *Domestic Violence Act 1994*, Part 1, <https://tcclaw.com.my/wp-content/uploads/2020/12/Domestic-Violence-Act-1994-1.pdf> (accessed 8 August 2022), para. 2.

34 A joint family is characterized by a common male ancestor and some of his descendants living together under one roof. Saimy Eliza Abraham, “Short Note on Hindu Joint Family- Under Mitakshara and Dayabhaga,” *International Journal of Law Management and Humanities* 2(1): 2018, <https://www.ijlmh.com/wp-content/uploads/2019/04/Short-Note-on-Hindu-Joint-Family-Under-Mitakshara-and-Dayabhaga.pdf> (accessed 8 August 2022). Nepal, *Domestic Violence (Offence and Punishment) Act, 2066 (2009)*, <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/domestic-violence-crime-and-punishment-act-2066-2009.pdf> (accessed 8 August 2022), para. 2(a)(b).

Sri Lanka's **Prevention of Domestic Violence Act, No. 34 of 2005** provides an exhaustive list of who may be considered a perpetrator.³⁵

Timor-Leste's **Law on Domestic Violence (Law No. 7/2010)** uses gender-neutral language in referring to victims and perpetrators. It is unique in that it recognizes other bases of unequal power relations, such as economic and physical, which it calls "situations of ascendancy." These situations are considered an element in determining whether a certain act of violence falls under domestic violence as defined by the law. In addition, it recognizes that "families have a special duty to protect and defend people who are particularly vulnerable to violence, such as women, children, the elderly and the disabled."³⁶ Such codified recognition can provide a basis for the integration, in implementing rules and regulations, of special protections and services centering the identified groups.

It defines domestic violence as:

[...] any act or sequence of acts committed within a family context, with or without cohabitation, by a family member against any other member of that family, where there is a situation of ascendancy, notably physical or economic, in the family relationship,

35 Perpetrator includes the spouse of the aggrieved person, ex-spouse of the aggrieved person, cohabiting partner of the aggrieved person, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter's grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister, stepbrother, stepsister, sibling of a parent, child of a sibling, child of a sibling of a parent; of an aggrieved person or of the spouse, former spouse or cohabiting partner of the aggrieved person or of the spouse, former spouse or cohabiting partner of the aggrieved person. Sri Lanka, *Prevention of Domestic Violence Act, No.34 of 2005*, [https://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/asia/prevention%20of%20domestic%20violence%20act/sri%20lanka%20-%20prevention%20of%20domestic%20violence%20act%20\(2005\).pdf?vs=5243](https://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/asia/prevention%20of%20domestic%20violence%20act/sri%20lanka%20-%20prevention%20of%20domestic%20violence%20act%20(2005).pdf?vs=5243) (accessed 8 August 2022), para. 23.

36 Timor-Leste, *Law No. 7/2010 on Domestic Violence, 2010*, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_179323.pdf (accessed 8 August 2022), preamble.

or by a person with regard to another person with whom the former has had an intimate relationship which resulted, or may result, in physical, sexual or psychological injuries or suffering, economic abuse, including threats such as intimidating acts, bodily harm, aggression, coercion, harassment, or deprivation of freedom.³⁷

China's **Anti-Domestic Violence Law** refers to the victim as any member of the family, or any person who despite not being a family member of the perpetrator, lives together with them.³⁸ Despite the law providing blanket protection to all persons subjected to family violence, regardless of gender, it also contains a provision recognizing the vulnerabilities to domestic violence of certain individuals such as "the minors, the elderly, the disabled, pregnant and lactating women, and seriously ill patients" by mandating that special protection be given to them.³⁹ The law does not specify what special protection entails.

In countries that define victims and perpetrators in a gender-neutral way, implementation can remain non-inclusive of LGBTQ people.

In many contemporary societies, heteronormativity permeates government institutions and agencies, such that in the absence of clear directives for LGBTQ inclusion in legislation, implementers and interpreters of a specific law tend to rely on their heteronormative instincts.

An LGBTQ rights activist in Timor-Leste said that in her experience working with several LGBTQ survivors of gender-based violence, she had observed that when intimate partner violence in a non-heterosexual relationship

37 Ibid., art. 2, sec. 1.

38 China, *Anti-domestic Violence Law of the People's Republic of China*, 2015, arts. 2, 37.

39 Ibid. art.5.

was reported, law enforcers and the courts would only consider the incident as a case of simple assault. She said this was the likely result of the socially prevalent belief that intimate partnership may only be between a woman and a man.⁴⁰ Direct discrimination can also hinder LGBTQ inclusion. The same activist in Timor-Leste shared her experience of handling a case of domestic violence in which the victim was a trans man. When the man went to the police, a police officer told him to dress as a woman and only then could he come back to the station to process his case.⁴¹

The Case of China

China's 2015 Anti-Domestic Violence Law is a product of decades of determination and collaboration among different sectors of Chinese civil society, including feminists and LGBTQ activists.⁴²

"While there is room for improvement and despite the inadequacy of the law in terms of protecting women and queer people, it is still considered an achievement," an activist in China said.⁴³

Although the law does not use gendered definitions of victim and perpetrator, the law's implementation is a different arena of struggle.

At the time of the bill's passage, Guo Linmao, then a member of the legislative affairs commission of parliament's standing committee, stated that, "As for homosexuals in our country, we have not yet discovered this form of violence, so to give you a certain answer, it can

40 OutRight interview with Laura Afonso De Jesus, via video communication, October 2021.

41 Ibid.

42 OutRight interview with A.L., via video communication, October 2021.

43 Ibid.

be said that people who cohabit does not include homosexuals."⁴⁴ While this statement does not hold legal power, the public message has caused hesitation among LGBTQ communities.

To deny that intimate partner and family violence are experienced by LGBTQ people in China is inconsistent with facts.⁴⁵ According to the director of a Beijing-based NGO, Common Language, a survey the organization conducted showed that LGBTQ people experience a higher rate of domestic violence than heterosexual people.⁴⁶ The director said that her organization had submitted a petition and the survey results to legislative officials during the public

"The law, being non-gender-specific, should not make one assume that, in practice, it will also be inclusive."

-LGBTQIA+ Rights Activist from China

consultation for the Anti-Domestic Violence Law to call attention to domestic violence in same-sex relationships.

The activist interviewed for this report said that based on their experience working with LGBTQ communities, they believe that without explicit inclusion under the law or systems of support available to them, LGBTQ Chinese people are unlikely to file cases under the domestic violence law. They also observed that in Chinese culture and tradition, generally, people

44 "China Passes First Domestic Violence Law," *Guardian*, 27 December 2015, <https://www.theguardian.com/world/2015/dec/27/china-passes-first-domestic-violence-law> (accessed 8 August 2022).

45 See, for instance, Xie Wenting, "Same-Sex, Same Abuse. Gay People Seek Protection Under China's First Domestic Violence Law," *Global Times*, 15 January 2016, <https://www.pressreader.com/china/global-times/20160115/282205124886375> (accessed 8 August 2022).

46 Ibid.

do not use litigation for resolving conflicts, and it is even more unusual for people, queer or not, to sue their family members, even when it comes to serious intergenerational violence.

The activist added that another reason that people do not sue for domestic violence is that they fear that filing a case would expose their sexual orientation or gender identity to the public, which could lead to discrimination in their communities and workplaces. They noted that multiple news reports have shown that employers in China have fired LGBTQ people upon knowing their sexual orientation or gender identity. In addition, the activist said some people also fear that the authorities might not take an LGBTQ victim's claim seriously.

Relationship and Cohabitation Requirements as Barriers to Remedies and Protection

Recommendations

- a. Domestic violence laws should broaden their scope to cover the full range of relationships in which domestic violence is likely to happen, including intimate and family relationships of LGBTQ people.
- b. Countries should pass marriage equality and civil union laws so that LGBTQ people can seek remedies and services in cases of domestic violence under the laws that afford them to cisgender, heterosexual couples and families.

The relationship between the victim and perpetrator is an integral aspect of domestic violence legislation. This relationship aspect sets domestic violence apart from other criminal acts of similar nature. This is so because laws

on domestic violence are passed in recognition of the claim that in certain relationships, violence is more likely to occur but is harder to be discovered and addressed. However, ideas and assumptions about the likelihood of certain relationships to provide the environment for the commission of domestic violence may stand as factors in limiting or expanding the populations who can seek protection and remedies under the laws.

In *The Straight Mind and Other Essays*, Wittig described heterosexuality as a political regime that the world assumes and affirms as a must-be.⁴⁷ It does not come as a surprise, then, that the language used in many of the domestic violence laws assumes the universality of heterosexual marital relationships to the exclusion of queer kinships.

In Asia, same-sex relationships are largely treated as illegitimate. Of the countries included in this report, Sri Lanka and Malaysia criminalize same-sex relations, and Malaysia also criminalizes gender diversity. Only one Asian country, Taiwan, provides for civil union and marriage between people of the same sex.⁴⁸

Where LGBTQ people are criminalized, not only are they deterred from seeking protection against violence due to the threat of arrest or discrimination, but they are also unable or unlikely to meet marriage or cohabitation requirements under domestic violence laws.

47 Monique Wittig, *The Straight Mind And Other Essays* (Boston: Beacon Press, 1992), pp. 60, 63, 64.

48 Taiwan, Act for Implementation of Judicial Yuan Interpretation, No. 748, 24 May 2019, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0000008#:~:text=The%20Act%20is%20enacted%20to,of%20living%20a%20common%20life> (accessed 10 August 2022), art. 2.

In countries that do not criminalize LGBTQ people but exclude them from institutions like family and marriage, they may be deprived of the remedies and services provided by domestic violence laws because they do not meet marriage or cohabitation requirements and are not considered to be in legitimate relationships where domestic violence is likely to occur.

These gaps reveal how domestic violence legislation is intimately connected to other legislation that pertains to the rights of LGBTQ people such as decriminalization of same-sex relations and gender diversity as well as marriage equality and civil union laws.

Domestic violence legislation in the countries covered by this report may be categorized into laws that cover relationships outside marriage and laws that contain marriage and cohabitation requirements.

