

The Cultural and Legal Perspectives on Wife Battering in Malaysia

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Abstract

Wife battering has become one of the major problems across the world. It cuts across lines of races, religion, income and classes of people. It is also deeply embedded in all cultures, so much so that millions of women consider it as a way of life. This article seeks to examine the cultural and legal perspectives on wife battering in Malaysia. In relation to cultural perspective, it attempts to address the issue of cultural beliefs of the major races in Malaysia, i.e. the Chinese, Indians and Malays, on this matter particularly pertaining to the extent of the husband's authority over the wife which is claimed to be one of the contributing factors of wife battering. In relation to this, special emphasis is made on the misconception of wife battering in Islam. Finally, the article discusses the applicable laws and the available remedies and presents to what degree these laws are adequate in controlling the problem of wife battering in Malaysia.

Introduction

Article 1 of the United Nations Declaration on the Elimination of Violence against Women ("the Declaration"), proclaimed by the United Nations General Assembly in its resolution 48/104 of December 20, 1993,¹ defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".² Protection against such violence is guaranteed in Article 3(h) of the Declaration, where it affirms women's equal right to the enjoyment of a variety of rights, including the right to be free from torture and other cruel, inhuman or degrading treatment. Despite the international recognition, women in most societies in the world are still subject to various kinds of violence, particularly violence inflicted by husbands within the domestic sphere. The traditional tendency to consider women as subordinate to men has led to a perception of justification of traditional

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1 The purpose of this declaration is to further strengthen and complements the process of eliminating violence against women as being enshrined in the United Nation Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

2 Available at <http://www.un.org/documents/ga/res/48/a48r104.htm>.

violent practices and gender-based violence such as wife battering, as a form of control or “protection” of women.³ In many jurisdictions, particularly Asia, wife battering is seen as a private matter and considerations of family and culture or religion tend to prevail over women’s interests.⁴

Cultural perspective on wife battering in Malaysia

Wife battering is still a prevalent issue in Malaysia as it is deeply embedded in the cultures of the community, so much so that it is considered as a way of life. In Malaysia, like any other Asian countries, culture and traditions play a big role in the lives of the people. The belief that men are superior and females are subordinates still exists in the culture and traditions of the Indians, Chinese and Malays, the major populations in Malaysia. The family system in the culture of these races is still based on the patriarchal concept. Men are perceived to be the leaders and the breadwinners of the family whereas women are assigned to a lower position in the family and society,⁵ such as being the “reproducer and nurturer of children”.⁶ Based on this belief, a husband is acknowledged to have absolute authority over his wife including the right to use violence as a method of disciplining her.

Women continue to be recognised only in terms of their relationship with others, as mothers, wives or daughters.⁷ For instance, in the Chinese culture which is profoundly rooted in Confucian teaching, a girl has to obey her father before she is married, to obey her husband once married and to obey her son when she is widowed.⁸ Traditionally, when a girl is married, she belongs to the husband’s family. During the marriage she is not supposed to be opinionated nor act against her husband’s will and should conform to all his demands.⁹ A similar pattern of belief existed in the Indian culture. A woman was to depend on her father in childhood, on her husband in her young age and on her sons in her old age. In a marriage, the husband is perceived as “God” whom a virtuous wife must always worship irrespective

3 Alvazzi del Frate, Anna & Patrignani, Angela, “Women’s Victimization in Developing Countries”, (1995) United Nations Interregional Crime and Justice Research Institute (UNICRI), Issues and Reports No 5, retrieved from <http://www.uncri.it/wwk/publication/books/reports/r5.php>.

4 Amirthalingam, Kumaralingam, “A Feminist Critique of Domestic Violence Laws in Singapore and Malaysia”, (2003) Asia Research Institute, Working Paper Series No 6, July, retrieved from www.ari.nus.edu.sg/docs/wps/wps03_006.pdf.

