

WIFE BATTERING FROM AN ISLAMIC PERSPECTIVE AND MALAYSIAN LEGAL PROVISIONS*

*Nasimah Hussin and
Ramizah Wan Muhammad***

ABSTRACT

Wife battering is a ground for divorce in the Malaysian Shariah Courts. Some husbands claim that it is their prerogative right to discipline their wives by corporal punishment based on their superficial understanding of the Qur'anic text 4:34 which seems to justify this argument. Some feminist organizations condemn this and allege that if physical assault is lawful in Islam, it leads to a woman's persecution. This paper examines the issue of wife battering from both Islamic perspective and Malaysian legal provisions. It clarifies the misconception that exists regarding the above issue which is in fact, due to lack of understanding and prejudice against Islamic law.

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** Assistant Professors, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia.

INTRODUCTION

Allah has created man and woman as companions. They are not created to compete but to complement one another. They have been created with some strengths and weaknesses so that they will help each other, and ultimately live in peace and tranquility according to the commandments of Allah and directions of the Prophet Muḥammad s.a.w.

Allah says:

“And among His signs is this, that He created for you mates among yourselves, that you may dwell in tranquility with them and He has put love and mercy between your hearts. Undoubtedly in these are signs for those who reflect.”¹

The Holy Prophet s.a.w. is reported to have said:

“Take good care of women, for what they are restrained under you...”²

Allah says further:

“...live with them on a footing of kindness and equity...”³

Marriage in Islam, is at once *‘ibādah*⁴ and *mu‘āmalah*.⁵ Marriage is *‘ibādah* because it is an act of the *sunnah* of the Prophet so that we can attain Allah’s pleasure in efforts to continue the human race and nurture children borne out of marriage to become the servants of Allah. In its *mu‘āmalah* aspect, marriage is an aspect of the relationship between husband and wife in terms of their duties and rights in translating those rights and duties as a human institution. Islam stresses the importance for Muslims to be clearly aware of their roles in the family. As a husband

¹ Al-Qur’ān, 30:21.

² Al-Nawawī, *Riyāḍ al-Ṣālihīn*, Mu’assasāt al-Rayyān, Beirut, 1994, 161.

³ Al-Qur’ān, 4:19.

⁴ i.e., the relationship between man and Allah (religious observance).

⁵ i.e., the relationship between human beings.

or wife, each has a distinctive role to play and certain obligations to fulfill. As such, responsibilities are associated with roles to ensure balance of harmony is achieved in the family. If anyone in the family has transgressed the rights or become irresponsible as prescribed by *Shara'*, he or she can be disciplined.⁶ However, the right to discipline the guilty should be within the prescribed limit. If one presumes that the right to discipline is his prerogative right and exceeds it to lead to physical assault and abuses the victims, it is no longer a right but a crime.

BASIS OF CRIMINAL LIABILITY IN ISLAM

In Islamic law, the criminal accountability rests on three bases. First, the act committed is unlawful. Second, the unlawful act is committed by the person willfully. Third, the unlawful act must be committed by an adult and sane person who can distinguish between right and wrong. In the absence of these bases, a person committing the offence will not be held liable and thus the punishment cannot be imposed. In Islamic law, an unlawful act may otherwise be lawful due to any of certain reasons. All such reasons relate to the performance of one's duty or the exercise of one's right. In other words, exercise of rights and performance of duties makes certain acts lawful and absolves the person committing them of accountability, while they remain unlawful to other people. Muslim jurists consider one of the general exceptions which make the unlawful act lawful is an act of a husband in disciplining his wife,⁷ which would otherwise be an unlawful assault.

The right of a husband in this respect is based on the Qur'anic verse which says:

“...As to those women on whose part you fear disloyalty and ill-conduct, admonish them (first), (next) refuse to share their beds, (and last) beat them (lightly): but if

⁶ What is meant by “discipline” in this statement is that to enjoin what is good and to forbid what is evil.

