

**ARE MUSLIM MEN ALLOWED
TO BEAT THEIR WIVES?**

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In the name of Allah, Most Gracious, Most Merciful

Introduction

Sisters in Islam is a group of Muslim women studying and researching the status of women in Islam. We have come together as believers because we want to achieve the rights granted to us by Islam.

Islamic resurgence in the past three decades has affected the lives of Muslims all over the world. It has prompted among many of the Faithful a renewed endeavour to understand the meaning of Islam as a comprehensive way of life (*al-din*). We believe that women and men who constitute the *ummah* must participate as equal partners in this noble effort.

We are concerned over certain attitudes towards women prevalent in the Muslim world today. From its very outset, Islam was a liberating religion that uplifted the status of women and gave them rights that were considered revolutionary 1,400 years ago. The Prophet (*saw*) introduced radical changes to improve the status of women; unfortunately “[t]he thick curtain of counter-revolutionary darkness, which subsequently began to descend on the *ummah* at large and on the women whom Islam had firmly set on the road to emancipation, first made itself felt within a few decades after the departure of the Prophet (*saw*).”¹ Consequently, in spite of its founding spirit, Muslim practices today often oppress women and deny them the equality and human dignity granted in the Qur’an.

¹ Muddathir ‘Abd. al-Rahim, ‘The Islamic Tradition’, in W. H. Brackney (ed.), *Human Rights and the World’s Major Religions*, Vol. 3, Westpoint, Connecticut and London, Praeger, 2005, p. 69.

Our research has shown that oppressive interpretations of the Qur'an are influenced mostly by cultural practices and values which regard women as inferior and subordinate to men. It is not Islam that oppresses women, but human beings with all their weaknesses who have failed to understand Allah's intentions.

It has been a liberating experience for us to return to the Qur'an and study Allah's actual words in an effort to understand their true meaning. The Qur'an teaches "love and mercy" (Surah ar-Rum 30:21) between men and women, that men and women are like each other's garment (Surah al-Baqarah 2:187), that "be you male or female, you are members of one another" (Surah al-Imran 3:195) and that "men and women are protectors, one of another" (Surah at-Taubah 9:71).

It is this spirit of equality and justice so insistently enjoined by the Qur'an that guides our efforts. We now wish to share our findings with everyone in the hope that together we can create a world where equality and justice may prevail.

The first version of this booklet was written in the early 1990s, when women's groups were lobbying the government for the enactment of an Act of Parliament against domestic violence. Part of the problem during the negotiations for the Domestic Violence Act in the early 1990s was the attempts to exclude Muslims from the jurisdiction of the Act because of the belief that Muslim men have the right to beat their wives. The women's groups had to lobby the government hard for many years to make domestic violence a crime whether it is committed by a Malay, a Chinese or an Indian man. Even after the law was passed by Parliament in 1994, we had to go through two more years of pressure and

lobbying to get it implemented. This was due to objections that this Act should not apply to Muslims because domestic violence was a family matter and thus should come under the Shari'ah jurisdiction of the states, rather than a criminal matter under federal jurisdiction.² The Domestic Violence Act 1994 finally came into force in 1996; however, there are still weaknesses in its practical implementation.

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² Abd. al-Rahim, 'Law-making in the Name of Islam: Implications for Democratic Governance', in K. S. Nathan and Mohammad Hashim Kamali (eds.), *Islam in Southeast Asia: Political, Social and Strategic Challenges for the 21st Century*, Singapore, Institute of Southeast Asia, 2005, p.128.

ARE MUSLIM MEN ALLOWED TO BEAT THEIR WIVES?

Domestic violence is now increasingly recognised as a serious social problem in Malaysia affecting the well-being, physical security and health of women, children and families. More battered women are turning to friends, relatives, counsellors, women's organisations, shelters, lawyers and the Religious Department for help.

There are a number of views being expressed on what the Qur'an says about a husband beating his wife. This booklet puts forward the perspective of the group, Sisters in Islam, based on its research and consultation with religious scholars of the Qur'an. It is hoped that the booklet will be of value for Muslim women and men who are concerned about the issue, both those directly affected by domestic violence and those who are in a position to help.

1. Does Islam allow a husband to physically beat or mentally harass his wife?

No. Islam does not allow a husband to act cruelly to his wife, either physically or mentally. The Qur'an stresses love, kindness and justice in family relationships and prohibits cruelty of all kinds:

And among His signs is this that He created for you mates from among yourselves, that you may dwell in tranquillity with them, and He has put love and mercy between your (hearts): behold, verily in that are signs for those who reflect (Surah ar-Rum 30:21).

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 which God brings about through it a great deal of good (Surah an-Nisa' 4:19).

The Hadith, which is a record of the sayings of the Prophet (*saw*), and the second source of Muslim law and practice, records the Prophet (*saw*) as saying:

The best of you is he who is best to his wife.