5 Domestic Violence: Malaysian Context, retrieved from <http://www.woa.org.my/research/domesticviolence.htm#dv>.

6 Hoff, Lee Ann, *Battered Women as Survivors* (London: Routledge, 1990), p 3.

7 Ibid.

8 This principle is known as “San-chong side”, which is derived from Confucianist teachings. See Chia Oai Peng, “Traces of Confucianist Influence on Malaysian Chinese Women and its Implications”, in Hing Ai Yun, Nik Safiah Karim and Rokiah Talib (eds), *Women in Malaysia* (Kuala Lumpur: Pelanduk Publications Sdn Bhd, 1984), p 176.

9 Ibid, p 177.

of his unruly behaviour.¹⁰ As such, in domestic violence cases, this belief has kept battered wives in the violent relationship for a longer period of time than might be expected.

As for the Malays, their culture is deeply rooted in the religion of Islam. According to Islam, the husband, as the head of the family, is responsible for the protection and maintenance of the family, and in return the wife must be obedient to the husband.¹¹ Nonetheless, such responsibility has been commonly misused by irresponsible Muslim men to justify their acts of using violence towards the wives.

The unequal power relationship between men and women, compounded in male dominated societies as portrayed in the cultures of the three major races in Malaysia, has undeniably contributed towards the crime of wife battering. Although it has been argued that due to the process of urbanisation, the influence of the culture is less pronounced, nevertheless, it is submitted that in Asian societies, culture is deeply rooted and interlinked with religion. Rejecting such unfair practices is looked upon as rejecting the culture and religion itself.¹²

The concept of husband's authority in Islam

Marriage in Islam is seen as a sacred covenant that accentuates love, mutual respect and understanding between two individuals. Both husband and wife have a distinctive role to play and certain obligations to fulfil to ensure that a balance of harmony is achieved in the family.¹³ Islam has laid down that the responsibilities of the husband are the rights of the wife and vice versa. The husband as a leader of the household is responsible to protect and maintain his wife, which is one of her basic rights. In return, the wife is responsible for caring for the husband and the family including the obligation of being obedient to the husband during the existence of the marriage.¹⁴ As stated in the holy Quran:

Men are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them)

10 This belief was formulated by a famous Indian philosopher, Manu. See Oorjitham, K S Susan, "Indian Women in Urban Malaysia", in Hing Ai Yun, Nik Safiah Karim and Rokiah Talib (eds), *Women in Malaysia* (Kuala Lumpur: Pelanduk Publications Sdn Bhd, 1984), p 116.

11 A detailed discussion on the authority of the husband in Islam is presented in the next subheading of this article.

12 Chelliah, Anuradha and John, Carol (eds), *A Handbook on Understanding Domestic Violence* (Kuala Lumpur: ERA Consumer, 2003).

13 Nasimah Hussin and Ramizah Wan Muhammad, "Wife Battering from an Islamic Perspective and Malaysian Legal Provisions", (2008) IIUMLJ 203 at 205.

14 Muhammad Iqbal Siddiqi, *The Family Laws of Islam* (Lahore: Kazi Publications, 1984), pp 47-49.

from their means. Therefore the righteous women are devoutly obedient and guard in the husband's absence what Allah would have them to guard.¹⁵

The husband's leadership in relation to his family does not imply dictatorship over his wife.¹⁶ Men in Islam are made the protectors and maintainers because of superior physical strength and because of their economic responsibilities towards the family.¹⁷ In the event of disputes between the parties, Islam totally prohibits the husband to act cruelly towards his wife. He is encouraged to resolve the problems with kindness and to consider the positive aspects of the wife. As stated in the Quran:

O! you who believe! You are forbidden to inherit women against their will. Nor should you treat them with harshness; ... on the contrary live with them on a footing of kindness and equity. If you take a dislike to them it may be that you dislike a thing and Allah brings about through it a great deal of good.¹⁸

Kind treatment towards the wife is also supported by a number of traditions of the Prophet Muhammad (p.b.u.h).