⁷ ‘Awdah, ‘Abd al-Qādir, *al-Tashrī‘ al-Jinā’ī al-Islāmī Muqaranan bi Qanūn al-Waḍ‘ī*, Vol. 1, 13th ed., Mu’assasah al-Risālah, Beirut, 1994, 402.

they return to obedience, seek not against them means (of annoyance).”⁸

The word “*nushūz*” in the above verse means disobedience or disloyalty of a wife towards her husband.⁹ This word is derived from the root “*nashaza*” which indicates rising. It means that if a wife rises above the limit which Allah has laid down for the obedience to the husband, she will be treated as disobedient.¹⁰

Nushūz is a situation where a wife is found guilty of disobeying lawful wishes or commands of her husband such as refusal to share a bed with him and leaving home against her husband’s will and refusing to move with him to another home or place.¹¹ Nevertheless, if a wife leaves the house without her husband’s permission in order to go to the court to claim her rights against the husband, or to inquire about certain legal rulings if the husband is not knowledgeable, then she cannot be treated under *nushūz*. Similarly, if a wife has to leave the house for the sake of earning a living when the husband is unable or weak to do so, she is not *nushūz*.¹²

Likewise, a wife is not under an obligation to obey her husband if he orders her to commit an unlawful act and to ignore religious duties. Thus, the right to discipline a wife is not absolute but subject to certain conditions as stipulated by *Shari’ah*.¹³

⁸ Al-Qur’ān, 4:34.

⁹ *Nushūz* can also refer to the husband who fails to fulfill his obligatory duties towards his wife and children. See: Syed Sābiq, *Fiqh al-Sunnah*, Vol.8, Dār al-Dayān li al-Turāth, Cairo, 1990, 450.

¹⁰ Al-Rāzī, *Mukhtār al-Ṣiḥah*, Mu’assasah al-Risālah, Beirut, 1988, 660.

¹¹ Section 59(2) of Selangor Islamic Family Law Enactment 1984. See: *Khatijah v. Ismail* [1989] 6 JH 109.

¹² There are cases where the husband accused the wife of being *nushūz* in order to evade *nafaqah* or *mut’ah*, see for example: *Aisny Mohd Daris v. Haji Fahro Rozi b Mohdi* [1991] 7 JH 216. See also: Raihanah Haji Abdullah, “*Nafkah: Peruntukan Undang-Undang dan Perlaksanaannya*,” *IKIM Law Journal*, Vol. 5, No.1, 2001, 64.

¹³ Bahnasi, Aḥmad Faṭḥi, *al-Mas’uliyah al-Jinā’iyyah Fī al-Fiqh al-Islāmī*, 3rd Ed., Dār al-Shurūq, Beirut, 1984, 175.

THE EXTENT OF A HUSBAND'S RIGHT TO DISCIPLINE HIS WIFE

In Islām, as servants of Allah, husbands and wives have distinct roles to play in ensuring the smooth running of their family lives. A man is responsible to give maintenance and protection to his family. To shoulder this responsibility, a man is regarded as a leader of his family with certain leadership attributes. Allah makes obedience to a husband as obligatory upon every wife. This is based on the Qur'anic verse which says:

“Men are protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard...”¹⁴

Ḥammūdah¹⁵ stipulates that the wife's obedience in Islam is qualified by at least two conditions:

- i. It is required only if what is asked of or expected from the wife is within the permissible categories of action.
- ii. It must be maintained only with regard to matters that fall under the husband's right.

A ḥadīth of the Prophet s.a.w. stresses on this regard:

“And be careful of your duty to Allah in the matter of women, for you have taken them as the trust of Allah... and they owe you this obligation that they will not allow anyone to come into your house that you do not like. If they do, then give them light corporal punishment which may not leave any effect on their bodies.”¹⁶

¹⁴ Al-Qur'ān, 4:34.

¹⁵ Ḥammūdah 'Abd al-'Ati, *The Family Structure in Islam*, American Trust Publications, Indiana, 1977, 172.

¹⁶ Bahnasī, *al-Mas'uliyah al-Jinā'iyah Fī al-Fiqh al-Islāmī*, 173.

