

## **FINANCIAL ABUSE IN DOMESTIC VIOLENCE: HOW CAN ISLAMIC FINANCIAL INSTITUTIONS PLAY THEIR ROLE?**

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### **ABSTRACT**

While domestic violence in a marriage is commonly associated with physical and mental abuse, there has been an increasing number of cases involving financial abuse in the form of financial control, financial deprivation, sabotage, and exploitation of the spouse's financial resources. This study aims to conceptualise financial abuse from the Domestic Violence Act 1994 perspective. The study explores the role of Islamic financial institutions (IFIs) in overcoming this issue and providing several recommendations to help the abused women from financial perspective. This study examines relevant laws, policy and regulations in Malaysia that may provide some sort of financial protection to those women. A critical analysis of the laws and policy is important as a starting point in protecting women who are facing this financial difficulty. Based on the research conducted, it is believed that IFIs can play an effective role in assisting financially abused victims. This study is only limited to the Malaysian domestic violence situation but can be further extended through a more comprehensive empirical legal research. Findings of this study could serve as a guide for policymakers, Shari'ah Court, and related government

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agencies (such as the Department of Social Welfare Malaysia) as well as the IFIs to assist women who are affected by financial abuse.

**Keywords:** Financial Abuse, Domestic Violence, Islamic Financial Institutions, Women Empowerment.

## **PENDERAAN KEWANGAN DALAM KEGANASAN RUMAH TANGGA: BAGAIMANA INSTITUSI KEWANGAN ISLAM DAPAT MEMAINKAN PERANAN?**

### **ABSTRAK**

Walaupun keganasan rumah tangga dalam perkahwinan sering dikaitkan dikaitkan dengan penderaan fizikal dan mental terdapat peningkatan kes penderaan kewangan dalam bentuk pengawalan kewangan, penidakan kewangan, sabotaj dan eksploitasi sumber kewangan pasangan. Kajian ini bertujuan untuk mengkonsepsualisasikan penderaan kewangan dari perspektif Akta Keganasan Rumah Tangga 1994. Kajian ini turut meneroka peranan Institusi-institusi Kewangan Islam dalam mengatasi isu ini dan seterusnya mengutarakan beberapa rekomendasi untuk membantu wanita yang didera dari perspektif kewangan. Analisa kritis terhadap undang-undang dan dasar adalah penting sebagai titik permulaan dalam melindungi wanita yang menghadapi masalah kewangan. Berdasarkan kajian yang dilakukan, adalah dipercayai bahawa IFI boleh memainkan peranan aktif dalam membantu mangsa penderaan kewangan. Kajian ini hanya terhad kepada situasi keganasan rumah tangga Malaysia tetapi boleh diperluaskan lagi dalam penyelidikan undang-undang empirikal yang lebih komprehensif. Dapatan kajian ini boleh menjadi panduan kepada penggubal dasar, Mahkamah Syariah, dan agensi kerajaan yang berkaitan (seperti Jabatan Kebajikan Masyarakat Malaysia) serta IFI untuk membantu wanita yang terkesan dengan penderaan kewangan.

**Kata Kunci:** Penderaan Kewangan, Keganasan Rumah Tangga, Institusi-Institusi Kewangan Islam, Memperkasa Wanita.

## INTRODUCTION

Domestic violence against women is a globally recognised issue that has been patronising women for ages. Despite the increasing role and contribution of women in society, some of them have been suffering in silence due to the traditional taboo that domestic affairs are considered private and should not be discussed openly.<sup>1</sup> Only when there are apparent bruises, wounds, or broken bones that these women can be taken seriously as domestic abuse victims. However, these common physical injuries are no longer the limit of domestic abuse as mental and emotional abuse have also been recognised as a form of domestic violence.

Financial abuse, on the other hand, is a much more subtle way of abuse that violates women's right to their own financial resources such as deprivation from having access and spending their own financial assets.<sup>2</sup> Not only that, some women anticipated to submit to home expenses such as paying bills, and mortgages on the house or car, while their abuser spouse only contributes sporadically. Many women do not realise this as part of domestic violence and in fact, in Malaysia the law has yet to recognise financial abuse as part of domestic violence.

Women's Aid Organisation (WAO)<sup>3</sup> has identified what constitutes financial abuse in marriage which includes withholding information regarding personal bank's account, withholding money or allowances (*nafkah*) by minimising access or requiring permission to use the money and also forced unemployment by making the victims feel guilty for working and making them quit. On top of this, refusing to pay for child support, sabotaging credit and taking away banking cards are also considered as financial abuse in marriage.

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<sup>1</sup> Siti Nurzulaika Roslan and Zuriatunfadzliah Sahdan, "Mapping Women's Journey in Seeking Refuge from Domestic Violence in Malaysia," *GEOGRAFI* 10, no. 1, (2022), 1-19. <https://doi.org/10.37134/geografi.vol10.1.1.2022>

<sup>2</sup> Norjannah Abu Bakar et al., "Awareness among Women in Malaysia on the Issue of Financial Abuse," *Asian Journal of Accounting & Governance* 17 no. 1, (2022), 1-12.

<sup>3</sup> "Getting Help for Domestic Violence in Malaysia," Women's Aid Organisation, May 19, 2022, <https://wao.org.my/getting-help-for-domestic-violence/>.

The United Kingdom (UK) for example has recognised this type of domestic violence in its Domestic Abuse Act 2021. Section 4 in the Introduction of the Act defined economic abuse as “any behaviour that has a substantial adverse effect on B’s ability to acquire, use or maintain money or other property, or obtain goods or services”. The inclusion of a definition and acknowledgement of economic abuse in the legislation is a significant step forward, as it not only protects individual victims but also raises awareness of this sort of abuse and its potential consequences.