On the authority of Mu'awiyah al-Qushairi who said, "I went to the Messenger of Allah and asked him: 'What do you say (command) about your wives?' He replied: 'Give them the same food you have for your selves, and clothe them with the same clothe yourselves and do not beat them, nor revile them'.¹⁹

In another tradition, the Prophet said:

Among the Muslims, the most perfect as regards to his faith is the one whose character is most excellent, and the best among you are those who treat their wives well.²⁰

From the above discussion, it is clear that men are chosen as the leader of the family not for their superiority over women but due to their physical ability which make them better equipped to earn a livelihood and bears the physical strains for the family.²¹ The husbands' responsibilities towards the

15 The Quran, 4:34.

16 Fatima Umar Naseef, *Women in Islam: A Discourse in Rights and Obligations* (India: Sterling Publishers Pvt Ltd, 1999), p 198.

17 Zeenath Kausar, "The Status and Role of Woman in Feminist Philosophy and Islam", in Zaleha and Zeenath Kausar (eds), *Women's Issues: Women's Perspectives* (Petaling Jaya: Ilmiah Publishers Sdn Bhd, 2002), p 11.

18 The Quran, 4:19.

19 Abi Dawud Sulaiman, Sunan Abi Daud (Beirut: al-Maktabah al'Asriyyah, 1995), Vol 2, Kitab al-Nikah, Hadith no 2142, at pp 244-245. See also Jamilah Abdul Kadir al-Rafa'I & Muhammad Ramiz Abdul Fatah al-Azizi, *Huquq al Mar'ah fi al-Islam*, (Amman: Dar al-Mamoun, 2006), p 198.

20 Abi Isa Muhammad bin Isa bin Saurah al-Thirmizi, al-Jami' al-Sahih wahuwa Sunan al-Thirmizi (Beirut: Dar al-Kutub al-'Ilmiyyah, 2000), Vol 3, Kitab al-Rida', Hadith no 1195, at p 407.

21 Zeenath Kausar, "The Status and Role of Woman in Feminist Philosophy and Islam", supra, n 17, p 11.

wives cannot be seen as an absolute authority that justifies violence to be inflicted on the latter.

Misconception of wife battering in Islam

Islam allows some degree of punishment towards a recalcitrant wife (*nusyuz*),²² i.e. when there is a serious misconduct committed by a wife and other efforts which have been taken by the husband to discipline her have failed.²³ As stated in the Quran:

As to those women on whose part you see ill conduct, admonish them (first), (next) refuse to share their beds, (and last) beat them (lightly); but if they return to obedience, seek not against them means (of annoyance); for Allah is most High and Great.²⁴

Regrettably, this verse has been erroneously interpreted and misused by irresponsible Muslim men to justify the right to beat their wives. Most Muslim scholars agree that the revelation of this verse is to give guidance on how to handle delicate family situations with care and wisdom. The word “beating” which is used in the verse does not mean physical abuse. The Prophet explained that it must be “a light tap that leaves no mark and faces should be avoided”.²⁵ Some scholars agree that any beating should be symbolic only, as where a “*sivak*” or tooth-stick or similar light object is used. In addition, beating can only be resorted to if the husband believes that it would improve the situation, otherwise it is preferable to abandon this measure.²⁶ Again, it must be borne in mind that act of beating is considered as the last resort after the other two options, i.e. admonishing and boycotting,²⁷ failed to be effective in disciplining the wife.

It has also been argued that recourse to beating, as far as possible, should be avoided because Islam clearly encourages all marital disputes to be solved peacefully, i.e. through mediation.²⁸ In the Quran it is stated that:

22 The word “*nusyuz*” means disobedience or disloyalty of the wife towards her husband to such an extent that it transgresses the injunction of the Quran and the traditions of the Prophet Muhammad. See Nasimah Hussin and Ramizah Wan Muhammad, *supra*, n 13, at 206 for further discussion on the meaning of the term.

23 The Muslim 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. See Bahnasii, *Mas’uliyah al-Jinaaiyyah fii al-Fiqh al-Islami*, 175, as cited in Nasimah Hussin and Ramizah Wan Muhammad, *supra*, n 13, at 208.