Laws that cover relationships outside marriage provide greater access to LGBTQ people.

The laws of the Philippines and Timor-Leste cover intimate partner relationships outside any domestic arrangement or any arrangement that is akin to marriage or cohabitation. The Philippine law further expands the relationships covered by explicitly including dating or sexual relationships without regard to duration, level of commitment or intimacy. It covers acts of violence committed against a person who has or has had a sexual or dating relationship with the perpetrator or with whom the perpetrator has a common child.⁴⁹ The law also affords protection to a woman's children, without the child having to be the child of the perpetrator.

49 Philippines, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, And For Other Purposes, 2004, [https://lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html#:~:text=\(a\)%20%22Violence%20against%20women,her%20child%20whether%20legitimate%20or](https://lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html#:~:text=(a)%20%22Violence%20against%20women,her%20child%20whether%20legitimate%20or) (accessed 8 August 2022), section 3 (A).

This broad definition of intimate partner relationship provides opportunities for LGBTQ-inclusive access to justice in jurisdictions where LGBTQ people are deprived of marriage rights or where there is difficulty in providing proof of relationship or cohabitation, the relationship being hidden from the public eye for fear of prosecution, persecution, and stigmatization. It provides space for the inclusion of partnerships and kinships that are otherwise invisible or illegitimate in legislation that privileges the heteronormative nuclear family.

Designing laws in this manner expands the population that can access redress and services and provides recognition that factors that produce violence between family members or spouses may also be present in relationships outside legally recognized families.

Laws that have marriage or cohabitation requirements may negatively impact LGBTQ people's access to them.

Singapore's *Women's Charter* identifies only the category "spouse" as a possible victim of intimate partner violence.⁵⁰ There is no mention of the law's applicability to partners who live or have lived together in a domestic setting or under an arrangement that is akin to marriage without the benefit of an actual marriage. As a result, a victim who is in an intimate partner relationship with the perpetrator but is not married to them may be denied remedy or services.

Malaysia's law covers violence committed against a *de facto* spouse, defined therein as "a person who has gone through a form of ceremony which is recognized as a marriage ceremony according to the religion or custom of the parties concerned."⁵¹ While the provision

50 Singapore, *Women's Charter* 1961 (2020 Revised Edition), Part 7, <https://sso.agc.gov.sg/act/wc1961>, para. 64.

51 Malaysia, *Domestic Violence Act* 1994, Part 1, <https://tc-claw.com.my/wp-content/uploads/2020/12/Domestic-Violence-Act-1994-1.pdf>, para. 2.

does not have a civil marriage requirement, victims are required to have gone through a culturally or religiously recognized marriage ceremony with the perpetrator to be able to access the law, excluding many people in same-sex relationships.

Thailand's law provides protection to a victim who is not or was not married to the perpetrator for as long as they cohabit or used to cohabit "as husband and wife," which is a gendered framing that can be used to foster a heteronormative interpretation. The law also covers acts of violence committed against a person who is not a family member but depends on or lives in the same household.⁵²

India's law affords protection to family members who are related to the perpetrator by consanguinity, marriage or a relationship in the nature of marriage or adoption, or who are family members living together as a joint family, provided that they are living or have lived with the perpetrator in a shared household.⁵³ Also within the ambit of this law are relationships between a woman and the relatives of her partner.

Nepal's law covers violence committed against any person who is related to the perpetrator by consanguinity, marriage, adoption or is a family member of the perpetrator who lives with them together as a joint family, or a dependent "domestic help" living in the same family. However, the law has a cohabitation requirement in its definition of domestic relationship.⁵⁴

52 Thailand, *Domestic Violence Victim Protection Act*, B.E. 2550, 2007, <http://ilo.org/dyn/natlex/docs/ELECTRON-IC/82853/91030/F1861648233/THA82853.pdf> (accessed 8 August 2022), section 3.

53 India, *The Protection of Women from Domestic Violence Act*, 2005, <https://indiankanoon.org/doc/542601/>, paras. 2 (a), 2 (f), 2(q).

54 Nepal, *Domestic Violence (Offence and Punishment) Act*, 2066 (2009), <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/domestic-violence-crime-and-punishment-act-2066-2009.pdf>, para. 2(a)(b).

Japan's law covers relationships where there is a spousal relationship, there was a spousal relationship but the parties separated subsequent to the commission of violence by one spouse, there is a relationship where the parties live together in a manner that is similar to a marital relationship, or where there was a relationship where the parties lived together in a manner that is similar to a marital relationship but the parties separated subsequent to the commission of violence by one partner.⁵⁵

China's law covers relationships between family members as well as people who live together without being family members.⁵⁶

The term spouse is often used in domestic violence legislation. Without expanding clauses that extend the definition of spouse to any person who has a relationship with another in an arrangement that is similar to marriage or intimate relations outside of it, the law could be interpreted as only covering parties who are living as spouses under a legally recognized marriage.

None of the ten Asian countries allow same-sex marriage and/or civil union. Thus, the absence of provisions in domestic violence laws that clearly name and recognize LGBTQ partnerships as domestic partnerships, as well as the definitions given to family and domestic relationships that are restricted by marriage and cohabitation requirements, may ultimately lead to arbitrary and discriminatory application that excludes LGBTQ people.

55 Japan, *Act on the Prevention of Spousal Violence and the Protection of Victims* (Act No. 31 of April 13, 2001), https://www.gender.go.jp/policy/no_violence/e-vaw/law/pdf/sv.pdf, art. 1, paras. 1, 3; art. 28-2.

56 China, *Anti-domestic Violence Law of the People's Republic of China*, 2015, art. 5; *Handbook for Legislation on Violence against Women*, UN Department of Economic and Social Affairs, Division for the Advancement of Women, ST/ESA/329, <https://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>.



Spotlighting the Types of Domestic Violence Experienced by LGBTQ People

Recommendations

- a. Domestic violence laws should cover psychological, physical, sexual, and economic violence and provide diverse, flexible and appropriate mechanisms for addressing commonly-reported types of domestic violence that LGBTQ people experience such as threats to reveal a person's sexual orientation or gender identity, coercive conversion practices, and forced marriage, among others.
- b. Domestic violence laws should provide wide-ranging, flexible, and appropriate mechanisms that address all violent acts by a family member against an LGBTQ family member whose commission is motivated by anti-LGBTQ bias and not leave an opportunity for interpretation that can justify violent customary practices.
- c. Governments should pass other laws that specifically address discrimination, abuse, and violence experienced by LGBTQ people.

While domestic violence experienced by LGBTQ people shares similar characteristics with domestic violence against cisgender and heterosexual people, a distinguishing factor in some domestic violence cases targeting LGBTQ people by family members is that the commission of violence is motivated by rejection and hatred on the grounds of sexual orientation and gender identity. These violent acts may take the form of persistent coercive efforts to “change” an LGBTQ family member’s sexual orientation or gender identity through physical

and psychological abuse, physical deprivation, punitive rape, or forced marriage.⁵⁷

It is worth noting that cisgender, heterosexual women and girls may also experience domestic violence for reasons related to their unwillingness or inability to perform gender in a way that matches familial or societal expectations. Eradicating the insistence on adhering to rigid gender binaries that underlies anti-LGBTQ bias would equally benefit cisgender, heterosexual women and girls who suffer as a result of violence enforcement of gender norms. Nevertheless, homophobia and transphobia are not seen as grave social issues that need explicit expression in policies and legislation, as evidenced by their invisibility in domestic violence legislation.

In terms of intimate partner violence, acts of domestic violence against LGBTQ people may include threatening to reveal a person's gender identity, sexual orientation, or in some cases, HIV status to the public or to law enforcement officials; isolating the victim from their families, friends, and communities; threatening to deprive or actually depriving them of the custody of children; threatening to deprive or actually depriving them of the possession of assets and properties which the victim may not have a legally recognized claim on; withholding medicines, including hormones; and using coercion to repress a person's sexual orientation or gender expression.⁵⁸ Perpetrators may believe that taking advantage of the social stigmas attached to being LGBTQ is an effective way to exercise control over and manipulate the LGBTQ victim.⁵⁹

57 Amie Bishop, “Harmful Treatment: The Global Reach of So-Called Conversion Therapy,” OutRight Action International, August 2019, <https://outrightinternational.org/reports/global-reach-so-called-conversion-therapy> (accessed 10 August 2022).

58 Messinger, *LGBTQ Intimate Partner Violence: Lessons for Policy, Practice, and Research*.

59 Ibid.

Outright Action International's multi-country research on violence faced by lesbian, bisexual, and transgender (LBT) people in Asia found that based on the information gathered from informants, family members are the primary perpetrators of violence against LBT people. Informants revealed that family members carried out emotional, verbal, physical, and sexual violence that had a greater and more sustained impact than violence perpetrated by non-family members.⁶⁰

Each of the laws in the ten countries contains unique sets of acts that constitute domestic violence. Laws in the Philippines, Timor-Leste, Nepal, and India address physical, psychological, sexual, and economic violence or abuse and provide detailed definitions of each. In contrast, the other laws only broadly describe domestic violence by the use of terms such as "hurt" and some do not explicitly mention sexual and economic abuse.⁶¹ For instance, in 2020, the Asia Foundation pointed out that the domestic violence law of China does not unequivocally name sexual violence and economic control. In India, some harmful customary practices, such as dowry, are integrated in the domestic violence legislation.⁶²

The laws of the Philippines, Nepal, and Timor-Leste cover physical, sexual, psychological, and economic violence or abuse, with extensive descriptions of what qualifies as each. The Timor-Leste law covers any unwanted

60 Grace Poore, "Violence Against Lesbians, Bisexual Women and Transgender People in Asia: A Five Country Study," OutRight Action International, 2016, https://outrightinternational.org/sites/default/files/RegAnCC_0.pdf (accessed 10 August 2022), p. 13.

61 The domestic violence laws of China, Japan, Singapore, Japan, and Sri Lanka do not expressly mention sexual violence in their definition of domestic violence. However, lawmakers in Singapore have argued that their law's definition is sufficient to cover this form of violence.