As a leader in the family, a husband is in charge of educating his family particularly in regards to *farq* 'ain (the knowledge on imperative duties). He is also responsible to ensure that every member of his family observes his or her religious duties as well as prevent them from indulging in unlawful acts. To take up this responsibility, a husband is given a right to discipline his *nushūz* wife as provided in verse 4:34 of the Qur'ān.

Bahnasī states that the verse 4:34 of the Qur'ān explicitly mentions that the sole cause which legalizes a husband to beat or discipline his wife is *nushūz*, i.e. disobedience of the wife towards her husband.¹⁷ Other jurists hold the opinion that a husband has the right to discipline his wife in forbidden acts other than *ḥudūd*¹⁸ and *qīṣāṣ*.¹⁹ This is because the *ḥudūd* punishment falls within the jurisdiction of the authority concerned whilst the infliction of *qīṣāṣ* depends on the demand of the victim or his relatives. The jurists agree that disciplining a wife cannot be resorted to simply for fear of disobedience on her part but only when she actually commits the prohibited act or oversteps the limit laid down by Allah.²⁰

¹⁷ Bahnasī, *ibid*, 175.

¹⁸ *Ḥadd* (plural: *ḥudūd*), is a crime punishable with a fixed punishment imposed as the right of public, or known as the right of God. *Ḥudūd* crimes and their punishments are mentioned clearly in the text of the Qur'ān and the Sunnah. The crimes of *ḥudūd* in Islamic criminal law are *zinā* (adultery or fornication), *qadhīf* (false accusation of *zinā*), theft, robbery, drinking intoxicants, apostasy and rebellion. When a crime of *ḥadd* is established, the prescribed punishment must be imposed. It cannot be reduced nor pardoned. See: 'Awdah, 79.

¹⁹ *Qīṣāṣ* and *diyah* is a crime punishable with a fixed punishment imposed as the right of individual. *Qīṣāṣ* and *diyah* crimes and their punishments are mentioned clearly in the text of the Qur'ān and the Sunnah. The crimes include homicide and causing bodily harm to others. Since these crimes involve the right of an individual, the victim has the right to choose, whether to demand the infliction of punishment on the offender or to pardon him. See: 'Awdah, 80.

²⁰ Bahnasī, *al-Mas'uliyah al-Jinā'iyyah Fī al-Fiqh al-Islāmī*, 175.

MEASURES IN DISCIPLINING A WIFE

The Qur'ān has specified the following measures that the husband should follow in disciplining his wife. The measures are as follow:

1. Admonition

A husband should first try to advise his wife on the importance of good conduct by force of argument appealing to the finer traits of her character. If it proves to be effective, then there is no need to resort to a harsher measure.²¹

2. Severing of the conjugal relationship

If the first step i.e., admonition, fails to win her over to the right path, the husband may refuse to share the bed with his wife temporarily, as a corrective measure. In other words, he may boycott her. This could mean, either avoiding her entirely and sleeping in other places or sleeping on the same bed but keeping away from her. However, this must be confined to a reasonable period of time and should not be continued indefinitely. Al-Ghazālī stipulates that the period cannot exceed three days before the next action can be taken.²²

3. Beating

If boycotting still does not work in mending her behaviour and there is no change in her attitude towards her husband, then the last measure in disciplining the wife, i.e., beating, can be resorted to. Beating can only be resorted to only if the husband believes that it would improve the situation, otherwise it is preferable to abandon this measure. Some of the jurists are of the view that beating is a *makrūh* (disapproved of) act based on the ḥadīth of the Prophet who said, in response to a request from some men to beat their *nushūz* wives: “You may beat them (wives) but a good man will never beat his wife.”²³

²¹ Mufti Zafeeruddin Miftahi, *Modesty and Chastity in Islam*, Qazi Publishers and Distributors, Kuala Lumpur, 1997, 144-145.

²² As quoted by Bahnasī, *al-Mas'uliyah al-Jinā'iyah Fī al-Fiqh al-Islāmī*, 179.