24 The Quran, 4:34.

25 See Sayyid Abul A’la Maududi, *Towards Understanding the Quran*, Translated and Edited by Zafar Ishaq Ansari (Leicester: The Islamic Foundation, 1989), Vol 2, Surahs 4–6, English version of Taffhim al-Quran, at p 36.

26 Nasimah Hussin and Ramizah Wan Muhammad, *supra*, n 13, at 209.

27 Severing from conjugal relationship.

28 Abdul Karim Zaidan, *al-Mufasil fi Ahkam al-Mar’ah wa Baiti al-Muslim fi al-Shariah al-Islamiyyah* (Beirut: Muassasah al-Risalah, 2000), Vol 7, at p 318.

If you breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from hers: if they both wish for peace, Allah will cause their reconciliation. Indeed Allah is Ever All-Knower, Well-Acquainted with all things.²⁹

The verse indicates that an arbiter from each spouse's side ought to be brought to mediate the disputes and to effect reconciliation with Allah's help.³⁰

From the above discussion, it is clearly understood that Islam does not contemplate domestic violence or wife battering. If the wife is defiant or disobeys the husband without any lawful reason, three measures have been mentioned, but it does not mean that all the three are to be taken at one and the same time, but they are to be administered with the sense of proportion according to the nature and extent of the offence.³¹

Legal protection under the Malaysian laws

There are a number of statutes that give protection to wives against any form of violence. The most important is the Domestic Violence Act 1994 (hereinafter referred to as "DVA 1994"). This Act was enacted as a result of the concerted efforts of various non-governmental women's organisations to highlight the inadequacies of the previous laws relating to domestic violence in light of the increasing number of domestic violence cases.³² It was designed to grant both civil and criminal remedies for the victims of domestic violence, irrespective of race, religion, cultural and family background differences.³³

Generally, the DVA 1994 provides protection to all family members including the wife against violence committed within the domestic sphere.³⁴ It gives a wide interpretation of domestic violence which includes attempting to place fear of physical injury, causing physical injury, compelling by force or threat to engage in sexual conduct, confining or detaining the victim against her or his will and causing mischief or damage to the property of the victim with intent to cause distress or annoyance to her or him.³⁵ In the case of a battered wife, she can seek protection by making a complaint to the police or welfare officer and criminally charge the husband, or apply for a protection orders³⁶

29 The Quran, 4:35.

30 See commentary on the Quran by Abdullah Yusuf Ali, *The Meaning of the Holy Quran*, 11th edn (Maryland, USA : Amana Publication, 1994), p 196.

31 S Abul A'la Maududi, *supra*, n 25.

32 Noor Aziah Haji Mohd Awal, "Women and Law", in Roziah Omar and Azizah Hamzah (eds), *Women in Malaysia: Breaking Boundaries* (Kuala Lumpur: Utusan Publications & Distributors Sdn Bhd, 2003), p 91.

33 The DVA 1994, s 1(2) declares the Act to apply to all persons in Malaysia.

34 "Family members" under the DVA 1994, s 2 include spouse, former spouse, a child, an incapacitated adult and other member of the family.

35 See the DVA 1994, s 2.

36 Section 4 provides for the application for interim protection order while long term protection order may be sought under the DVA 1994, s 5.

from the court. Besides these measures, the DVA 1994 also provides rights for compensation³⁷ to the victim due to the injury sustained from the violence and for counselling sessions³⁸ to enable reconciliation and rehabilitation in order to facilitate preservation of the family.

Apart from the remedies available under the DVA 1994, battered wives may also find refuge in several other laws enacted prior to the said Act. The abuser husband may be charged under the Penal Code per se for causing personal injury to the wife under the provisions pertaining to offences against a person that apply to any person generally.³⁹

The Law Reform (Marriage and Divorce) Act 1976 (hereinafter referred to as "LRA 1976")⁴⁰ on the other hand provides for an injunction against molestation⁴¹ as well as the right to apply for divorce based on the breakdown of marriage due to the unreasonable behaviour of the husband that means the wife cannot be reasonably be expected to live with him⁴² or it will cause exceptional hardship to the battered wife if the marriage remains intact.⁴³ It is to be noted that the application for an injunction against molestation must be made during matrimonial proceedings. This means that a battered wife would not be able to get an immediate injunction to restrain her husband from molesting her unless she filed for a divorce or for any other matrimonial proceedings against her husband.