62 India, *The Protection of Women from Domestic Violence Act, 2005*, <https://indiankanon.org/doc/542601/>. The law refers to any act that "harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security(...)."

sexual act and contains a specific clause stating that sexual violence may occur even within marriage while the Philippine law considers sexual abuse as the act of causing a woman to engage in any sexual activity that is against the woman's will.⁶³ In the Nepal law, sexual harm includes "sexual misbehavior, humiliation, discouragement or harm in self-respect of any person" and any act that hampers "safe sexual health," while economic harm is the deprivation from using property or deprivation of access to employment opportunities and economic resources.⁶⁴

In the laws of the Philippines, Nepal, and Timor-Leste, the definitions provided for psychological violence are broad enough to cover coercive forms of conversion practices, a form of abuse experienced by many LGBTQ people in family settings. For instance, Timor-Leste's law enumerates circumstances such as curtailment of the freedom of movement, controlling the behaviors and decisions of a person, and systemic persecution.⁶⁵ The inclusion of these circumstances can provide a legal basis for filing a case under the domestic violence law by a person who is compelled by a family member to undergo conversion practices. The Nepal law covers mental harm, which includes "discrimination carried out on the basis of thought, religion or culture and customs and tradition."⁶⁶

63 Timor-Leste, Law No. 7/2010 on Domestic Violence, 2010, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_179323.pdf, art. 2, para 2 (b); Philippines, *An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, And For Other Purposes*, [https://lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html#:~:text=\(a\)%20%22Violence%20against%20women,her%20child%20whether%20legitimate%20or](https://lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html#:~:text=(a)%20%22Violence%20against%20women,her%20child%20whether%20legitimate%20or), section 3 (A)(B).

64 Nepal, *Domestic Violence (Offence and Punishment) Act, 2066 (2009)*, <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/domestic-violence-crime-and-punishment-act-2066-2009.pdf>, para. 2(e)(f).

65 Timor-Leste, Law No. 7/2010 on Domestic Violence, 2010, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_179323.pdf, art. 2.

66 Nepal, *Domestic Violence (Offence and Punishment) Act, 2066 (2009)*, <https://www.lawcommission.gov.np>.

Domestic violence laws that cover psychological, physical, sexual, and economic violence and provide expansive definitions of such violence present a wider opportunity to LGBTQ people to seek remedies and services for the violence they experience from family members, including acts of homophobia and transphobia that cannot be accurately captured by narrower domestic violence laws. These expansive laws also respond to the fact that physical, psychological, sexual and economic violence often go hand in hand, and that the various harms of domestic violence stem from systematic operation of power, and are therefore interrelated.⁶⁷

Conversion practices and forced marriage are forms of domestic violence.

In 2019, OutRight published a study on conversion practices around the world. “Conversion practices” refers to any sustained or intensive effort to change or suppress a person’s sexual orientation, gender identity or gender expression.⁶⁸ The data gathered by OutRight suggest that families were one of the major drivers of conversion practices, with family members in different cases seeking to either “help” or punish their LGBTQ child or relative.⁶⁹ Many of the participants of the study from Asia said that family honor and culture drove families and LGBTQ people themselves to seek out “conversion therapy,” primarily through

np/en/wp-content/uploads/2018/10/domestic-violence-crime-and-punishment-act-2066-2009.pdf, para. 2(d).

67 Margaret Johnson, “Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law,” *University of California, Davis Law Review* 42 (2009): 1154, https://lawreview.law.ucdavis.edu/issues/42/4/articles/42-4_Johnson.pdf (accessed 10 August 2022).

68 Conversion practices are more commonly known as “conversion therapy.” OutRight uses the term “conversion practices” in recognition of the fact that these practices have no therapeutic value and often cause harm. Conversion practices are also described by other terms such as sexual orientation, gender identity, and expression change efforts (SOGIE change efforts).

69 Amie Bishop, “Harmful Treatment: The Global Reach of So-Called Conversion Therapy,” OutRight Action International, <https://outrightinternational.org/reports/global-reach-so-called-conversion-therapy>.

private and public medical and mental health clinics.⁷⁰ Others described religion as a key driver of conversion practices. Conversion practices were often combined with threats of expulsion from the home, physical abuse, forced incarceration or institutionalization, withholding of school fees, and restrictions on freedom of movement or contact with others.⁷¹ OutRight found that in some cases, queer children who are still legally entitled to economic support face parents’ abandonment of their obligation to provide support if the children do not “change.”

Domestic violence laws should recognize coercive conversion practices perpetrated by family members as a form of family violence, enumerate all forms of coercive conversion practices identified in major studies, and provide appropriate legal remedies.

As for forced marriage, none of the domestic violence laws covered by this report directly name forced marriage as an act of family or intimate partner violence.

In summary, the general language through which the provisions on types of domestic violence are expressed allows for interpretations that consider LGBTQ specific abuse as domestic violence. However, considering other factors that may negatively affect implementation, a more effective strategy to combat arbitrary and exclusive application and to ensure LGBTQ survivors understand the law applies to them is to identify specific forms of abuse in the domestic violence legislation.

For instance, in some legislation, such as the violence against women law of the Philippines, forms of abuse and concepts that have been linked to violence against women, such as battered-women syndrome, are recognized

70 Ibid.

71 Ibid.

and codified.⁷² The codification into law of the lived experience of women who suffer domestic violence provides guidance to implementers of the law. The process of providing a legal expression for LGBTQ people's experiences, which are in some cases ignored or do not receive institutional recognition, is an important step towards building policymakers' and other stakeholders' awareness of the vulnerabilities that LGBTQ people face and the urgency to appropriately address them.

“Protection of the Family” Principle and the Human Rights Framework

Recommendation

- a. Domestic violence laws should consistently use the human rights framework and identify domestic violence victims' rights and security as the paramount goals of the legislation.

Each of the domestic violence laws in the ten countries adopts a distinct framework for addressing domestic violence. Two predominant frameworks are the *protection of the family framework* and the *human rights framework*. The protection of the family framework conceptualizes domestic violence as injurious to families. This framework highlights the need to find resolutions to domestic violence cases that have at their core the preservation of families and marriages. Some laws that use this framework contain provisions that promote the “balance” between individuals' rights to seek redress and the goal of preserving families and marriages. In these laws, it is

72 Philippines, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, And For Other Purposes, 2004, [https://lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html#:~:text=\(a\)%20%22Violence%20against%20women,her%20child%20whether%20legitimate%20or](https://lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html#:~:text=(a)%20%22Violence%20against%20women,her%20child%20whether%20legitimate%20or) (accessed 8 August 2022), section 26.

common to authorize the conduct of conciliation between victims and perpetrators. In contrast, the human rights framework treats domestic violence as a violation of human rights or a form of violence against women.

The Philippine domestic violence law places heavy emphasis on adherence to international human rights instruments, with explicit reference to fundamental freedoms provided for by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁷³ The law's declaration of policy also states that it recognizes the need to protect the personal safety and security of the family and its members particularly women and children.⁷⁴

Timor-Leste's law stresses the government's commitment to ensure respect for human rights.⁷⁵ It acknowledges that families have the duty to protect and defend vulnerable groups, such as women, children, the elderly and the disabled, against all forms of violence and incorporates an inclusivity clause which stresses that any individual, irrespective of his or her origin, nationality, social status, sex, ethnicity, language, age, religion, disability, political or ideological beliefs, culture or educational level, shall be guaranteed equal opportunities to live free of violence.⁷⁶ However, the law does not reference LGBTQ people as a vulnerable group and does not mention sexual orientation or gender identity in the law's inclusivity clause.

Japan's law emphasizes the need to safeguard human rights and eradicate violence against women in line with efforts taken by the international community and places heavy emphasis

73 Ibid., section 2.

74 Ibid.

75 Timor-Leste, Law No. 7/2010 on Domestic Violence, 2010, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_179323.pdf, preamble.

76 Timor-Leste, Law No. 7/2010 on Domestic Violence, 2010, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_179323.pdf.

on creating multi-level and multi-strategy mechanisms to address spousal violence, especially those whose victims are women.⁷⁷

In contrast, the provisions relating to domestic violence in Singapore's Women's Charter are contained under the chapter "Protection of Family." The title of the chapter itself, along with its prefatory statement, may lend itself to a judicial interpretation and executive implementation that are biased towards family preservation, at the expense of human rights and the protection of the vulnerable individuals. The law's protections are further weakened by the presence of a provision stating that any force lawfully used by way of correction towards a child below 21 years of age is excluded in the definition of family violence.⁷⁸

Thailand's law also identifies "the maintenance and protection of marital status" as one of its primary goals.⁷⁹

The domestic violence law of China includes "promotion of family harmony" and "social stability" as some of its foremost goals.⁸⁰ This may prove problematic considering that China has historically deployed family laws and policy to politicize the family by using it as a tool of social stability and national security and to

enforce heteronormative ideals.⁸¹ In China, the state's heteronormative and patriarchal agendas are embedded in and facilitated by laws and policies relating to marriage and family.⁸²

The employment of the protection of the family framework in the laws of Singapore, Thailand and China may result in judicial interpretations instructed by biases in favor of protecting nuclear families instead of upholding human rights principles in addressing family violence. It also has to be noted that LGBTQ people have frequently been subjected to grave acts of violence from their family members under the guise of "correcting" their identities or conduct. The potentially contradictory goals of protection of victims and protection of "the family" may enable an application that fails to address family cultures and practices that subvert the rights of individuals. Interpreters and implementers may approach the law in a manner that favors their biases and subjectivities, which may be worsened by the lack of provisions that provide metrics for determining the balance between achieving family stability and upholding individual rights.