Women nowadays have their own careers and are handsomely paid, which is not the same as the condition in the last 60 years. Though this is a good sign of women’s empowerment and independence, another party might take advantage of their financial stability, specifically their life partners who became a ‘free riders’. WAO reported that in 2020, out of 224 clients living in shelters under WAO’s protection, 37.1% were reported to be financially abused.<sup>4</sup> Literature that discusses specific financial abuse in Malaysia is insufficient and is mostly skewed towards physical abuse.

Gender equality is one of the Sustainable Development Goals (SDGs)<sup>5</sup>, which can be a key focus area for financial institutions. In Islamic finance, IFIs should not only strive for SDGs but also to focus on *Maqasid Shari’ah* (purpose of shariah) which serves as guiding principles of its establishment. According to Ibn Ashur, *Maqasid Shari’ah* relates to maintaining order, obtaining benefits, preventing harm and corruption, establishing equality among people, respect, compliance, and effectively enforcing laws. A term that allows ummah to be: powerful, respected and confident<sup>6</sup>. Existing products such as financing for women, donation crowdfunding platforms and training to enhance life skills should be applauded but there is always room for

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<sup>4</sup> Dina Ahmad Murad, “My ‘Love’ or Your Money? Red Flags of Financial Abuse in Relationships.” *The Star*, April 25, 2021, <https://www.thestar.com.my/news/focus/2021/04/25/my-039love-or-your-money-red-flags-of-abuse-in-financial-abuse-in-relationships>.

<sup>5</sup> “Goal 5 on Gender Equality in The UN Sustainable Goal Developments,” The United Nations (UN), accessed at March 30, 2022, at <https://malaysia.un.org/en/sdgs/5>

<sup>6</sup> Maybank, “The Application of Maqasid Al-Shariah in Islamic Finance ,” accessed September 27, 2022, [https://www.maybank2u.com.my/iwov-resources/islamic-my/document/my/en/islamic/scoe/knowledge-centre/articles/Application\\_of\\_Maqasid\\_al-Shariah.pdf](https://www.maybank2u.com.my/iwov-resources/islamic-my/document/my/en/islamic/scoe/knowledge-centre/articles/Application_of_Maqasid_al-Shariah.pdf).

improvement. Initiatives to aid deprived victims of financial abuse can be explored as part of continuous services to these customers in Malaysia as the country is lagging behind the UK in terms of efforts to assist these victims. The UK established a financial abuse code of practice in 2018, which was recently updated in 2021<sup>7</sup> while such code is absent in Malaysia. Further details on the code will be explained later.

Considering the preceding, this study examines the role of IFIs to help women in despair and also future perspectives. This study finds that there is an imminent need to address the issue of financial abuse and to examine the role of IFIs in assisting women to overcome tragic episodes. It is high time for the legislators and the judges in Malaysia, be it Islamic law or the marriage civil law to recognise financial abuse as a type of domestic violence. Following a chronological order, the second part of this paper dilates on previous literature that discussed and highlighted the issue of financial abuse. Thereafter, the third part highlights the position on financial abuse in Malaysia. In a few decided cases, the judges discussed financial abuse even though it was yet to be recognised under the law. The last part of this paper discusses the role of IFIs in detail by providing some suggestions and approaches that may be taken up by the IFIs.

## METHOD

This paper applies doctrinal legal research and adopts a qualitative study using the content analysis approach. The primary data are mainly from law cases and legal provisions from domestic-violence-related statutes such as the Domestic Violence Act 1994, Chapter XVI of Penal Code, Law Reform (Marriage and Divorce) Act 1976, and Islamic Family (Federal Territory) Act 1984. The secondary data is gathered from academic articles from various academic journals, relevant reports, and relevant websites. These resources are analysed critically to demonstrate the prevalence of financial abuse in Malaysia and other parts of the world, as well as the role of IFIs in alleviating the aftereffects of financial abuse.

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<sup>7</sup> “UK Finance Launches Updated Financial Abuse Code,” UK Finance, accessed at Sept 29, 2022, at <https://www.ukfinance.org.uk/press/press-releases/uk-finance-launches-updated-financial-abuse-code>

## FINANCIAL ABUSE

If a person deprives the right to the financial freedom of others, it is called financial abuse. Being the most complex forms of abuse, financial control, exploitation or sabotage are common categories of financial abuse. Often committed by a partner, 16 per cent of all vulnerable adults in the UK have been a target of financial abuse in a current or past relationship<sup>8</sup>. In the past two years, more than 7 out of 10 domestic violence victims seeking shelter from the Women's Aid Organisation (WAO) in Malaysia have suffered from financial abuse<sup>9</sup>. Withholding information, withholding money or allowance, forced unemployment, refusing to pay child support, sabotaging credit and taking away cards are types of financial intimate partner abuse<sup>10</sup>.

In addition, the United States-based National Network to End Domestic Violence (NNEDV) highlighted that monetary abuse is the primary concern for survivors to stay or go back to an abusive partner due to the financial hardships imposed to feed themselves and their dependents. As expected, the majority of cases involved are primarily perpetrated by men against women according to The Australian-based Women's Information and Referral Exchange Inc.<sup>11</sup>

## FINANCIAL ABUSE FROM THE LEGAL PERSPECTIVE

### Domestic Violence in Malaysia

Domestic violence and cruelty, as mainly interpreted in decided cases, refer to a habitual act of violence, abuse, or intimidation used to control

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<sup>8</sup> The Cooperative Bank and Refuge, "Know Economic Abuse," October 14, 2020, <https://www.co-operativebank.co.uk/about-us/press-release/2020/know-economic-abuse-report/>.

<sup>9</sup> Dina Murad, "My 'Love' or Your Money? Red Flags of Financial Abuse in Relationships," *The Star*, April 25, 2021, <https://www.thestar.com.my/news/focus/2021/04/25/my-039love-or-your-money-red-flags-of-abuse-in-financial-abuse-in-relationships>.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

or maintain power over a partner in an intimate relationship who is or has been in one.<sup>12</sup>

According to figures from the Royal Malaysia Police (PDRM)<sup>13</sup>, the number of domestic violence complaints received has increased yearly. In 2018, there were 3,947 instances reported whereas in 2019 the number of reported cases has increased to 5,657.