The Islamic Family Law (Federal Territories) Act 1984 (hereinafter referred to as "IFLA 1984"), an Act which is applicable to Muslims, provides similar remedies to those available in the LRA 1976. A battered Muslim wife may apply for divorce by *fasakh*,⁴⁴ *ta'liq*,⁴⁵ *khulu'*⁴⁶ or annulment of the marriage and an injunction against molestation.⁴⁷ In addition, she also has the right to charge the husband under the IFLA 1984 for ill-treatment, under which the husband may be subjected to a penalty of being fined or imprisonment

37 See the DVA 1994, s 10.

38 See the DVA 1994, s 11.

39 For example, under Chapter XVI – Offences Affecting Human Body, see ss 299–309(B) for Offences Affecting Life and ss 319–338 for the offence of hurt and grievous hurt.

40 This Act is only applicable to the non-Muslims. See the LRA 1976, s 3(3).

41 See the LRA 1976, s 103.

42 See the LRA 1976, ss 53 and 54(1)(b).

43 See the LRA 1976, s 50(2).

44 *Fasakh* divorce is a divorce by judicial decree and the relevant ground is cruelty of the husband as laid down in the IFLA 1984, s 52(1)(h).

45 Divorce which is based upon non-fulfilment of stipulated conditions as laid down in the IFLA 1984, s 50. See Mimi Kamariah Majid, *Family Law in Malaysia* (Kuala Lumpur: Malayan Law Journal Sdn Bhd, 1999), p 135.

46 This is a divorce by redemption where a wife may request for a divorce from the husband by offering him money of gifts as stated in s 49 of IFLA 1984. See Mimi Kamariah Majid, *ibid*, p 133.

47 According to the IFLA 1984, s 107, the injunction against molestation must be sought during any matrimonial proceedings.

or both.⁴⁸ Apart from the specific injunction in the IFLA 1984, a general injunction to restrain the perpetrator from doing any act which may jeopardise the victim is also available in the Shariah Court Civil Procedure (Federal Territories) Act 1998.⁴⁹ This can be an alternative avenue for a battered wife under the civil law.

Other available protection in civil law can be found in the Married Women Act 1957. The Act allows a husband or wife to sue each other in tort for damages in respect of injuries to his or her person, in the like manner as any other two separate individuals.⁵⁰

Weaknesses of the laws

Despite the available remedies offered by the above laws, they are still subject to many weaknesses which hinder the battered wife from seeking protection under them. Under the DVA 1994, in order to charge the perpetrator for domestic violence, the Act must be read together with the provisions of the Malaysian Penal Code.⁵¹ The Penal Code is an Act relating to criminal offences and all actions under the DVA 1994 are only to be taken if there is any information relating to the commission of any offence under the Penal Code. This means that domestic violence per se is not a specific crime punishable with new penalties under the DVA 1994. This therefore makes the power of the police less effective as action could not be taken immediately.

Additionally, if an act of domestic violence has been alleged, the police have to adhere to the procedure laid down in the Criminal Procedure Code⁵² (hereinafter referred to as "CPC"), that is to first determine the nature of the offence as to whether it is a seizable⁵³ and non seizable⁵⁴ offence. Under the CPC, the police are only required to conduct immediate investigations in cases of seizable offences.⁵⁵ Seizable offences are described as serious offences where the offender uses "dangerous weapons or means" to cause hurt or grievous hurt, which is defined as permanent loss of sight or hearing, fracture or dislocation of bones.⁵⁶ It has been argued that in most cases of domestic

48 See the IFLA 1984, s 127.

49 See the Shariah Court Civil Procedure (Federal Territories) Act 1998, s 200.

50 See the Married Women Act 1957, s 4A.

51 See the DVA 1994, s 3. The relevant offences under the Penal Code (Act 574, first enacted as FMS Cap 45) are stated under Chapter XVI – Offences Affecting the Human Body.