Provisions on reconciliation and mediation are also common in domestic violence laws. In Thailand, the domestic violence law promotes settlement of domestic violence cases "for the peaceful cohabitation of the family," paying due regard to "the maintenance and protection of marital status as the center of man and woman who voluntarily cohabit as husband and wife."⁸³ Malaysia's domestic violence law allows courts to refer parties to conciliatory bodies "instead of or in addition to issuing a protection order," an approach that could obstruct the resolution of domestic violence cases in line with human rights principles, in favor of resolutions

77 Japan, *Act on the Prevention of Spousal Violence and the Protection of Victims* (Act No. 31 of April 13, 2001), Preamble, https://www.gender.go.jp/policy/no_violence/e-vaw/law/pdf/sv.pdf.

78 "An Act to provide for monogamous marriages and for the solemnisation and registration of such marriages; to amend and consolidate the law relating to divorce, the rights and duties of married persons, the protection of family, the maintenance of wives, incapacitated husbands and children and the punishment of offences against women and girls; and to provide for matters incidental thereto." Singapore, *Women's Charter 1961* (2020 Revised Edition), <https://sso.agc.gov.sg/act/wc1961>, part 7, para. 64.

79 Thailand, *Domestic Violence Victim Protection Act*, B.E. 2550, 2007, <http://ilo.org/dyn/natlex/docs/ELECTRONIC/82853/91030/F1861648233/THA82853.pdf> (accessed 8 August 2022), section 15 (2).

80 China, *Anti-domestic Violence Law of the People's Republic of China*, 2015, art. 1.

81 Di Wang, "Jia, as in Guojia: Building the Chinese Family into a Filial Nationalist Project," *China Law and Society Review* 5 (2020): 1-32, doi:10.1163/25427466-00501001 (accessed 10 August 2022).

82 Ibid.

83 Thailand, *Domestic Violence Victim Protection Act*, B.E. 2550, 2007, <http://ilo.org/dyn/natlex/docs/ELECTRONIC/82853/91030/F1861648233/THA82853.pdf>, section 15 (2).

influenced by oppressive religious dogmas that are biased in favor of heteronormative families.⁸⁴ In contrast, Nepal's law allows for the participation of a psychologist, sociologist or social activist in the conduct of reconciliation, at the victim's request. A domestic violence legislation provision that instructs the presence of professionals and activists can shape reconciliation into a more survivor-centric process.⁸⁵

LGBTQ survivors of domestic violence are likely to face particular challenges in jurisdictions where not only does the domestic violence law promote maintenance and protection of families, but the very existence of LGBTQ people is seen as a threat to "the family."⁸⁶ For instance, in Indonesia, several political parties

backed a proposed "Family Resilience Bill" in 2020 that would have declared LGBTQ people as threats to the nuclear family and provided a legal basis for forcing LGBTQ people to undergo conversion practices.⁸⁷ The inclusion of a "family protection" objective in domestic violence laws might be utilized to undermine the protection of marginalized groups such as women and LGBTQ people.

Queering Remedies for Domestic Violence Cases

Recommendations


- a. Domestic violence laws should enable the institution of diverse mechanisms that address the systemic conditions that contribute to domestic violence, including homophobia, transphobia, and heterosexism, through public education and empowerment programs, and provide services to victims that include mental health, sexual and reproductive health, shelter, and economic support.
- b. Domestic violence laws should provide various and flexible remedies including civil remedies to prevent domestic violence and protect and promote the rights of survivors. The choice of remedy of the survivor should be prioritized.
- c. Domestic violence laws should enable the institution of mechanisms to address the barriers and challenges experienced by LGBTQ people in seeking help and protection in cases of domestic violence, such as lack of awareness of remedies, re-traumatization or re-victimization, economic and

84 Malaysia, *Domestic Violence Act 1994*, Part 3, <https://tc-claw.com.my/wp-content/uploads/2020/12/Domestic-Violence-Act-1994-1.pdf>, para. 11.

85 Nepal, *Domestic Violence (Offence and Punishment) Act*, 2066 (2009), <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/domestic-violence-crime-and-punishment-act-2066-2009.pdf> (accessed 8 August 2022), para. 4(9).

86 Around the world, the concept of "protection of the family" is regularly used to justify human rights abuses against LGBTQ people. In some cases, state institutions and government officials themselves employ family violence as a means to persecute LGBTQ people in their jurisdiction. In Chechnya in 2017, for instance, security forces arrested and tortured gay and bisexual men and then handed some of them over to their families and encouraged them to carry out "honor killings." Prior to the series of arrests, lives of LGBTQ people had already been made precarious by families and relatives who would surrender them to state security forces upon discovery of their sexual orientation or gender identity. Rachel Denber, "As Gay Men are Detained in Chechnya, the Kremlin is Slow to Respond," Human Rights Watch, 20 April 2017, <https://www.hrw.org/news/2017/04/20/gay-men-are-detained-and-killed-chechnya-kremlin-slow-respond> (accessed 10 August 2022). In 2015, a group of states led by Russia called on the UN Human Rights Council to put in place mechanisms that would protect "the family" and "traditional values." One of their aims appeared to be to preserve the superiority of heteronormative and patriarchal families and to undermine women's and LGBTQ people's rights. Isabel Marler, "'Protection of the Family': What it means for Human Rights," AWID, 9 December 2015, <https://www.awid.org/news-and-analysis/protection-family-what-it-means-human-rights> (accessed 10 August 2022); Cai Wilkinson, "Putting 'Traditional Values' Into Practice: The Rise and Contestation of Anti-Homopropaganda Laws in Russia," *Journal of Human Rights*, 3 September 2014, <https://iusgentium.ufsc.br/wp-content/uploads/2017/08/Berger-WILKINSON-Cai-Putting-Traditional-Values-into-Practice-the-Rise-and-Contestation-of-Anti-Homopropaganda-Laws-in-Russia.pdf> (accessed 10 August 2021).

87 Draft Law on Family Resilience, 2017. The bill was eventually blocked by the parliamentary majority. See "The House Drops a Bill That Will Require Indonesians to Turn in Gay Family Members," *Jakarta Globe*, 24 November 2020.



social disempowerment, stigma and discrimination, and criminalization of LGBTQ people and same-sex relations.

- d. States should scrap laws that criminalize LGBTQ people and same-sex relations.

Domestic violence survivors have a broad spectrum of needs for withstanding or overcoming the impacts of domestic violence, such as those that relate to sexual, reproductive, and mental health and economic support. They also have diverse experiences and relationships with systems, institutions and processes. Pursuant to the framework for model domestic violence legislation that urges states to adopt “a wide range of flexible and speedy remedies to discourage domestic violence and harassment of women within interpersonal relationships and within the family,” domestic violence laws should provide survivors with the autonomy to choose the remedy and services that best respond to their circumstances.⁸⁸ Laws should also ensure survivors’ right to privacy and confidentiality.

While criminal penalties are appropriate for a range of acts that constitute domestic violence, an approach exclusively centered on criminalization, and on carceral penalties in particular, raises both practical and theoretical concerns. First, many survivors may be unwilling or reluctant to see a family member or intimate partner behind bars. For this reason, systems that automatically engage the police deter the filing of domestic violence reports.⁸⁹ Second, incarceration almost inevitably carries grave

88 UN Commission on Human Rights, Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy, A Framework for Model Legislation on Domestic Violence, E/CN.4/1996/53/Add.2.

89 Prochuk, *We Are Here: Women’s Experiences of the Barriers to Reporting Sexual Assault*, <https://www.westcoast-leaf.org/our-publications/we-are-here-womens-experiences-of-the-barriers-to-reporting-sexual-assault>.

human rights consequences, particularly in contexts of overincarceration or discriminatory application of criminal penalties based on race, ethnicity, religion, gender, socioeconomic class, or other factors. Human rights advocates pursuing accountability and redress for domestic violence should maintain an intersectional approach, acknowledging that alleged perpetrators also have human rights claims and that criminal penalties, where relevant, should be fair and proportionate.

Protection Orders

In the majority of the ten countries, the issuance of a protection order is the primary remedy for cases of domestic violence. Most of the laws do not, at first instance, provide specific punishments for the commission of domestic violence. Rather, failure to comply with the prohibitions and directives in the protection order gives rise to criminal liability.

In many of the domestic violence laws, the protection order consists of prohibition to commit further acts of domestic violence as well as directives that aim to ensure that conditions and arrangements that expose the victim to harms from the perpetrator are resolved, including those that relate to shared household, contact and communication between the victim and the perpetrator, personal properties and assets. While many protection orders deal with the obligations of the perpetrator towards the victim, some direct appropriate agencies to provide needed protection and services. The domestic violence law of the Philippines is one such law that can issue a protection order directing appropriate government agencies to extend services to the victim.⁹⁰

90 Philippines, *An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, And For Other Purposes*, 2004, [https://lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html#:~:text=\(a\)%20%22Violence%20against%20women,her%20child%20whether%20legitimate%20or](https://lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html#:~:text=(a)%20%22Violence%20against%20women,her%20child%20whether%20legitimate%20or) (accessed December 2021), section 8 (I).

An LGBTQ activist from India said that they often use their domestic violence law in advocacy work around gender-based violence because its provisions entitle a woman survivor to seek immediate civil remedies. For the activist, the multiple remedies that the law sanctions is one of its salient features. According to them, under this law, LBT people who do not want their family members jailed can opt to file for the issuance of a protection order that directs the perpetrator to provide monetary support, or provides other alternative remedies not exclusive to criminal penalties.⁹¹

Protection orders provide the courts and other bodies additional and unique tools to address domestic violence, other than incarceration, through relief measures that aim to protect the rights and security of the victim. The protection order, as a legal tool, is useful in ensuring that victims have access to diverse and holistic remedies, whether against perpetrators or from government institutions, without enabling further criminalization.

Criminal Liabilities

The majority of the domestic violence laws in the ten countries do not attach separate criminal liability to acts of domestic violence. These laws are mostly framed in a way that criminal or civil liability is primarily determined in reference to the penal code or other related laws. Hence, when a domestic violence act is committed, the propriety of imposing criminal liability is ascertained by evaluating whether the domestic violence act has the elements of a particular crime punished in the penal code or other legislation.

91 OutRight Interview with Ritupurna Borah, via video communication, October 2021.

Domestic Violence Laws That Do Not Provide Criminal Liabilities

Timor-Leste's law states that the acts of domestic violence that are considered crimes are to be treated as public offenses, and that the penal code remains the governing law in the determination and imposition of criminal liability.⁹² Other acts of domestic violence do not call for the imposition of criminal liability.