Domestic violence cases, on the other hand, have swiftly climbed to an alarming 9,051 cases in 2021 during the enforcement of the Movement Control Order of the COVID-19 pandemic. The Welfare Department of Malaysia reported that in 2019, 93% of domestic violence cases involved violence against women with 73% of the perpetrator being their own husbands<sup>14</sup>.

### **Domestic Violence in the Malaysian Law**

While the main statute regulating domestic violence in Malaysia is the Domestic Violence Act 1994, due to the cruel character and severity of the consequences of domestic violence, the action was added as one of the offences that carry substantial penalties in other legislation as well.

In Chapter XVI of the Penal Code (Act 574), the Act provides a long list of offences affecting human body, or ‘hurt’ starting from Section 319 until Section 377E. Specifically, section 326A provides for the punishment for causing hurt specifically by a spouse during the subsistence of a valid marriage which amounted to twice the maximum term of imprisonment depending on the initial conviction of offences under the Penal Code.<sup>15</sup>

A plain reading of the sections in the Domestic Violence Act indicates that the Act does not make domestic abuse a particular crime

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<sup>12</sup> The Annotated Statute of Domestic Violence Act 1994, 2017 Lexis Nexis Malaysia

<sup>13</sup> “Domestic Violence Statistic,” Women’s Aid Organisation (WAO), accessed March 30, 2022, <https://wao.org.my/domestic-violence-statistics/>.

<sup>14</sup> “Social Welfare Statistic Report 2019,” The Department of Social Welfare Malaysia, 2019.

<sup>15</sup> For example, if the accused had been convicted under section 325 of the Penal Code for voluntarily causing grievous hurt punishable for maximum imprisonment of seven years, in addition to the conviction under section 326A, total punishment for the accuse would ultimately be 14 years of imprisonment maximum.

punishable by the Act, nor does it provide police greater tools to investigate such offences. However, Section 3 of the Act effectively emphasises that the act of domestic violence to be in the same group with several more offences punishable under the Penal Code<sup>16</sup>.

This has been further highlighted by Abdul Malik Ishak J in the case of *Chan Ah Moi v Phang Wai Ann* [1995] 3 MLJ 130<sup>17</sup>, where he stated that;

“Domestic violence per se is not a specific crime in the DVA [Domestic Violence Act]. Section 3 of the DVA shall be read together with the provisions of the Penal Code. This in turn would necessarily impede investigations as all investigations are governed by the Criminal Procedure Code (FMS Cap 6) (‘the CPC’). Thus, the police must first determine the nature of the offence before deciding on the next course of action. If the offence is non-seizable in nature, the police will conduct an investigation upon receipt of an order to investigate from the deputy public prosecutor. An investigation of a non-seizable offence without an order to investigate from the deputy public prosecutor would render whatever evidence collected illegal (*PP v Seridaran* [1984] 1 MLJ 141). Under the CPC, the police are required to conduct immediate investigations in cases of seizable offences. Taken from this angle, the DVA would be a toothless tiger. I say this because most cases of domestic violence like punching, kicking, assaulting, etc, would fall squarely under the category of non-seizable offences. There is therefore, no immediate need for the police to investigate unless the deputy public prosecutor issues an order to investigate.”

Other than provisions under the Penal Code, domestic violence is also one of the major grounds for the nullity of marriage and divorces under both civil and Islamic family law in Malaysia. Under section 52(h)(i) and (iv) of the Islamic Family Law (Federal Territories) Act 1984, it is provided that spouses may apply for the ground of nullity of marriage or *fasakh* when the husband or wife habitually assaults her or him or makes her or his life miserable by cruelty of conduct, or when the victim had been prevented to utilise his/her own property.

Although there are no specific provisions against cruelty or domestic violence in the Law Reform (Marriage and Divorce) Act 1976 (‘LRA’) governing civil or non-Muslim marriages, under Section

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<sup>16</sup> The Annotated Statute of Domestic Violence Act 1994 (Act 521), 2019 Lexis Nexis Malaysia.

<sup>17</sup> [1995] 3 MLJ 130



54(1)(b) of the Act, one of the grounds for divorce is where the husband/wife had behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. Under this section, although not mentioned clearly on the abuse, it is within the scope of the section to include that any violent action by the spouses could be the proof of breakdown and be the ground for the nullification of marriage<sup>18</sup>.

## **The Domestic Violence Act 1994**

The Domestic Violence Act 1994 (DVA) was passed by the Parliament on 24 June 1994 and subsequently gazetted on 7 July 1994, making Malaysia the first country in Asia that has passed such a law.<sup>19</sup> Since then, the Act had undergone several amendments in the effort to provide better protection to the victims of domestic violence.

### **Definition and Extent of Domestic Violence in the Domestic Violence Act**

Section 2 of the Act provides a statutory interpretation of domestic violence, where it generally covers both physical, psychological and financial abuse that had occurred within a family institution. It states that; “Domestic violence” means the commission of one or more of the following acts:

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

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<sup>18</sup> The Annotated Statute of Domestic Violence Act 1994 (Act 521), 2019 Lexis Nexis Malaysia.

<sup>19</sup> Daleleer Kaur Randawar, Norliah Ibrahim, Roslina Che Soh@Yusoff, “Extending the Scope of Protection to Domestic Violence Victims in Relation to Employment Entitlements”, (Kuala Lumpur, Industrial Law Journal Articles, 2019), 3.