²³ Bahnasī, *al-Mas'uliyah al-Jinā'iyah Fī al-Fiqh al-Islāmī*, 174.

Though beating a wife is not recommended, sometimes it is necessary for the husband to beat her lightly, to discipline her in order to save the marriage. There are differences of opinion as to when a husband can beat his wife. According to the Shāfi'īs and Ḥanbalīs, it is the right of a husband to beat his wife whether or not she repeats the act of disobedience. Mālik and Abū Ḥanīfah on the other hand, hold that it is not justified for a husband to beat his wife who has committed an offence for the first time. Only repeated commission of the same offence warrants corrective remedy. This view is preferred. It can be inferred that if a husband beats his wife on her first and second offence, he will be liable to punishment. Similarly, if a husband beat his wife for her third offence without first admonishing her and then boycotting her, he would also be liable to punishment.²⁴ It must be borne in mind that this last measure must be administered very carefully according to the limit as laid down by the principles of *Shari'ah*, otherwise the husband may be held liable on criminal ground.

LIMITS ON DISCIPLINING A WIFE

A husband cannot beat his disobedient wife as he wishes but must exercise this right within the prescribed limit. One should not take part of the verse 4:34, “*and beat them*” and use it to justify one's own misconduct. This verse neither permits violence nor condones it. It guides us to ways to handle delicate family situations with care and wisdom. In this respect, the *Shari'ah* has laid down certain limitations so that the husband does not misuse the right given to him. The word “beating” which is used in the verse does not mean “physical abuse.” Beating for the purpose of disciplining should be in a light manner so that the consequence is not serious.

Muslim jurists discussed this issue thoroughly in their *fiqh* manuals and based on their discussion, it can be said that light beating means beating in a manner that may cause pain but can neither fracture bones nor bleed. Beating cannot leave any mark of injury on the body. The pain resulting from beating should not last for many days. Sensitive parts of

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‘Awdah, *Criminal Law of Islam*, vol. 2, International Islamic Publishers, Karachi, 1987, 232.

the body such as head, face, breast, stomach and private parts must be avoided because the purpose of beating is only for disciplining and thus cannot harm the wife.²⁵

If the husband exceeds the limit of beating, he is held liable on both civil and criminal grounds depending on his wife's condition. If the beating results in the death or injury of the wife, the husband is held liable for homicide or causing injury. The majority of jurists consider it as an unintentional act whilst some others consider it as an intentional act and thus the husband is liable for *qisās* punishment.²⁶

Abū Ḥanīfah states that if a husband exceeds the limit of beating, his wife has grounds to ask for a divorce. According to the Shāfi'īs, if a husband abuses his wife and beats her unnecessarily despite being cautioned by a judge, he (the judge) has the discretion to separate (divorce) both of them and the husband must pay her maintenance up to a certain period.²⁷

WIFE'S RIGHT TO DISCIPLINE HER HUSBAND

It is interesting to note that the term *nushūz* in the Qur'ān refers not only to a wife but also to a husband, as stated in the following verse:

“And if a woman fears *nushūz* from her husband or that he may turn away, there is no sin upon the two of them to make terms of agreement between them, an agreement is better.”²⁸

From the verse, it can be said that a *nushūz* husband is recognized and certain measures need to be taken in dealing with him. However, the meaning of *nushūz* husband is slightly different to that of wife as it signifies a husband who abandons his wife.²⁹

²⁵ *Ibid*, 233.

²⁶ Bahnasī, *al-Mas'uliyah al-Jinā'iyah Fī al-Fiqh al-Islāmī*, 177.

²⁷ Bahnasī, *ibid.*, 178.

²⁸ Al-Qur'ān, 4:128.

²⁹ Bahnasī, *al-Mas'uliyah al-Jinā'iyah Fī al-Fiqh al-Islāmī*, 175.