The law of Malaysia states that its provisions must be read with the applicable provisions of Malaysia's Penal Code. While the law does not specifically provide penalties for the commission of acts of domestic violence that are not found in the penal code, it gives the court the authority to attach an order of arrest to the protection order or interim protection order if the court determines that the respondent is likely to cause actual physical injury to the victim.⁹³ Therefore, a domestic violence case can give rise to a criminal matter.

Sri Lanka's law does not specifically provide criminal liabilities for the commission of acts of domestic violence but only generally states that nothing in the law shall be construed as depriving an aggrieved person of the right to institute a separate civil action or criminal proceeding.⁹⁴

The law of Japan authorizes a police officer to take necessary measures, such as stopping the

92 Timor-Leste, *Law No. 7/2010 on Domestic Violence*, 2010, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_179323.pdf, art 36.

93 Malaysia, *Domestic Violence Act 1994*, Part 7, <https://tcclaw.com.my/wp-content/uploads/2020/12/Domestic-Violence-Act-1994-1.pdf>, para. 1.

94 Sri Lanka, *Prevention of Domestic Violence Act*, No.34 of 2005, [https://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/asia/prevention%20of%20domestic%20violence%20act/sri%20lanka%20-%20prevention%20of%20domestic%20violence%20act%20\(2005\).pdf?vs=5243](https://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/asia/prevention%20of%20domestic%20violence%20act/sri%20lanka%20-%20prevention%20of%20domestic%20violence%20act%20(2005).pdf?vs=5243) para. 21.

violence or providing protection to a person at any appropriate place, such as a police station, hospital, shelter, pursuant to the provisions of the *Police Act (Act No. 162 of 1954)*, *Police Duties Execution Act (Act No. 136 of 1948)*, and other laws and regulations, for the purpose of preventing the victim from suffering harm due to spousal violence.⁹⁵

Domestic Violence Laws That Provide Criminal Liabilities

In the Philippines, Nepal, and Thailand, domestic violence is treated as a distinct criminal act with specific liabilities attached to it. In these countries, the mere act of committing any form of domestic violence enumerated under the law will provide a basis for exacting personal accountability from the perpetrator through the imposition of a criminal penalty. In these laws, there are some references to existing laws such as the penal code, but only for the purpose of determining penalties. In essence, these laws recognize the commission of a domestic violence act as a punishable offence whether or not the act constitutes a crime in the penal code or other legislation.

The Philippine Violence Against Women Law provides penal and civil liability for the commission of acts of domestic violence. Acts that constitute parricide, murder or homicide are punished according to the provisions of the penal code, and forms of physical violence are punished based on their severity. The law defines and provides criminal penalties for sexual violence, psychological violence, and economic violence.⁹⁶

95 Japan, *The Police Duties Execution Act*, Act No. 136 of July 12, 1948, https://www.policinglaw.info/assets/downloads/1948_Police_Duties_Execution_Act.pdf (accessed 10 August 2022), art. 3.

96 Philippines, *An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, And For Other Purposes*, 2004, [https://lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html#:~:text=\(a\)%20%22Violence%20against%20women,her%20child%20whether%20legitimate%20or](https://lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html#:~:text=(a)%20%22Violence%20against%20women,her%20child%20whether%20legitimate%20or) (accessed December 2021), section 3.

Nepal's law exacts personal accountability of the perpetrator through the imposition of fines, imprisonment or both. The law also provides circumstances that can result in the charging of higher penalties/fines such as when a perpetrator has been punished once before for the offence and when the perpetrator is a person holding public office.⁹⁷

Thailand's law punishes acts of domestic violence with either imprisonment, a fine or both.⁹⁸

Some LGBTQ victims are reluctant to engage the criminal legal system for help and relief for domestic violence cases because they fear confronting discrimination within the system itself.⁹⁹ This situation demonstrates the need for policy approaches that take into account LGBTQ people's experiences in and attitudes toward certain institutions and sources of help. A remedy may only be considered beneficial to LGBTQ people if they would actually use it and if these remedies do not become, themselves, sites of oppression

Thus, in pushing for remedies for domestic violence cases, it is important to consider the level of comfort and trust LGBTQ people have toward certain processes and institutions. LGBTQ people's reluctance to seek help from the police and the criminal legal system can be explained by the institutions' long histories of targeting LGBTQ people, including ongoing criminalization of same-sex relations or gender diversity. Even in countries without anti-LGBTQ laws, discriminatory enforcement remains a problem.

97 Nepal, *Domestic Violence (Offence and Punishment) Act*, 2066 (2009), <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/domestic-violence-crime-and-punishment-act-2066-2009.pdf>, para. 13.

98 Thailand, *Domestic Violence Victim Protection Act*, B.E. 2550, 2007, <http://ilo.org/dyn/natlex/docs/ELECTRONIC/82853/91030/F1861648233/THA82853.pdf> (accessed 8 August 2022), section 4.

99 Messenger, *LGBTQ Intimate Partner Violence: Lessons for Policy, Practice, and Research*.

Experiences in Sri Lanka

Sections 365 of the Sri Lankan Penal Code, which criminalizes “carnal intercourse against the order of nature” and has been the basis of prosecutions for consensual same-sex conduct, serves as a significant barrier for LGBTQ people in accessing the Domestic Violence Act (No. 34).¹⁰⁰

“In Sri Lanka, if you are an LGBTQ person who has been subjected to any form of abuse and discrimination based on your SOGIE, you don’t seek the help of the police or if you do, you have to make sure that your SOGIE is not disclosed in the process because when that happens, you can face criminal liability.”

—queer activist and academic from Sri Lanka

According to an LGBTQ activist from the country:

In Sri Lanka, if you are an LGBTQ person who has been subjected to any form of abuse and discrimination based on your SOGIE, you don’t seek the help of the police or if you do, you have to make sure that your SOGIE is not disclosed in the process because when that happens, you can face criminal liability. The legal system and the criminal justice system are conservative and

homophobic. When a queer person is in a relationship with a “straight” person, the latter might use the person’s SOGIE to control or get back at the queer person by revealing or threatening to reveal the person’s SOGIE.¹⁰¹

The activist mentioned the case of a queer person who experienced severe violence from their partner but was afraid to seek help even from medical institutions, because hospitals sometimes report domestic violence cases to the police. Once the police find out that the violence involves a survivor who is in a relationship with another person of the same sex, they could become at risk for facing charges. No laws explicitly criminalize trans people but police have utilized other criminal laws to target transgender men and women.¹⁰²

100 Section 365 of the Sri Lankan penal code states: “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be punished with fine and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for injuries caused to such person.” Sri Lanka, *Penal Code: An Ordinance To Provide a General Penal Code for Ceylon*, 1 January 1885, [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/2962721b86fc380ac125767e00582c62/\\$FILE/Penal%20Code.pdf](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/2962721b86fc380ac125767e00582c62/$FILE/Penal%20Code.pdf) (accessed 10 August 2022). See “Sri Lanka: Forced Anal Exams in Homosexuality Prosecutions,” Human Rights Watch and EQUAL GROUND, 20 October 2020, [https://www.hrw.org/news/2020/10/20/sri-lanka-forced-anal-exams-homosexuality-prosecutions#:~:text=\(Colombo\)%20%E2%80%93%20Sri%20Lankan%20authorities,and%20EQUAL%20GROUND%20said%20today](https://www.hrw.org/news/2020/10/20/sri-lanka-forced-anal-exams-homosexuality-prosecutions#:~:text=(Colombo)%20%E2%80%93%20Sri%20Lankan%20authorities,and%20EQUAL%20GROUND%20said%20today) (accessed 10 August 2022).

101 OutRight interview with Thiyagaraja Waradas, via video communication, October 2021. See also “Human Rights Watch Submission to the UN Human Rights Committee in Advance of its Review in Sri Lanka,” Human Rights Watch, May 2022, <https://www.hrw.org/news/2022/06/01/human-rights-watch-submission-un-human-rights-committee-advance-its-review-sri> (accessed 10 August 2022).

102 Ibid.; “Submission to the Universal Periodic Review of Sri Lanka, 28th Session of the UPR,” Human Rights Watch, 20 March 2017, <https://www.hrw.org/news/2017/03/30/submission-universal-periodic-review-sri-lanka> (accessed 10 August 2022).



Other Components of Domestic Violence Laws that Affect LGBTQ Inclusive Implementation

Reporting and Data Collection

Recommendation

- a. Domestic violence laws should decree the protection of the victim's information by sanctioning data firewalls or gender-based violence desks in police stations, especially in contexts where laws criminalize same-sex relations.

Despite the prevalence of domestic violence impacting LGBTQ people, fear of stigma and revictimization makes survivors reluctant to report to police and other institutions engaged in domestic violence response.

In contexts where revelation of gender identity and sexual orientation can give rise to criminal liability or provoke stigma, a perpetrator may take advantage of the social context to maintain control and power over the victim. Forcible outing of the sexual orientation or gender identity of a victim may have serious implications, such as losing child custody.

In Nepal, some LGBTQ people choose not to file cases under the domestic violence law because they are afraid that this might damage the reputation of their families.¹⁰³

In Sri Lanka, the continued criminalization of consensual same-sex relation has reportedly precluded LGBTQ people from reporting incidents of domestic violence and obtaining needed services and protections. The activist interviewed for this report said that LGBTQ people in Sri Lanka who are survivors of domestic violence are in need of shelters and mental health services.

103 OutRight interview with Sarita K.C, via video communication, October 2021.

However, because of the criminalization of same-sex relations, security and safety in these informal shelters have become big issues. The shelters are not openly advertised. “If a shelter is to be built, the fact that the shelter caters to LGBTQ survivors cannot be made public because it might expose victims and activists to criminal charges,” the activist said.

For the activist, to be able to address domestic violence experienced by LGBTQ people, the first step should be to decriminalize same-sex relations.