- (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;
- (ea) dishonestly misappropriating the victim's property which causes the victim to suffer distress due to financial loss;
- (eb) threatening the victim with intent to cause the victim to fear for his safety or the safety of his property, to fear for the safety of a third person, or to suffer distress;
- (ec) communicating with the victim, or communicating about the victim to a third person, with intent to insult the modesty of the victim through any means, electronic or otherwise;"
- (f) causing psychological abuse which includes emotional injury to the victim;
- (g) causing the victim to suffer delusions by using any intoxicating substance or any other substance without the victim's consent or if the consent is given, the consent was unlawfully obtained; or
- (h) in the case where the victim is a child, causing the victim to suffer delusions by using any intoxicating substance or any other substance, by a person, whether by himself or through a third party, 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;

The scope of this section also provides on the extent of family members which includes adult sons and daughters, fathers and mothers, brothers and sisters, and any other relatives .

This section also applies to the “de facto spouses” or couples who married in a religious or customary ceremony but did not register their union<sup>20</sup>.

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<sup>20</sup> The Annotated Statute of Domestic Violence Act 1994 (Act 521), 2019 Lexis Nexis Malaysia.

## **Mode of Protection provided in the Act**

There are several different modes of protection provided by the Act, of which the victim may apply to the court consisting of Interim Protection Order, Protection Order, and Restraining Order, among others.

### **Interim Protection Order (IPO)**

By virtue of Section 4 (read together with section 12) of the Act, the court has the power to issue an IPO for the survivor (extending to the survivor's other family member upon application) during the pending police course of the investigation.

The abused survivor may petition the court for an interim protection order (IPO) banning the perpetrator from inflicting violence upon them during the course of investigations. IPO will be issued by the Magistrate Court and it is effective throughout the course of police investigations and expires once the police investigation had completed and the case is being brought to the Court.

### **Protection Order (PO)**

The Protection Order can be given to the abused victim as a follow-up protection order by the court after the case was brought to the court. The PO would remain effective as long as the court trial was ongoing, upon yearly renewals.

PO prevents the perpetrator from inflicting any abuse against the applicant and the court may also include additional orders to the PO accordingly as per Section 6 of the Act. This section includes orders to exclude the abuser from the shared residence regardless of whether the shared residence is solely owned or leased by the abuser, prohibiting or restraining the person from; entering any protected person's safe place or residence, entering any protected person's place of employment or school, entering any other institution where any protected person is placed, going near any protected person at a distance of at least fifty meters, and making personal contact with any protected person.

Another court's order under Section 6(1)<sup>21</sup> of the Act is for the survivor to be accompanied by a police officer or social welfare officer for the purpose of collecting the survivor's personal belongings and also an order to permit the survivor to have the continued use of a vehicle that has previously been ordinarily used by the survivor during the course of the marriage.

## FINANCIAL ABUSE AS A TYPE OF DOMESTIC VIOLENCE

While it is clearly established that domestic violence in the form of physical and emotional abuse is the current occurrence of domestic violence, it is also important to establish that financial or economical abuse is also another type of violence in the wider scope of interpretation of domestic violence.

In the United Kingdom, this type of domestic violence is termed as "economic abuse"<sup>22</sup> which is more comprehensive as it not only covers control of money or finances but also includes other things that money can buy such as food, clothing and housing.<sup>23</sup>

In Malaysia, financial distress happened in the course of marriage are commonly perceived when there is failure of the husband to provide for maintenance of his wife and neglecting his duties for upbringing of the child. While the right of the wife upon maintenance after divorce are pretty much secured under both Islamic and civil family law<sup>24</sup>, the suffering of the wife upon the financial distress caused during the course of marriage should also be acknowledged.

The case of *Jayakumar Karuppanan and Anor*<sup>25</sup>, is a child custody case after the wife had died due to illness. In this case, the court recognised the type of 'financial abuse' as a type of abuse that may

<sup>21</sup> Section 6 of Domestic Violence Act 1994.

<sup>22</sup> Section 3(d) Domestic Abuse Act UK 2021, accessed September 21, 2022, at <https://www.legislation.gov.uk/>

<sup>23</sup> Surviving Economic Abuse, "The Cost of Covid-19: Economic Abuse throughout the Pandemic," Financial Fairness Trust (Standard Life Foundation, n.d.), <https://www.financialfairness.org.uk/docs?editionId=a0bf9d88-7974-4daf-8247-a7d6ee0889e8>.

<sup>24</sup> Mansur Isa Yelwa, "Protection of Wife's Right to Maintenance in Islamic Law and Its Implementation in The Malaysian Islamic Family Law," *IIUM Law Journal* 21, no. 2 (2013), <https://doi.org/10.31436/iiumlj.v21i2.102>.

<sup>25</sup> [2006 ] MLJ 484 .

happen in the course of marriage, other than emotional and physical abuse, where the wife in this case has suffered financial abuse at her husband's hands. It is further discussed in the context of the financial difficulties the woman had experienced when the husband abandoned her without paying any support. The wife had to independently provide for the family and upbringing of the child whilst maintaining her own medical expenses after she was diagnosed with a spinal cord tumour, causing her to end up paraplegic and died due to that. The court eventually disposed of the father's right to the child custody citing the financial abuse committed by the father as one of the reason that has deprived both the child and the wife to suffer hardship.

While in the case of *DK Hjh Suhani v Hj Mohamad Shahbrin*<sup>26</sup>, the plaintiff had alleged that her husband had deprived her financially by depriving her from her savings account book and that her husband had disposed of her property by asking for a loan and withdrawing her money from the account to buy things. Although the plaintiff had failed to fulfil the burden of proof on the financial abuse done by the husband as the ground for *fasakh*, it is crucial to be aware of the several types of financial abuse such as deprivation and exploitation of one partner's money without permission can be used as legal reasons for *fasakh* when successfully proved.

Highlighting the Domestic Violence Act provisions, specifically Section 2(e) which focuses on the type of abuse that happened which involves either the damage or constraints on utilising the victim's property by the abuser to the victim. Although the section does not specifically mention the type of property exploited by the abuser, the section implies that the type of property does not necessarily meant the kind of property such as existing private jewellerys or vehicles but could also include the misappropriation and deprivation of money by the abuser to the victim so as to cause the victim to suffer financial loss.