The question arises as to whether a wife also has the right to discipline her husband. The answer is positive but on the ground of *al-‘amr bi al-ma‘rūf wa al-nahy ‘an al-munkar* (enjoining good and forbidding wrong). There are many Qur’anic verses which mention this obligation; one of those is as follows:

“And the believers, men and women, are protecting friends of one another. They enjoin the right and forbid the wrong, and they establish worship.”³⁰

There is a ḥadīth of the Prophet which says:

“If anyone of you sees an evil and can prevent it with his own hand, he must do that. If he is incapable to do so, then he must verbally forbid the people doing it. Again if he is incapable to do so, then he must abhor it in his heart. This is the lowest degree of faith.”³¹

Some of the jurists declare that the obligation of enjoining good and forbidding wrong is an imperative duty (*fard ‘ain*) which is unquestionable and imposed on every Muslim in proportion to his or her ability. Some other jurists are of the view that this obligation is a collective duty (*fard kifāyah*) and thus if some of the Muslims discharge it, the rest are relieved of it.³² Thus, if a husband commits any unlawful act or neglects his duties towards his family, the wife has the right to advise him and remind him of his responsibility towards his religion and family. However, this right should be exercised in a kind and gentle manner maintaining her respect to the husband.

³⁰ Al-Qur’ān, 9:71.

³¹ *Ṣaḥīḥ Muslim*, Ḥadīth No. 34, see also: Muḥammad Fārūq al-Nabahan, *Nizām al-Ḥukm fī al-Islām*, Mu’assasah al-Risālah, Morocco, 1983, 617.

³² ‘Awdah, *Criminal Law of Islam*, vol. 2, 206-209.

WIFE BATTERING IN MALAYSIA

In Malaysia, there are quite a number of reported cases of domestic violence which includes wife battering.³³ As shown in **Table 1**, statistics recorded that the number of domestic violence cases has been increasing. There were 2,555 reported cases of domestic violence in 2003, and 3,101 cases in 2004. The number of reported cases in 2005 stood at 3,093 and increased to 3264 in 2006. In 2007 alone, the number of domestic violence cases stood at 3756, i.e. the average of 313 cases per month and 10.5 cases per day. The detailed figures are shown in the table below.³⁴

³³ There are a lot of reported cases of wives who have been physically and mentally abused by their husbands. For instance, in Pakistan, there was a case of Sabira Khan, three months pregnant, who was abused because she told her husband that she wanted to see her mother very badly after three years of marriage. Her husband was very angry and poured kerosene over her and set her on fire. She took him to court but lost the case because the court believed that it was self-inflicted and she was insane. See: <http://web.amnesty.org/library/print/ENGASA330181999>. In Saudi Arabia, there was a case which had attracted national and international attention when Rania al-Baz, a TV presenter, had been beaten by the husband for having answered a telephone call. She suffered thirteen fractures on her face. The husband later made a false report saying that she was involved in an accident. The husband was found guilty and sentenced to six months imprisonment and three hundred lashes. This case had actually created public awareness that there exists many cases of wife battering in Saudi Arabia. See: BBC News Online, 16th April 2004.

³⁴ The Royal Malaysian Police.

Table 1:

Statistics on Domestic Violence Cases Based on Sections of the Penal Code, 2003-2007

Offence	2003	2004	2005	2006	2007
Sect. 323 / Causing Hurt	1546	1928	1723	1538	1853
Sect. 324 / Voluntarily causing hurt by dangerous weapons	286	296	332	496	509
Sect. 325 / Punishment for Causing grievous hurt voluntarily	34	50	50	47	41
Sect. 326 / voluntarily causing grievous hurt by dangerous weapons or means	20	26	31	21	30
Sect. 362 / Abduction	2	14	34	1	5
Sect. 427 / Committing Mischief	27	35	27	14	25
Sect. 452 / House trespass	2	2	11	2	4
Sect. 506 / Punishment for criminal Intimidation	457	553	676	928	993
Sect. 507 / Criminal Intimidation by anonymous communication	16	36	35	43	83
Sect. 506/323 / Voluntarily causing hurt by dangerous weapons	49	74	102	119	47
Others	116	87	72	55	166
Total	2555	3101	3093	3264	3756