The situation in Sri Lanka proves that criminalization of consensual same-sex conduct hinders access to protection under domestic violence laws and raises issues on reporting. Criminalization of same-sex relations renders off-limits other services, apart from criminal accountability, that require an initial report to the police. It also prevents survivors from filing complaints with the police and obtaining protection orders or seeking accountability. As specifically raised by the interviewee, with criminalization of same-sex relations, organizations cannot safely and publicly advertise services to survivors, meaning many LGBTQ survivors of domestic violence remain unaware of such services. Additionally, survivors who take advantage of services, such as shelters, are put at heightened risk.

These obstacles to reporting contribute to the gap in knowledge of the nature and extent of domestic violence experienced by LGBTQ people.

In contexts where there are laws that criminalize LGBTQ people, HIV status and sex work, or where being queer is stigmatized, domestic violence laws should ensure the establishment of “data firewalls” that prevent first responders of domestic violence cases from sharing information about the victim’s SOGIE that can be used to jeopardize them.

The data firewall concept is a key tool advocated by international organizations, civil society organizations and academics to protect undocumented migrants from facing deportation and other immigration control mechanisms. A firewall is a clear separation between immigration enforcement and the provision of essential services.

This may be difficult in contexts where the police are the first responders to domestic violence cases, but one solution is to set up gender-based violence desks in communities, local government units, human rights or women’s commissions and police stations that are solely in charge of handling domestic violence and other gender-based violence reports. The Philippines has a mechanism of this kind under its Magna Carta of Women, which mandates the establishment of violence against women (VAW) desks in local government offices (*barangay*).¹⁰⁴

Another factor that contributes to the insufficiency of data and knowledge on LGBTQ domestic violence relates to methodological approaches. In all ten domestic violence laws covered in this report, none specifically direct the implementation of a system of documenting, reporting and disaggregation of data that treats sexual orientation and gender identity as relevant categories.

A provision in the domestic violence law of Malaysia requires the collection of data on the gender of the parties involved in domestic violence cases.¹⁰⁵ The law does not provide the definition of gender, nor does it explicitly mention that gender identity or sexual orientation should be considered in the reporting.

104 Philippines, Republic Act No. 9710, *An Act Providing for The Magna Carta Of Women*, 14 August 2009, <https://www.officialgazette.gov.ph/2009/08/14/republic-act-no-9710/> (accessed 10 August 2022), ch. IV, section 9 (d).

105 Malaysia, *Domestic Violence Act 1994*, Part 4, <https://tc-claw.com.my/wp-content/uploads/2020/12/Domestic-Violence-Act-1994-1.pdf>, para. 16.

Guidelines for Implementation

Recommendations

- a. Domestic violence laws should contain guidelines for implementation that are compliant with human rights standards. These guidelines should positively decree the creation of detailed protocols that are tailored to the needs and contexts of LGBTQ people.

The UN Committee for the Elimination of Discrimination Against Women (CEDAW) recommends that all prevention, protection, prosecution, punishment and redress measures that State parties take must be implemented with a victim/survivor-centric approach.¹⁰⁶

Of the ten countries covered by this report, only the Philippines, Timor-Leste, Japan and China explicitly direct the authorities mandated to perform domestic violence functions to follow certain guidelines concerning the rights of the victims.

Timor-Leste's law is a good example of a domestic violence law that provides mechanisms to enable a victim/survivor-centric approach. The law states that any intervention to support the victim shall be done in full observance of the universal principles of human rights.¹⁰⁷ This provision may be utilized for demanding accountability from officials and governments in instances of abuse and discrimination in the interpretation and implementation of the domestic violence law.

106 Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on Gender-based Violence against Women, Updating General Recommendation No. 19, CEDAW/C/GC/35 https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf, para. IV (28).

107 Timor-Leste, *Law No. 7/2010 on Domestic Violence*, 2010, https://www.ilo.org/wcmsp5/groups/public/---ed_pro-protect/---protrav/---ilo_aids/documents/legaldocument/wcms_179323.pdf, art. 8.

Similarly, Japan's law mandates persons with duties related to the protection of victims, investigations, and judicial decisions pertaining to spousal violence to take into consideration the psychological and physical circumstances of the victims and their environment, to respect their human rights regardless of their nationality or disabilities, and to give due consideration to ensuring their safety and privacy.¹⁰⁸

The Philippine law enumerates the duties of prosecutors and court personnel, law enforcers and healthcare providers. Among these duties is to protect the rights of the victim.¹⁰⁹ The law of China mandates that state functionaries who abuse their power shall be punished in accordance with law.¹¹⁰

In some jurisdictions, the mandate to receive reports on and respond to domestic violence cases is primarily lodged to the police. However, activists have shared instances in which LGBTQ victims who sought redress for domestic violence were treated by police officers and authorities with hostility. In some cases, police officers are themselves perpetrators of violence. One activist from the Philippines expressed wariness about the delegation of domestic violence mandates to the police, since the police institution has been known to commit large-scale human rights violations, including against LGBTQ persons.¹¹¹ As an alternative approach, countries including Nepal, China, and the Philippines allow for the filing

108 Japan, *Act on the Prevention of Spousal Violence and the Protection of Victims* (Act No. 31 of April 13, 2001), Preamble, https://www.gender.go.jp/policy/no_violence/e-vaw/law/pdf/sv.pdf, ch. V, art. 23 (1).

109 Philippines, *An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, And For Other Purposes*, 2004, [https://lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html#:~:text=\(a\)%20%22Violence%20against%20women,her%20child%20whether%20legitimate%20or](https://lawphil.net/statutes/repacts/ra2004/ra_9262_2004.html#:~:text=(a)%20%22Violence%20against%20women,her%20child%20whether%20legitimate%20or) (accessed December 2021), section 35.

110 China, *Anti-domestic Violence Law of the People's Republic of China*, 2015, art. 36.

111 OutRight interview with Ivanka Custodio, via video communication, October 2021.

of reports to other institutions such as the Barangay (Philippines), and local government units (Nepal), and employers, residents' committees, villagers' committees, and women's federations (China).

When a domestic violence law provides guidance for proper application, implementers, including the police and other service providers, become obliged to adhere to them and accountability arises in case of non-compliance. For LGBTQ people whose encounters with authorities and the criminal legal system are fraught with hostilities, precise implementation guidelines that address the victims' safety and uphold the protection of their human rights can serve to neutralize discriminatory and arbitrary application of the law.

Training and Community Engagement

Recommendations

Domestic violence laws should enable the training of key professionals responding to domestic violence. The training should include topics pertaining to types of domestic violence experienced by LGBTQ people, the challenges they face when domestic violence occurs, their rights and issues.

- a. Domestic violence laws should mandate that the relevant authorities conduct awareness-raising programs aimed at educating communities about the domestic violence experienced by LGBTQ people and the need to prevent it.
- b. Domestic violence laws should include LGBTQ people as key stakeholders of anti-domestic violence work and mandate regular consultations with LGBTQ individuals and organizations.

LGBTQ people have many times expressed apprehension about seeking help, based on perceptions that no help is available for them. They fear, justifiably, that homophobia and transphobia seep through institutions that provide help, and that interacting with these institutions could expose them to re-victimization.

To address this, domestic violence laws should sanction the provision of training to officials vested with duties to respond to domestic violence cases, with the objective of raising the consciousness of participants with regard to gender equality and human rights, including the rights and issues of LGBTQ people.

Engaging communities is also crucial in preventing the occurrence of domestic violence and supporting the development networks of support outside government institutions. Community engagement with key stakeholders also helps ensure that the authorities who craft guidelines for implementation are responsive to the contexts of these stakeholders.

The extent and nature of community engagement that the domestic violence laws sanction vary from one country to another. China's law engages multiple institutions and entities in providing public awareness campaigns aimed at instilling "family virtues" to prevent the occurrence of domestic violence.¹¹² Timor-Leste's law identifies gender, sexuality, and human rights as priority training topics that should be integrated in school curricula.¹¹³ This mandate provides opportunities for LGBTQ activists to negotiate for the inclusion of topics that relate to LGBTQ human rights in anti-domestic violence curricula.

112 China, *Anti-domestic Violence Law of the People's Republic of China*, 2015, ch. II.

113 Timor-Leste, *Law No. 7/2010 on Domestic Violence*, 2010, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_179323.pdf, art. 11.

Japan's law requires national government and local public entities to conduct training and "enlightenment" activities to deepen officials' understanding of victims' human rights and the characteristics of spousal violence, and to promote education and enlightenment activities to deepen citizens' understanding of the prevention of spousal violence.¹¹⁴

LGBTQ people fear that they will experience discrimination from service providers.

According to the same activist, there are shelter homes in Nepal for women survivors of domestic violence but some of these shelter homes are not LGBTQ-friendly. Because of the unavailability of shelters for LGBTQ people and their exclusion in existing shelter homes, some LGBTQ organizations temporarily house victims in their offices.¹¹⁵

“We want laws that specifically address the needs and LGBTQ people, laws that are responsive to the contexts and realities of LGBTQIA+ people.”

-Activist from Nepal

The experience in Nepal shows that the gender-neutrality of a law on domestic violence is not a guarantee to an LGBTQ-inclusive implementation if professionals who implement the mandates of the law discriminate against LGBTQ people. In addition, some centers and offices that fulfill domestic violence functions use intake forms with heteronormative language that invisibilizes non-heteronormative identities and experiences.¹¹⁶ As mentioned earlier, these barriers may be partly addressed by integrating provisions that enable spaces for training, community engagement and accountability.



114 Japan, Act on the Prevention of Spousal Violence and the Protection of Victims (Act No. 31 of April 13, 2001), Preamble, https://www.gender.go.jp/policy/no_violence/e-vaw/law/pdf/sv.pdf, art. 23 (2).