52 Act 593 (first enacted as FMS Cap 6).

53 See the CPC, s 110.

54 See the CPC, s 108. According to the CPC, s 2, a "non-seizable offence" means an offence for which a police officer may not ordinarily arrest without a warrant according to the third column of the First Schedule.

55 Mimi Kamariah Majid, *Criminal Procedure in Malaysia* (Kuala Lumpur: University of Malaya Press, 1987), p 59.

56 Nor Aini Abdullah, "Domestic Violence Act 1994: An End to a Nightmare?" [1995] 1 MLJ xli at xlii.

violence, such as wife battering, the violence inflicted by the husband would usually be classified as non-seizable offences.⁵⁷ Thus, a battered wife could not seek immediate protection as the police are not compelled to investigate or arrest the husband immediately until and unless a warrant is issued by the public prosecutor or a magistrate.

Another drawback of the DVA 1994 is that the protection orders which may be sought by the battered wife to prevent further violence being inflicted cannot be immediately obtained. An interim protection order may only be sought if there is a police investigation being carried out, and for a long-term protection order, it can be obtained only if the accused is charged with a crime of domestic violence. Hence, in the majority of domestic violence cases, the victims are left without any immediate protection and “they have to be literally knifed or their bones broken before they can even consider applying for protection order”.⁵⁸

Apart from the above, an application for divorce due to domestic violence is seen as a last resort remedy particularly if the wife is a homemaker and totally dependent on the husband. The injunction against molestation is not an immediate injunction of relief as it can be applied for only when there is a pending matrimonial proceeding. In addition, this injunction cannot be invoked by a wife who wishes to continue with the marriage but only wants to protect herself from further violence inflicted by her abuser husband. In case of suing the husband in tort for personal injury, it is improbable that the wife will have the courage to take action as the procedure may be time consuming, costly and emotionally demanding as she will have to face the husband in open court.

Despite the weaknesses in the Malaysian laws in providing adequate protection to battered wives, it is submitted that recognition given to such acts as a crime committed within domestic setting particularly under the DVA 1994 has effectively created greater awareness among women. For instance, statistics from the Royal Malaysian Police Force reveal that from year 2006 to year 2007, there was about a 10 percent increase in the domestic violence cases committed by the husband.⁵⁹ Although, the statistics may indicate that the

57 Usually the violence inflicted involves the act of punching, kicking, assault, battery etc, which fall under the Penal Code, s 319. This section provides that, “Whoever causes bodily pain, disease, or infirmity to any person is said to cause hurt”. See Nor Aini Abdullah, *supra*, n 56.

58 See Abu Bakar Munir and Nor Aini Abdullah, “Domestic Violence and the Need for a Family Court” [1995] 4 CLJ lxxv.

59 Superintendent Ong Chin Lai, “Sexual, Women & Child Abuse Division, Malaysian Royal Police Force”, presentation at “Forum cum Workshop on the Role of Police Involving Domestic Violence & Custody Disputes: The Shariah & Civil Perspective”, organised by Pertubuhan Mencegah Alienasi Keibubapaan Kuala Lumpur & Selangor (PEMALIK), held at The Bar Council Auditorium, Kuala Lumpur on December 20, 2008.

incidences of wife battering are on the rise, it may also be assumed that the increase in the number of reports relating to wife battering signifies greater awareness among the victims of their rights to take action under the DVA 1994.

Conclusion

Protection against wife battering cannot solely rely on legal sanctions. In reference to Asian cultures, which are based on the patriarchal system and consider domestic violence as a private matter, it takes a lot of courage for the victim to report and deal with the problem. Besides dealing with the weaknesses of the laws, rigorous efforts should be taken by the government to overcome this issue. Programmes such as victim support groups, legal awareness programmes, educational and mass media awareness campaigns may spur improvement to the present situation to reduce the number of wife battering cases in this country.