Table 2:

Statistics on Domestic Violence Cases Based on the Relationship
between the Accused and the Victim

Relationship	2003	2004	2005	2006	2007
Husband	1540	2018	1825	1850	2205
Wife	49	41	28	27	36
Father	69	102	108	116	104
Mother	17	30	29	23	22
Father in Law	26	35	34	25	33
Mother in Law	10	4	13	5	23
Sister	16	23	14	22	44
Brother	162	230	288	309	285
Sister in Law	12	8	10	19	20
Brother in Law	160	150	209	206	160
Ex-wife	1	12	40	23	22
Ex-Husband	95	88	95	112	116
Son/Daughter	83	110	198	235	222
Others	315	250	202	292	464
Total	2555	3101	3093	3264	3756

The above statistics, reveal that the majority of violent cases concern husbands.³⁵ In 2003, out of 2,555 cases, husbands battering their wives took place in 1,540 cases or 60.3%. In the following year, the number of wife battering cases increased to 2,018 or 65.1%. The number of husbands who battered their wives kept on increasing and in 2007 it stood at 2205.³⁶

Domestic violence causes numerous social ills. It affects not only the women but also the whole family. Children who witness abuse are dramatically affected. They are more likely to attempt suicide, to abuse drugs and alcohol, to run away from home, to engage in teenage prostitution and other delinquent behaviour, and to commit sexual assault

³⁵ Other than husband, the batterers are father, mother, wife, father in laws, ex husbands etc.

³⁶ The Royal Malaysian Police refer: Table 2.

crimes.³⁷ Islam abhors these situations and hence never approved of wife battering which, as stated above, is a criminal act. Islam approves light punishment that leaves no trace on the women and that is intended to discipline the misguided.

LEGAL PROVISIONS IN MALAYSIA

There is no direct provision in the Malaysian statutes which grants a right to a husband to execute corporal punishment. In fact most of the statutes in Malaysia refer to the protection of women against abuses and domestic violence.

However, the Islamic Family Law enactments in Malaysia do refer to the disobedience of wife as a matrimonial offence and provide punishment for the offence if it is proven. In the Federal Territories, for example, it is provided that:

“Any woman who wilfully disobeys any order lawfully given by her husband according to Hukum Syara’ commits an offence and shall be punished with a fine not exceeding RM100 or in the case of a second or subsequent offence with a fine not exceeding RM500.”³⁸

Section 59(2) of the above Act also provides that:

“Subject to Hukum Syara’ and confirmation by the Court, a wife shall not be entitled to maintenance when she is *nushūz*, or unreasonably refuses to obey the lawful wishes or commands of her husband, that is to say, *inter alia*-
 (a) when she withholds her association with her husband;
 (b) when she leaves her husband’s home against his will;
 or

³⁷ Leonard P Edwards, “Reducing Family Violence: The Role of the Family Council,” *Juvenile and Family Court Journal*, 1992, 1. See also: Nisar Ahmad Ganai, “The wife Battering Syndrome in Modern Malaysia: Law and Practice,” [1994] ICLR, vol. xiv, 9-10.

³⁸ The Islamic Family Law (Federal Territories) Act 2006, s. 129.

- (c) when she refuses to move with him to another home or place, without any valid reason according to Hukum Syara'."

In *Khatijah v. Ismail*³⁹ the plaintiff applied for conditional (*ta'liq*) divorce on the ground that the defendant (i.e. the husband) had left her for more than six months and failed to pay her maintenance. The defendant, however, alleged that the wife was *nushūz* since she refused to move with him to a small room with bare facilities at his workplace. The appeal court judge decided that the husband was responsible to provide a place of residence that is sufficiently adequate and in accordance to the status of his wife. Thus, in this case, the wife could not be considered *nushūz*.