It is, however, interesting to compare that to the Indian law. Section 3(d)(iv) of the Protection of Women from Domestic Violence Act 2005<sup>27</sup> defined the scope of 'economic abuse' to be much wider, such as deprivation from any economic or financial resources, disposal or damage of property, and restriction to use the property of which the

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<sup>26</sup> [2011] 3 SHLR 99

<sup>27</sup> "The Protection of Women from Domestic Violence Act 2005", accessed April 4, 2022, <https://indiankanoon.org/doc/542601/>

victims are also entitled to utilise. The provision clearly acknowledged that economic abuse, or financial abuse is one type of domestic violence happened during a marriage relationship. It states:

(iv) “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, *stridhan*, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship, or which may be reasonably required by the aggrieved person or her children or her *stridhan*<sup>28</sup> or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

In an Indian case of *Jagadesan Versus State of Tamil Nadu*<sup>29</sup>, the court deliberated very thoroughly on the definition and scope of the above Section 3(d)(iv) for the economic abuse to be established as a type of domestic violence. In the said case, the wife had petitioned the court for monetary relief from her husband for the maintenance and educational expenses of their child and citing the above section to prove her dire need of financial assistance.

In the effort of establishing economic abuse as a part of domestic violence and the extent of its scope, applying to the current situation in hand, the Judge had stated;

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<sup>28</sup> The word *stridhan* is a Hinduism concept that means property of woman that imply the woman has an absolute ownership on the property.

<sup>29</sup> [2015] 2 MLJ (CRL) 135.

“Due to deprivation of economic or financial assistance, Wife may not be in a position to provide the same standard of education. When the parties lived together and when there was no domestic violence, the child would have been provided with all the care and assistance, either by the Husband or Wife or any other near relative, and when the same is lost, on account of domestic violence or when there is loss of continued support from other sources, then there would be a necessity, to seek for appropriate interim orders, against the respondents”

The judge then further deliberated the extent of economic abuse to also cover not only to the wife, but also extends to the child economic welfare, at the same level as it would be if the domestic violence had not happened.

“Economic abuse means deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom. It is customary that a father is morally bound to maintain his Wife and child, by providing basic amenities like, food, shelter and clothing. He is also bound to provide health and education.”

At the end of the judgment, after thoroughly establishing the definition, scope and extent of the matter, the judge decided that economic abuse is a domestic violence as per the provisions had mentioned in the section 3(d)(iv) of the Protection of Women from Domestic Violence Act by clearly stating in Para 114 of the judgment;

“As per Section 2(k) of Protection of Women from Domestic Violence Act, “Monetary relief”, means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage of hearing of an application seeking relief under the Act for meeting the expenses incurred and also the losses suffered by the aggrieved person, as a result of Domestic Violence. Economic abuse is a domestic violence”.

In the end, the monetary relief the wife sought from the court while invoking the economic abuse section provided by the Act is approved and awarded. This case is important as it does not only successfully establish economic abuse as domestic violence, but it also wider the extent to cover even if financial deprivation occurs due to the abuse done by the husband had impacted on the child’s education, then it also needed to be compensated.

Comparing to the current situation in Malaysia, there are not many court cases that have successfully established the facts on

financial abuse especially in divorce or annulment of marriage<sup>30</sup>, neither in civil nor in Islamic family law. What more on establishing and acknowledging that financial abuse is a domestic violence under the eye of the law.

Although there are specific provisions in few of the statutes such as in Islamic Family Law Enactment of every state<sup>31</sup> for financial deprivation to be one of the grounds for *fasakh*, there are no court cases that have successfully invoked the section as one of the grounds for *fasakh*.

By acknowledging financial abuse as domestic law, the victims can further seek for additional financial assistance or relief deemed appropriate according to the situation. This is where IFIs could play further role by utilising one of the many Islamic social finance instruments to provide for financial protection for the financial abuse victims.

## **EVALUATING THE MALAYSIAN PRACTICE RELATING TO IN-COMING AND OUT-GOING FINANCIAL ABUSE CASE**

### **Current Weakness**

It is safe to say that there is a lack of awareness on IFIs in Malaysia on this issue based on research done. Before going through the details on how IFIs would respond in dealing with financial abuse cases, preliminary findings confirm that there is no basic information provided on financial abuse for the public or internal staff by IFIs, AIBIM or BNM in their reports, news articles or other publicly available sources such as websites. Money laundering and terrorism

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<sup>30</sup> Abd Ghadas, Z. A., & Ibrahim, N. (2012). Right of Participation in Business as Matrimonial Property: The Malaysian Experience. *IIUM Law Journal*, 15(1). <https://doi.org/10.31436/iiumlj.v15i1.61>

<sup>31</sup> Financial deprivation as one of the grounds for *fasakh* is mentioned in Islamic Family Law Enactment of all states in Malaysia. Where it is mentioned in Section 53(h)(iv) in Islamic Family Law Enactment Selangor, Perak, Perlis, Johor, Kedah, Negeri Sembilan, Pahang, Kelantan, Melaka, Penang, and Sabah. Section 50(g)(iv) of Islamic Family Law Enactment of Terengganu, Section 52(1)(h)(iv) of Islamic Family Law Enactment (Federal Territories), and Section 51(h)(iv) for Islamic Family Law Ordinance of Sarawak.



financing are more common examples of financial abuse in the current IFIs landscape but not those involving intimate partner violence.

The absence of a voluntary code of conduct to handle financial abuse cases as compared to the UK and Australia might have contributed to the low awareness issue. The code is important as it becomes the main guidance on the standard operating procedures of IFIs in such occurrences to aid the victims. In both countries, banks' trade associations are the ones championing the initiatives to establish a code of conduct. Australia has enforced all its members to abide by the banking code including the financial abuse code while the UK has plenty of signatories from its members including FIs and all building societies members. However, no full-fledged Shariah banks in the UK are amongst the signatories.