115 Supra.

116 OutRight interview with Ivanka Custodio, via video communication, October 2021.



Summary of Recommendations

Lawmakers should ensure that domestic violence laws meet the following standards:

- a. Domestic violence laws should provide gender-neutral definitions of victim and perpetrator;
- b. Domestic violence laws should be gender-sensitive and enumerate sex, gender, sexual orientation, gender identity, age, disability, race, ethnicity, economic status, and other vulnerabilities as risk factors for being subjected to domestic violence;
- c. Domestic violence laws should cover all types of relationships in which domestic violence is more likely to happen, including intimate and family relationships of LGBTQ people;
- d. Domestic violence laws should cover psychological, physical, sexual, and economic violence and provide diverse, flexible and appropriate mechanisms for addressing the commonly-reported types of domestic violence that LGBTQ people experience such as threat to reveal a person's SOGIE, coercive conversion practices, and forced marriage;
- e. Domestic violence laws should provide wide-ranging, flexible and appropriate mechanisms that address all violent acts by a family member against an LGBTQ family member whose commission is motivated by anti-LGBTQ bias and not leave an opportunity for interpretation that can justify violent customary practices;
- f. Domestic violence laws should consistently use the human rights framework and identify protection of the rights and security of victims as the paramount goal of the legislation;
- g. Domestic violence laws should enable the institution of diverse mechanisms that address the systemic conditions that contribute to domestic violence, including homophobia, transphobia, and heterosexism, through public education and empowerment programs, and provide services to victims that include mental health, sexual and reproductive health, shelter, and economic support;
- h. Domestic violence laws should provide various and flexible remedies including civil remedies

to prevent domestic violence and protect the rights of survivors. The choice of remedy of survivors should be prioritized;

- i. Domestic violence laws should address the barriers and challenges experienced by LGBTQ people in seeking help and protection in cases of domestic violence such as lack of awareness of remedies for LGBTQ people, re-traumatization or re-victimization, economic and social disempowerment, stigma and discrimination, and criminalization of LGBTQ people and same-sex relations;
- j. Domestic violence laws should contain guidelines for implementation that are compliant with human rights standards. These guidelines should also direct the creation of detailed protocols and implementing rules and regulations that recognize and address the possible acts of discrimination and human rights abuses that LGBTQ people, in particular, might face in institutions that carry out anti-domestic violence work. The protocols should provide exacting guidance on the management of cases of domestic violence against LGBTQ people that covers matters pertaining to receiving reports, intake interviews, protective measures and provision of medical, psychological, shelter and other services;
- k. Domestic violence laws should enable the training of professionals responding to domestic violence on LGBTQ people's rights and issues as well as the forms of domestic violence they experience;
- l. Domestic violence laws should mandate awareness-raising programs aimed at educating communities about the domestic violence experienced by LGBTQ people and the need to prevent it;
- m. Domestic violence laws should identify LGBTQ people as key stakeholders of anti-domestic violence work and mandate regular consultations with LGBTQ individuals and organizations; and
- n. Domestic violence laws should decree the protection of survivors' information by sanctioning data firewalls or gender-based violence desks in local government offices and police stations, especially in contexts where laws criminalize same-sex relations.

Lawmakers should also:

- a. Decriminalize consensual same-sex relations;
- b. Pass marriage equality and/or civil union laws so that LGBTQ people can receive protection in cases of domestic violence from laws that afford it to married or legally recognized couples and families; and
- c. Pass laws that address discrimination on grounds of sexual orientation, gender identity or gender expression.

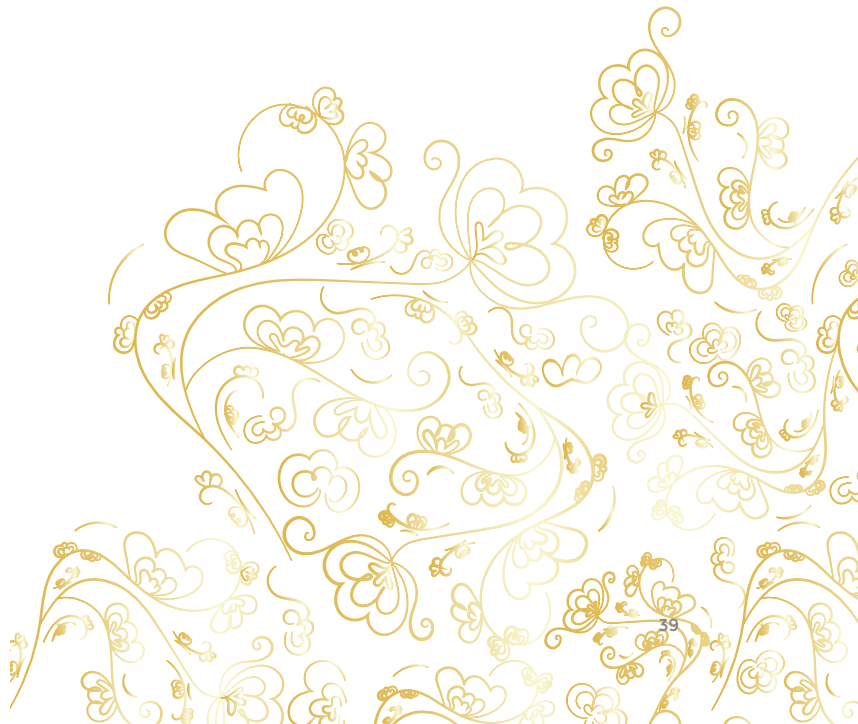


Conclusion

The observations in this report point to the inadequacy of the domestic violence laws in the ten countries covered in providing appropriate services and remedies to LGBTQ people experiencing domestic violence. The laws' inaccessibility to LGBTQ people stems from factors such as direct exclusion from services and remedies based on the law's adoption of a women-specific framework, more indirect exclusion through the integration of legal provisions, such as relationship or marriage requirements, that render the laws ultimately inapplicable to them, and a lack of provisions to facilitate LGBTQ people's access to justice.

In general, these factors may be attributed to a lack of recognition of the prevalence of domestic violence suffered by LGBTQ people and the absence of legal intent to incorporate mechanisms that aim to address or mitigate its occurrence.

Everyone merits protection from domestic violence, regardless of their sexual orientation or gender identity. In order to respect human dignity and comply with international human rights obligations to uphold rights to life, health, bodily integrity, and non-discrimination, governments should ensure that domestic violence laws prevent and address all forms of violence, against everyone.





Acknowledgments

This report was written by Faith Sadicon, Program Officer, Asia Pacific, and Grace Poore, Regional Program Coordinator for Asia, at OutRight Action International. It was edited by Neela Ghoshal, Senior Director of Law, Policy and Research at OutRight Action International, designed by Kathy Mills (kamil.graphics), and was reviewed by Maria Sjödin, executive director of OutRight, and AJ Jarrett, copy editor.

This report was made possible with the help and contribution of the following: Sarita K. C, executive director, Mitini Nepal; Ritupurna Borah, co-founder, Nazariya; Thiyagaraja Waradas, director, Community Welfare and Development Fund (CWDF- Lanka); Laura Afonso de Jesus, COVIDA-TL; Ivanka Custodio, Camp Queer; Di Wang, Ph.D. candidate in sociology, UW-Madison; and Marilag Sadicon, intern at OutRight Action International. We are grateful for their support and participation.





Annex 1

Domestic Violence Laws in the Ten Countries

COUNTRY	TITLE OF THE INTIMATE PARTNER OR FAMILY VIOLENCE LAW	DATE OF ENACTMENT
PHILIPPINES	Republic Act No. 9262 (An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes)	2004
TIMOR-LESTE	Law No. 7/2010 (Law on Domestic Violence)	2010
THAILAND	Domestic Violence Victim Protection Act, B.E. 2550	2007
SINGAPORE	No specific law: Incorporated in the Women's Charter	1961
MALAYSIA	Act 521 (Domestic Violence Act 1994)	1994
	Act A1538 (Domestic Violence (Amendment) Act 2017)	2017
INDIA	The Protection of Women from Domestic Violence Act, 2005	2005
NEPAL	Domestic Violence (Offence and Punishment) Act, 2066	2009
SRI LANKA	Prevention of Domestic Violence Act, No.34 Of 2005 (An Act To Provide for the Prevention of Any Act of Domestic Violence and for Matters Connected Therewith or Incidental Thereto)	2005
JAPAN	Act on the Prevention of Spousal Violence and the Protection of Victims (Act No. 31 of April 13, 2001)	2001
CHINA	Anti-Domestic Violence Law of the People's Republic of China	2015



Annex 2

Victim, Perpetrator, Relationship and Cohabitation in the Domestic Violence Laws of Each Country

COUNTRY	VICTIM	PERPETRATOR	RELATIONSHIP AND COHABITATION REQUIREMENTS
PHILIPPINES	<ol style="list-style-type: none"> 1. Woman 2. The woman's child 	<ol style="list-style-type: none"> 1. Any person who is the woman/victim's husband 2. Any person who is the woman/victim's former husband 3. Any person with whom the woman has or had a sexual or dating relationship 4. Any person with whom the woman has a common child 	<ol style="list-style-type: none"> 1. Between husband and wife 2. Between husband and former wife 3. Between a perpetrator (regardless of gender) and a woman who are or were in a sexual or dating relationship with one another 4. Between a male perpetrator and a woman with whom he has a common child 5. Between a perpetrator and a woman's child

COUNTRY	VICTIM	PERPETRATOR	RELATIONSHIP AND COHABITATION REQUIREMENTS
<p>TIMOR-LESTE</p>	<p>1. Any member of the family:</p> <p>a) Spouse or ex-spouse</p> <p>b) Person who lives or has lived with the perpetrator under conditions analogous to spouses, even though without cohabitation</p> <p>c) Relatives in the ascending and descending line of one or both spouses or of anyone in the situation referred to in the preceding paragraph, as long as they are the same relationship of dependency and part of the household economy</p> <p>d) Any other person who is part of the same context of dependency or household economy, including any person who carries out an activity in the household continuously and with a subordinated status</p> <p>2. Any person with whom the perpetrator has or had an intimate relationship</p>	<p>1. Any member of the family:</p> <p>a) Spouse or ex-spouse</p> <p>b) Person who live or has lived with the victim under conditions analogous to spouses, even though without cohabitation</p> <p>c) Relatives in the ascending and descending line of one or both spouses or of anyone in the situation referred to in the preceding paragraph, as long as they are the same relationship of dependency and part of the household economy</p> <p>d) Any other person who is part of the same context of dependency or household economy, including any person who carries out an activity in the household continuously and with a subordinated status</p> <p>Note: <i>The law provides another element in determining whether an act is covered by the law: Where there is a situation of ascendancy, notably physical or economic</i></p> <p>2. Any person with whom the victim has or had an intimate relationship</p>	<p>1. Relationships within family context (with or without cohabitation)</p> <p>Note: <i>The law provides another element in determining whether an act is covered by the law: Where there is a situation of ascendancy, notably physical or economic</i></p> <p>2. Intimate relationships (previous or present)</p>