In *Aisny Mohd Daris v. Haji Fahro Rozi b Mohdi*⁴⁰ the question of *nushūz* arose when the plaintiff left the house on the ground that the defendant failed to pay maintenance of his wife and children. Furthermore, the defendant also failed to pay the housing installment which caused hardship to the plaintiff. The learned judge decided that in this case the plaintiff cannot be considered *nushūz* since she had a valid reason to move and the husband did not object.

In Kedah, it is provided that a wife who intentionally fails to comply with a reasonable order or disobeys her husband and does not carry out her duties as a wife shall, on conviction, be declared as *nushūz* and all her rights under Hukum Syara' shall be forfeited.⁴¹

The above provisions, while recognizing the authority of husband as head of the household, does not give the husband the authority to abuse his wife. This is provided for in section 127 of Islamic Family Law (Federal Territories) Act 2006:

"Any person who ill-treats his wife or cheats his wife of her property commits an offence and shall on conviction be punished with a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both."

³⁹ [1989] 6 JH 109.

⁴⁰ [1991] 7 JH 216.

⁴¹ Islamic Family Law (Kedah) Enactment 2008, s. 130.

In fact, ill-treatment of a husband towards his wife is one of the grounds which entitle her to obtain an order for the dissolution of marriage or *fasakh* and *ta'liq* divorce.⁴²

In *Hasnah binti Omar v. Zaaba bin Mohammad Amin*,⁴³ the Shariah High Court of Kuala Terengganu allowed the application of *fasakh* in favour of the wife after she had proven before the judge that her husband had continuously caused physical assault against her. In this case, the judge granted such an order after observing mental and physical injuries she suffered in the hands of her husband.

In addition, the learned judge in *Hasnah v. Saad*⁴⁴ granted an order for *ta'liq* divorce as applied for by the wife when the court was satisfied with the evidence presented by her. In this case, even though the husband had solemnly denied the argument made by the wife by simply saying that injuries were the result of her own conduct, the court delivered a judgment which was in favour of the wife due to the medical treatment shown by her.

In considering the rights of the husband to punish a wife as a form of advice, the Court is required to identify the degree of force that has been used. This is illustrated in the case of *Hairun v. Omar*⁴⁵ whereby the Shariah Court of Appeal had allowed the termination of marriage through *fasakh* by virtue of Section 52(1) (h) read together with Section 52 (1) (i) Islamic Family Law Enactment of Selangor 1984. In delivering the verdict, the learned judge stated that the actions of punishing the wife which has resulted in serious injuries, even though not too frequent, still cannot be categorised as an “advice.”

The wife can also obtain protection through section 2 of the Domestic Violence Act 1994.

“Domestic violence means the commission of any of the following acts:

- (a) wilfully or knowingly placing, or attempting to place, the victim in fear of physical injury;

⁴² The Islamic Family Law (Federal Territories) Act 2006, s.127. See also: s. 50 concerning divorce under *ta'liq*.

⁴³ [1995] 10 JH 59.

⁴⁴ [1975] 3 JH 84.

⁴⁵ [1991] 8 JH 289.

- (b) causing physical injury to the victim by such act, which is known or ought to have been known would result in physical injury;
- (c) compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain;
- (d) confining or detaining the victim against the victim's will; or
- (e) causing mischief or destruction or damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the victim, by a person against-
 - (i) his or her spouse;
 - (ii) his or her former spouse;
 - (iii) a child;
 - (iv) an incapacitated adult; or
 - (v) any other member of the family;

If such claim is made and proven, it can act as a defense against any allegation of disobedience on part of the wife.”

Other than the Domestic Violence Act 1994 (DVA), the victims can also seek protection under the Penal Code (Act 574) (Revised 1997), the Criminal Procedure Code (Act 593) Revised 1999 and the Child Act (Act 611) 2001. These Acts and Codes and the punishments prescribed under such laws are not contrary to the objectives of Islamic criminal justice.