Nevertheless, Al Rayan Bank in the UK has somehow furnished quite detailed information on financial abuse in the light of its definition, its signs and available support from the government, agencies and the bank itself in its website. It offers specific help and support for financial abuse victims. A visit to Bank Islam, Bank Muamalat and Bank Rakyat's websites confirm that there is no awareness given on financial abuse as compared to fraud awareness campaign like unauthorised transaction, cardholders' responsibilities and phishing. It seems that the actual unauthorised transactions may look authorised when IFIs have no knowledge of possible coercion involving the account holder. Unless victims report to the police and agencies like WAO that will eventually link with IFIs, nothing can be done to identify such transactions.

On the other hand, awareness amongst women on financial abuse stood at 40% from more than 200 samples taken in a study<sup>32</sup>. They understand how to protect themselves and their rights by keeping personal financial information private. However, it is possible that it is confined to simply those who responded to this survey with more than 70% obtained a degree or higher with 60% working. This is where financial literacy plays a very important role. In another study, Gen Y female respondents recorded a slightly higher score in financial literacy which is 46% in contrast to 45% of those male respondents<sup>33</sup>. Females

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<sup>32</sup> Norjannah Abu Bakar et al., "Awareness among Women in Malaysia on the Issue of Financial Abuse" accessed September 22, 2022, <http://journalarticle.ukm.my/19736/1/46296-182856-2-PB.pdf>.

<sup>33</sup> Tay Lee Ying, Cheryl Chan & Tan Gek Siang, "Financial Literacy Among

are more family oriented, better organised and self-disciplined in managing matters relating to finances than males. Furthermore, it is suggested that working women in Malaysia tend to become financially literate by empowering themselves with financial education<sup>34</sup>. Less educated women and housewives might have different understanding and are more susceptible to risk of being a financial abuse victim even though there are instances that educated and working wives are willing to sacrifice everything in order to sustain the relationship.

### **Proposed Suggestions - Pre and during financial abuse**

As IFIs have an indirect control on people's bank accounts when needed, it probes whether IFIs can assist financial abuse victims as part of customer support services, corporate social responsibility agenda or rather, as a responsible community. From ongoing interactions between IFIs and victims which includes supportive and specialised support upon notification of financial abuse by customers, IFIs should assist customers with debts and outstanding debts and work with victims to help prevent further debt accumulation, including reviewing fees and charges. Guidelines for financial institutions should be established to generate a more dynamic, proactive, and informed reaction to revelations of financial abuse particularly concerning intimate-partner violence. The UK has remained at the forefront in terms of coming up with the proposed guideline for financial abuse<sup>35</sup>. It was launched in October 2018 and, so far, 29 members and 39 brands have committed to implementing this Code, including 14 organisations that are making the commitment for the first time<sup>36</sup>. There are six

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Gen Y In Malaysia" accessed September 22, 2022, <https://www.europeanproceedings.com/article/10.15405/epsbs.2020.12.05.52>

<sup>34</sup> Nur Najihah Binti Ashaari & Zahayu Binti Md Yusof, "Relationship Between Financial Literacy and Its Component: A Research on Working Women" access September 22, 2022, [http://www.sdiarticle3.com/wp-content/uploads/2019/09/Revised-ms\\_AJPAS\\_50803\\_v1.pdf](http://www.sdiarticle3.com/wp-content/uploads/2019/09/Revised-ms_AJPAS_50803_v1.pdf).

<sup>35</sup> "Strengthening Financial Institutions' Response to Domestic Economic Abuse," Financial Equity in The Financial Institutions and Banks (Canadian Center for Women's Empowerment, May 11, 2022), <https://ccfwe.org/financial-institution/>.

<sup>36</sup> Katie Stephen, "UK Finance 2021 Financial Abuse Code," Regulation Tomorrow (Norton Rose Fullbright, December 13, 2021),

principles underpinning the code of conduct, known as (1) raising awareness and encouraging disclosure, (2) training of colleagues, (3) identification and appropriate response, (4) minimising the need to repeat one's story in the same organisation, (5) help to regain control of finances and (6) signposting and referrals<sup>37</sup>. The first principle deals with the awareness campaigns which aim towards communicating the details of financial abuse within FIs' internal staff and facilitate more information on available FIs support to customers and third parties. The second principle highlights the importance of being empathy when dealing with customers and providing essential skills to recognise red flags and on-going observation of customer outcomes are training areas required for front-line employees. Next, colleagues, with the clear permission of the client, acknowledge and safely record the pertinent information that the client wants to release about financial abuse and offer reassuring responses to customers. FI will then activate the Banking Protocol (where it is in place across the country) if it entails the instant intervention of the police. The customer will be notified on relevant units within the organisation that are aware of the case and to minimise repetition of the case details. Based on the fifth principle, FIs will assist customers to regain control of finances. The use of alternate addresses for victims, such as a registered shelter centre, third party delegation on their account provided it is authorised by the customer, accessing financial services and provision of basic account where possible. FIs will support the victims to have access to their existing funds, accounts and services including for changes in security, joint assets and liabilities and current debt and arrears. The final code of principle is the signposting and referrals where FIs will make referrals to a registered Power of Attorney or other registered third-party legal authority and advise customers about other external sources of help such as independent legal advice; specialist help; debt advice and financial management agencies.<sup>38</sup>

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<https://www.regulationtomorrow.com/eu/uk-finance-2021-financial-abuse-code/>.

<sup>37</sup> UK Finance, "Financial Abuse Code of Practice ," accessed September 27, 2022, <https://www.ukfinance.org.uk/system/files/Financial-Abuse-Code-of-Practice.pdf>.