COUNTRY	VICTIM	PERPETRATOR	RELATIONSHIP AND COHABITATION REQUIREMENTS
THAILAND	<ol style="list-style-type: none"> 1. Spouse 2. Former spouse 3. Person who cohabits or used to cohabit as husband and wife with the perpetrator without marriage registration 4. Child 5. Adoptive child 6. Any member of the family 7. Any person who depends on or lives in the same household 	<ol style="list-style-type: none"> 1. Spouse 2. Former spouse 3. Person who cohabits or used to cohabit as husband and wife with the victim without marriage registration 4. Parent (perpetrator) toward a child (victim)/child (perpetrator) toward a parent (victim) 5. Parent (perpetrator) toward an adoptive child (victim)/adoptive child (perpetrator) toward a parent (victim) 6. Any member of the family 7. Any person who depends on or lives in the same household 	<ol style="list-style-type: none"> 1. Between spouses 2. Between former spouses 3. Between persons who cohabit or used to cohabit as husband and wife without marriage registration 4. Between members of the family or household and a child 5. Between members of the family or household and an adoptive child 6. Between members of the family 7. Between persons who depend on or live in the same household
SINGAPORE	<ol style="list-style-type: none"> 1. Spouse or former spouse of the perpetrator 2. Person who cohabits or used to cohabit with the perpetrator as husband and wife without marriage registration 3. Child of the perpetrator (legitimate or adopted) 4. Any member of the family 5. Any other person who live mutually with the perpetrator in the same household 	<ol style="list-style-type: none"> 1. Spouse or former spouse of the victim 2. Person who cohabits or used to cohabit with the victim as husband and wife without marriage registration 3. Parents of the victim ("legitimate" or adopted) 4. Any member of the family 5. Any other person who live mutually with the perpetrator in the same household 	<ol style="list-style-type: none"> 1. Between spouses or former spouses 2. Between persons who cohabit or used to cohabit with one another as husband and wife without marriage registration 3. Between parents and children ("legitimate" or adopted) 4. Between members of the family 5. Between persons who live mutually with the perpetrator in the same household

COUNTRY	VICTIM	PERPETRATOR	RELATIONSHIP AND COHABITATION REQUIREMENTS
MALAYSIA	<ol style="list-style-type: none"> 1. Spouse (including de facto) 2. Former spouse (including de facto) 3. Child (below the age of eighteen years who is living as a member of the offender's family or of the family of the offender's spouse or former spouse, as the case may be) 4. Incapacitated adult 5. Any other family member: <ol style="list-style-type: none"> a. an adult son or daughter of the offender b. a father or mother of the offender c. a brother or sister of the offender d. any other relative of the offender; who in the opinion of the court should, in the circumstances of that family, be regarded as a member of the family (full-blood or half-blood, or through marriage or adoption, including de facto adoption) 	<ol style="list-style-type: none"> 1. Spouse (including de facto) 2. Former spouse (including de facto) 3. Parent (perpetrator) toward a child (victim) 4. Member of the family (perpetrator) toward an incapacitated adult (victim) 5. Member of the family (perpetrator) toward any other family member (victim): <ol style="list-style-type: none"> a. Parents b. Son or daughter c. Brother or sister d. Any other relative who in the opinion of the court should, in the circumstances of that family, be regarded as a member of the family 	<ol style="list-style-type: none"> 1. Spouses (including de facto) 2. Former spouses (including de facto) 3. Parent-child 4. Member of the family - incapacitated adult 5. Member of the family - any other family member

COUNTRY	VICTIM	PERPETRATOR	RELATIONSHIP AND COHABITATION REQUIREMENTS
INDIA	<p>1. Woman who is or has been in a domestic relationship with the respondent (adult male):</p> <p>a. who lives or have, at any point of time, lived with the respondent in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family</p> <p>b. who is a wife or female partner of the husband or the male partner, in relation to the relatives of the husband or male partner</p>	<p>1. Adult male person in a domestic relationship with the aggrieved person*</p> <p>2. Relative of the husband or the male partner</p>	<p>1. Between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family</p> <p>2. Between wife or female partner living in a relationship in the nature of a marriage and a relative of the husband or the male partner</p>
NEPAL	<p>Person who has been in a domestic relationship with the defendant (those living together in a shared household and are related by descent (consanguinity), marriage, adoption or are family members living together as a joint family, or a dependent “domestic help” living in the same family)</p>	<p>Person who has been in a domestic relationship with the defendant (those living together in a shared household and are related by descent (consanguinity), marriage, adoption or are family members living together as a joint family, or a dependent domestic help living in the same family)</p>	<p>Between persons who have been in a domestic relationship with each other (those living together in a shared household and are related by descent (consanguinity), marriage, adoption or are family members living together as a joint family, or a dependent domestic help living in the same family)</p>

***Note:** Please see *Hiral P. Harsora v. Kusum Narottamdas Harsora* (2016) 10 SCC 165.

COUNTRY	VICTIM	PERPETRATOR	RELATIONSHIP AND COHABITATION REQUIREMENTS
<p>SRI LANKA</p>	<p>1. Aggrieved person in relation to the relevant person/perpetrator</p>	<ol style="list-style-type: none"> 1. Spouse of the aggrieved person 2. Ex-spouse of the aggrieved person 3. Cohabiting partner of the aggrieved person 4. Father, mother, grandfather, grandmother, stepfather, stepmother of an aggrieved person or of the spouse, former spouse or cohabiting partner of the aggrieved person or of the spouse, former spouse or cohabiting partner of the aggrieved person 5. Son, daughter, grandson, granddaughter, stepson, stepdaughter of an aggrieved person or of the spouse, former spouse or cohabiting partner of the aggrieved person or of the spouse, former spouse or cohabiting partner of the aggrieved person 6. Brother, sister, half-brother, half-sister, stepbrother, stepsister of an aggrieved person or of the spouse, former spouse or cohabiting partner of the aggrieved person or of the spouse, former spouse or cohabiting partner of the aggrieved person 7. Siblings of a parent of an aggrieved person or of the spouse, former spouse or cohabiting partner of the aggrieved person or of the spouse, former spouse or cohabiting partner of the aggrieved person 8. Child of a sibling 9. Child of a sibling of a parent of an aggrieved person or of the spouse, former spouse or cohabiting partner of the aggrieved person or of the spouse, former spouse or cohabiting partner of the aggrieved person 	<p>Between the aggrieved person and the relevant person/perpetrator identified in the preceding column</p>

COUNTRY	VICTIM	PERPETRATOR	RELATIONSHIP AND COHABITATION REQUIREMENTS
JAPAN	<ol style="list-style-type: none"> 1. Spouse of the perpetrator (including a person who is in a de facto state of marriage with the perpetrator, even if it has not been legally registered) 2. Former spouse or de facto spouse of the perpetrator (person who subsequent to being subjected to violence by the other spouse, obtained a divorce or annulment of marriage but continues to be subjected to violence by the former spouse) 3. Person in a relationship with the perpetrator (the relationship is one in which both persons are based in the same principal place, excluding relationships in which both persons do not live together in a manner similar to that of a marital relationship) 4. Person formerly in a relationship with the perpetrator (victim who has ended the relationship after being subjected to bodily harm by the other person in the relationship) 	<ol style="list-style-type: none"> 1. Spouse of the victim (including a person who is in a de facto state of marriage with the victim, even if it has not been legally registered) 2. Former spouse or de facto spouse of the victim 3. Person in a relationship with the victim 4. Person formerly in a relationship with the victim 	<ol style="list-style-type: none"> 1. Between spouses (including a persons who are in a de facto state of marriage, even if it has not been legally registered) 2. Former spouses or de facto spouses (persons who subsequent to the commission of violence, obtained a divorce or annulment of marriage) 3. Persons in a relationship (the relationship is one in which both persons are based in the same principal place, excluding relationships in which both persons do not live together in a manner similar to that of a marital relationship) 4. Persons formerly in a relationship
CHINA	<ol style="list-style-type: none"> 1. Family member 2. Person who live together with another person 	<ol style="list-style-type: none"> 1. Family member 2. Person who live together with another person 	<ol style="list-style-type: none"> 1. Family members 2. People living together



Annex 3

Types of Violence

COUNTRY	TYPES OF VIOLENCE COVERED IN THE IPV/FV LAW			
PHILIPPINES	Physical violence	Sexual violence	Psychological violence	Economic abuse
TIMOR-LESTE	Physical violence	Sexual violence	Psychological violence	Economic violence
THAILAND	Bodily harm	Mental harm	Health harm	Coercion or undue influence
SINGAPORE	Hurt (bodily pain, disease, infirmity)	Restraining a family member	Continual harassment	
MALAYSIA	Physical injury	Forcing the victim to engage in any conduct, sexual or otherwise, from which the victim has the right to abstain	Psychological abuse	Damage to property Misappropriation of victim's property
	Confinement or detainment	Causing the victim to suffer delusions by using any intoxicating substance	Threatening the victim	Insulting the modesty of the victim
INDIA	Physical abuse	Sexual abuse	Verbal abuse	Emotional abuse
	Economic abuse	Dowry-related act		
NEPAL	Physical harm	Mental harm	Sexual harm	Economic harm
SRI LANKA	Emotional abuse	Specific crimes in the Penal Code		
JAPAN	Physical harm	Psychological harm		
CHINA	Physical harm	Psychological harm	Other harms	



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