Despite the fact that the Domestic Violence Act 1994 has provisions which can be considered ideal remedies to protect the victims from all kinds of violence that take place in marriage, it has several weaknesses particularly when it comes to enforcement. For instance, the definition of “enforcement officer” under section 2 of the DVA is vague, i.e. it mentions that only a policeman and officers from social welfare are within the ambit of its definition. Nevertheless, it does not include other professional bodies such as lawyers, medical doctors or other relevant parties as enforcement officers. Domestic violence is not treated as an independent offence under section 319 of the Penal Code and Section 2 of Criminal Procedure Code and it is non-seizable. Besides,

the Interim Protection Order (section 4 and 5 of DVA) will only be granted if the investigation is pending, whereas it may not be done if the offence is a “non-seizable” one.⁴⁶ These are among the obstacles to give the fullest support to the victim. Apart from that, many victims are reluctant to bring the case to the court and they rarely come forward to give evidence against the abuser that impedes legal action from being taken to settle the problem. This can also be related to their misunderstanding about the Islamic religion itself as many believe that man as a leader of the family can use physical sanction against his wife.

There were suggestions prior to the enforcement of the Domestic Violence Act 1994, that Muslim women in Malaysia should be exempted from its jurisdiction because of the belief that a Muslim man has the right to discipline his wife with physical assault.⁴⁷ This is inaccurate and untenable in Islamic law. Islam opposes all kinds of punishment that injures or incapacitates a wife.⁴⁸ Such brutalities perpetrated by the husband can be a ground for the wife to apply for the dissolution of marriage.⁴⁹

CONCLUSION

It is clear that wife battering is *ḥarām* and is considered as a crime in Islamic law. Verse 4:34 of the Qur’ān has been greatly misconceived by many people who focus merely on its on the surface, meaning, taking it to allow wife beating. The Qur’ān urges husbands to treat their wives with kindness. In cases of family disputes, the Qur’ān exhorts the husbands to treat their wives kindly and not to overlook their positive aspects.

⁴⁶ For further details, see: Abu Bakar Munir and Nor Aini Abdullah, “Domestic Violence and the Need for Family Court,” [1995] 4 CLJ lxxv–lxxvii. See also: Nor Aini Abdullah, “Domestic Violence Act 1994: An End to a Nightmare?,” [1995] 1 MLJ xli–xlv.

⁴⁷ Zainah Anwar, “The Struggle for Women’s Rights Within the Religious Framework: The Experience of Sisters in Islam,” in *Modern Malaysia in the Global Economy: Political and Social Change*, [Colin Barlow, ed.] (United Kingdom: Cheltenham, 2001), 179.

⁴⁸ See Section 52 of Islamic Family Law (Federal Territories) Act 2006.

⁴⁹ Section 52(1)(i) *ibid*. See also the case of *Mohamad Habibullah Bin Mahmood v Faridah Binti Dato’ Talib* [1992] 2 MLJ 793.

However in some cases a husband as a leader in the family may use certain measures to discipline his disobedient wife in order to correct the moral infraction of his wife, but this is only in extreme cases and should be done within the limits laid down by Shari'ah otherwise the husband has to face the criminal liability.

The reality of what happens in Malaysia and some Muslim countries indicates that there are husbands who physically abuse their wives and use the ground that it is his prerogative right bestowed in the Holy Qur'ān. Such an interpretation of the Qur'ān is ill-conceived. Islamic laws most of the times have been confused with cultural habits of a community. There is a need to have a practical mechanism to overcome this problem and political will from the government is very essential.

It must be noted that the right to discipline the wife is only available to those husbands who observe religious duties themselves. The husband should be the one who first performs his duties and sets an example to his wife and family. If he himself does not observe religious duties or commits an offence, he should also be "disciplined" based on the commandment to do what is good and to forbid what is evil. The best way for the husband to discipline his wife is through his knowledge and example.

There is a ḥadīth of the Prophet s.a.w. which says:

"The believers with the most complete *īmān* are those with the most refined manners. And the best amongst you are those who are the best to their wives and I am the kindness amongst you to his wives."⁵⁰

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Al-Nawawī, Yahya Ibn Sharaf, *Riyāḍ al-Ṣālihīn*, (Beirut: *Mu'assasāt al-Rayyān*, 1994), 161.