<sup>38</sup> "Financial Abuse Code of Practice," UK Finance, August, 2018, accessed April 13, 2022, <https://www.ukfinance.org.uk/system/files/Financial-Abuse-Code-of-Practice.pdf>.

As of now, there is only one Shari'ah-compliant financial services provider who offers these kinds of assistance for the victims, which is UK-based though it has not signed up for the financial abuse code. Consistent with fifth principle in the code of conduct, Al-Rayan Bank offers solutions through updating personal information with different home addresses, easy account access via digital banking app, joint account suspension and new account setup, together with new PIN and passwords for restricted and a more secure access. The same should be applicable to life insurance and Family Takaful policies, especially in amending the beneficiaries.<sup>39</sup>

Banks are progressively employing technology to detect targets of financial abuse and help out in getting new approaches to seek help. An app-based bank, Monzo has introduced traceless in-app messaging, a technical tool designed for survivors over suspicious transactions. They may also personally set phrases such as "My Chip and PIN are broken" to alert emergency services on behalf of survivors. Following this, a specialist customer support will be in touch with a helpline and a domestic abuse charity. The service assists customers with financial guidance and redirects them to specialist charities for emotional support. These specialists are trained to immediately notice signs of abuse which are presently made up of 20 employees. Correspondingly, Lloyds, Halifax and Bank of Scotland have launched their 'Domestic and Financial Abuse Team'. In line with FinTech, the financial sector is pursuing innovative methods to identify victims and to help them overcome their difficulties. Artificial intelligence and machine-learning could be used to analyse existing information, such as existing criminal records, calls made to the police and reported incidents of violence, to forecast the risk of repeat incidents or patterns of abuse more effectively.<sup>40</sup>

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<sup>39</sup> "Financial Abuse Islamic Banking." Al-Rayan Bank, accessed April 13, 2022, <https://www.alrayanbank.co.uk/financial-abuse>.

<sup>40</sup> Joshua Zitser, "Banks Aren't Dealing with Financial Abuse. Monzo Has an Answer," WIRED, September 9, 2020, <https://www.wired.co.uk/article/financial-abuse-banks-monzo>.

## CONTINUOUS SUPPORT SERVICES

The highly examined economic empowerment programme for victims of Intimate Partner Violence (IPV) are financial literacy programmes. These programmes integrate conventional financial literacy subjects along with safety-related topics specifically for victims of IPV as well as introducing the concept of economic abuse. The course includes both group and individual activities provided over the course of a 12-hour group format broken down into four classes. The curriculum covers the following topic areas: money and power, developing a cost-of-living plan, building and repairing credit, and banking and investing.<sup>41</sup>

Microenterprises or small- and medium-sized businesses projects by women are other forms of supports that should be launched to support themselves as a strategy to rebuild their lives and improve their self-esteem. They should be encouraged to create cooperatives and funding circles to improve their financial standing and future prospects.<sup>42</sup> However, this might be seen as a little burdensome to these victims amidst emotional instability. Instead, there should be readily found funds for them. One practical example is donation crowdfunding platform which the fund will be channelled to these entrepreneurs, provided by Fin Ability, a US-based non-profit organisation. Besides, survivors will be offered with digital tools to access financial assessments, information regarding separately opening bank accounts and safeguarding identity documents, and education material to foster healthy financial practices in the midst of distress.<sup>43</sup> In Malaysia, Pitch IN is offering reward crowdfunding, where ideas and projects are publicly marketed for funding. In return, those who support the idea (through a pledge) will be rewarded by the project owner.<sup>44</sup> WAO, a

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<sup>41</sup> Amanda Stylianou, "Economic Abuse Within Intimate Partner Violence: A Review of the Literature", *Violence and Victims* 33, no. 1 (2018): 3–22, <https://doi.org/10.1891/0886-6708.VV-D-16-00112>.

<sup>42</sup> Cannie Shaila, "A Systemic Review of an Untold Story: The Financial Abuse," *Global Academic Journal of Medical Sciences*, (2022): 69-73, <https://doi.org/10.36348/gajms.2022.v04i02.005>.

<sup>43</sup> "Finability Crowdfunding Campaign," FinAbility (Powered by Donorbox), n.d., <https://donorbox.org/finability-crowdfunding-campaign>.

<sup>44</sup> "The Home of Crowdfunding.", Pitch IN, accessed April 13, 2022, <https://pitchin.my/>.

domestic abuse shelter is also raising funds through crowdfunding platforms.<sup>45</sup> On this point, IFIs should work together with WAO for example in assisting the financial abuse victims through crowdfunding platforms.

## **ROLES OF ISLAMIC FINANCIAL INSTITUTIONS**

Realising the aggravating circumstances of financial abuse in marital relationships, this study is of the view that IFIs can play a bigger role in assisting the poor wife and children who have been abused financially. In line with the Sustainable Development Goals (SDGs) Number 5 on gender equalities, it is believed that these matters should be taken up not only by women but by society as a whole. The essence of SDG5 is that it aims to eliminate all forms of violence against women in the public and private spheres, which also include financial abuse and exploitation.

### **Financial Abuse as a Risk**

IFIs such as Islamic banks, takaful operators and Islamic microfinance institutions generally need to be proactive and play an important role in protecting women from being abused financially. Considering financial abuse is a risk that needs to be addressed and managed if it happens, necessary mitigating measures need to be put in place by the Islamic financial institutions. This involves providing financial services that address issues leading to financial abuses including designing a surveillance mechanism in the event of financial abuse happening, financial literacy, financial counselling, and women's financial capability programmes.

Another common form of financial abuse among married women is when they are "forced" to be a guarantor or co-signee of the husband's debt<sup>46</sup>. This increases the possibilities of women to be saddled with debts in the event of default by the husband. The situation is further worsened following a divorce or death of the husband. Islamic financial institutions specifically need to pre-empt these possibilities and plan accordingly to protect the welfare of the women,

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<sup>45</sup> "Help Us Raise Our Fund for Our Shelter", Women's Aid Organisation, accessed April 13, 2022 <https://wao.org.my/donate/>.

<sup>46</sup> Bakar, Norjannah Abu, Nurul Aliyah Sham Rambely, Ayu Indayu Mohd Zohdi, and Mohd Yasir. "Awareness among Women in Malaysia on the Issue of Financial Abuse." *Asian Journal of Accounting and Governance* (17), (2022): 75-86.

especially those in the low-income category and with a large number of children or dependents<sup>47</sup>. Proper guidelines in terms of who qualifies to be a guarantor or co-signee needs to be put in place with the intention to protect women from being financially abused after being divorced or widowed.

In addition, other proposals include a free access to credit scoring report, new technology utilisation that can expedite the process such as traceless in-app messaging or artificial intelligence (AI) and machine learning. Partnering with donation crowdfunding platforms such as Pitch IN, Sadaqa House and domestic abuse shelters like WAO will bring about greater partnership synergy for unfortunate victims.

### **Financial Surveillance Mechanisms**

In the event that financial abuse happens, necessary action can be undertaken by the IFIs in response to the incident. For example, in Australia, the National Australia Bank Limited (NAB) has recognised the issue of financial abuse and provided help to those women suffering from it. Necessary surveillance mechanism is put in place whereby if a couple has a joint account with the NAB and the spouse is financially abused, the spouse may inform the predicament to the bank and in response, the bank can undertake necessary measures accordingly. The joint account will be marked with a red flag to alert on any possibility<sup>48</sup>, and through this way, the interest and welfare of the spouse who is financially abused will be taken care of. Specific response measures include, among others, changing the status of the joint account to one in which the abuser spouse cannot use the money in the account with the consent from the victim.

Earlier intervention should have been done. In this regard, FIs should nurture these customers on the importance of awareness campaigns on possible consequences of a joint account prior to signing for such products. It is simpler to stop an occurrence in the first place than to fix the damage after it has happened. General campaign on financial abuse for IPV can also be crafted, particularly on the concept and examples as women might not notice that they have been

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<sup>47</sup> Ibid

<sup>48</sup> “Financial Abuse and Keeping Your Money Safe”, National Australia Bank, accessed April 13, 2022, <https://www.nab.com.au/about-us/social-impact/customers/domestic-and-family-violence/financial-abuse>.

financially abused. Additionally, IFIs must also educate their personnel about domestic abuse to respond effectively to victims. Lastly, IFIs must also ensure that their policies and practices take into account the needs of customers who have been subjected to domestic abuse, including economic abuse, and that they reflect the special requirements that arise in particular settings.

### **Role of Supervisory Bodies**

The relevant financial supervisory bodies need to also play their roles to protect the interests of the women who are financially abused. The Central Bank and Securities Commission should establish a code of conduct to counter for financial abuse that is applicable to all IFIs. Meanwhile, the IFIs should also consider establishing protocols for vulnerable individuals by acknowledging victims of financial abuse. IFI service providers must design and effectively implement comprehensive and flexible domestic abuse policies, with a particular emphasis on financial abuse protections for their consumers. Relevant government agencies should step in and be supportive of the financial institutions efforts by imposing strict penalties on all forms of financial abuse. In the specific case of where divorced women are deprived of alimony, the government has decided to instruct the banking institutions to freeze the accounts of the ex-husbands if he defaults on the court order.<sup>49</sup>

### **Improving Financial Literacy and Financial Inclusion among Women**

IFIs have an important role to play in improving financial literacy to all segments of the society, especially among women. Financially literate women are more independent and confident, thus able to fight off financial abuse. Awareness and knowledge on the availability of financial products and services as well as financial access at affordable costs are important to increase financial inclusion among women. Also important is the role of women in the financial affairs of the family.

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<sup>49</sup> Anne Muhammad, “Banks to Freeze Accounts of Husbands Who Don’t Pay Alimony, Says PM” accessed April 14, 2022, <https://www.freemalaysiatoday.com/category/nation/2022/03/19/banks-to-freeze-accounts-of-husbands-who-dont-pay-alimony-says-pm/>.



Women should ensure that they are money-wise and as much as possible, being financially independent. This is where financial literacy is highly important as it empowers women to make wise and independent choices. Women would be able to make wise financial decisions during unforeseen circumstances only if she is financially literate. Being smart and stable financially, and what is more important is that being able to contribute to the family finances would enable women to make major financial decisions for the family.

If a woman is financially literate, she will know exactly all the financing facilities that she has incurred including the outstanding balance for repayment, credit card limits, total amounts saved in saving accounts or other investment accounts to avoid unauthorised or additional transactions to occur without her knowledge. She will know beforehand what to do if such things happened and to whom in the IFIs to lodge a report. For example, she can change email address or internet banking account credentials to block further transactions. Other than that, a wise and a financially literate person should avoid having a joint account, reducing the possibility of being financially abused by the spouse. Consequently, IFIs should support and promote financial literacy programs that consider these aspects in increasing financial literacy among women.

## CONCLUSION

No soul shall be deprived of their bodily rights as well as financial rights. Women in particular have a major contribution not only in mending the households and the family but also in building the nation. Thus, any form of violence against women either bodily harm mentally or financially should be prevented. This paper has shed some light on the issue of financial abuse and the role of IFIs in assisting women to overcome the tragic episodes. It is high time for the IFIs, legislators and judges in Malaysia, be it Muslim law or the marriage civil law to come together and recognise financial abuse as a type of domestic violence. This can, later, be a driving factor for other agencies such as financial institutions and government agencies to take a step in introducing surveillance mechanisms to monitor the abuser and to protect the victims.

While this study manages to introduce important conceptual ideas, further empirical research should be conducted to get the real perspectives of the women who have been financially deprived. This is pertinent to get their views and opinions on how this matter should be resolved amicably.