Aishah (*ra*) narrates that the Messenger (*saw*) never hit a servant or a woman, and he did not hit anyone with his own hand, i.e. physically.³

Many Muslim-majority countries have enacted or are in the process of drafting domestic violence laws. Personal laws, especially with regards to marriage and divorce, may also define what constitutes violence or "cruelty" towards women in marriage. In 1994, Malaysia passed a Domestic Violence Act. It is to be read together with the existing Penal Code.

In most states in Malaysia, the Islamic Family Law states that a man can be punished for ill-treating his wife. For example, section 127 of the Islamic Family Law (Federal Territory) Act, 1984 says:

(A)ny person who ill-treats his wife... commits an offence and shall be punished with a fine not exceeding one thousand

3 Kaukab Siddique, *The Struggle of Muslim Women*, Singapore, Thinker's Library, 1988, pp. 29-30, citing *Sunan Ibn Majah*.

ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

Domestic violence or cruelty is also included as a ground for *fasakh* under section 52(1)(h) of the Islamic Family Law Act.

2. In Islam, what is regarded as cruelty towards a wife?

As seen above, the Qur'an and Hadith exhort husbands to treat their wives with love and kindness. Conduct that deviates from these ideals may be considered to be cruelty.

The Domestic Violence Act 1994 of Malaysia defines "domestic violence" as the commission of any of the following acts:

- (i) wilfully or knowingly placing, or attempting to place, the victim in fear of physical injury;
- (ii) causing physical injury to the victim by such act which is known or ought to have been known would result in physical injury;
- (iii) 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;
- (iv) confining or detaining the victim against the victim's will; or
- (v) 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.

States in Malaysia have also enacted personal laws related to this question. In the Islamic Family Law (Federal Territory) Act 1984 for example, a husband is said to treat his wife with cruelty if he:

- (i) habitually assaults her or makes her life miserable by cruelty of conduct;
- (ii) associates with women of evil repute or leads what, according to *Hukum Syara'* (Islamic Law), is an infamous life;
- (iii) attempts to force her to lead an immoral life;
- (iv) obstructs her in the observance of her religious obligations or practice;
- (v) has more wives than one and does not treat her equitably in accordance with the requirements of *Hukum Syara'* [Section 52(1)(h)].

The ideal relationship between a husband and wife is one built together through mutual friendship and affection (*mu'asyarah*), what is considered good and reasonable (*ma'ruf*) according to religious principles, societal values, human reason and *fitra* or innate human nature (*mu'asyarah bi al-ma'ruf*).⁴ A marriage creates a relationship of mutual rights and obligations between the husband and the wife, and these rights and obligations should be based on equality, balance and fairness.

4 KH Husein Muhammad, *Fiqh Wanita: Pandangan Ulama terhadap Wacana Agama dan Gender*, Kuala Lumpur, Sisters In Islam, 2001, pp. 129-32.

3. Surah an-Nisa' verse 4:34 has been commonly used to justify wife-beating. How can this verse be explained?

Those who attempt to justify wife-beating often translate part of verse 4:34 as:

.... good women are *qanitat* (have *qunut*) guarding in secret that which Allah has guarded. As for those from whom you fear *nushuz*, admonish them, then banish them to beds apart and strike them. But if they obey you seek not a way against them (4:34).

Therefore, this verse has been misinterpreted to mean:

- (i) that a wife must obey her husband;
- (ii) that if she does not obey, the husband can beat her.

The Qur'an does not order women to obey their husband. It says good women are *qanitat* (have *qunut*). *Qunut* is used for both women and men (Surah al-Imran 3:17, Surah al-Ahzab 33:35) and non-humans (Surah az-Zumar 39:9, Surah al-Baqarah 2:117). *Qunut* does not refer to the obedience of a wife to a husband or any human to another. It refers to the spirit of humility before Allah.

When the verse goes on to say "if they obey you", the Qur'an uses the term *ta'a*, which means for one human to follow the orders of another, referring not just to women obeying men, but men following orders as well (Surah an-Nisa' 4:59). *Ta'a* is not used here in the command form for women, rather the Qur'an places a firm admonishment on the men: "If they (female)

obey you (male)" the males are commanded "not to seek a way against (the women)". "If they obey you" does not mean that women have an obligation to obey men. Nor does it mean that if a woman disobeys, a husband can beat her. The focus is on the responsibility of men to treat women fairly, especially when women follow their suggestions.

It is to be noted that variations of the following Hadith are also cited alongside verse 4:34 as justification for a wife's absolute obedience to her husband:

It is not lawful for anyone to prostrate to another. But if I could have ordered any person to prostrate to another, I would have commanded wives to prostrate to their husbands because of the enormity of the rights of husbands over their wives.

There are questions expressed over the authenticity of this Hadith: there are many versions, the authenticity of which ranges from *da'if* (weak) to *hasan gharib* (fairly good) according to scholars, and the reliability of a number of the narrators cannot be entirely established.

More importantly, however, are the problems identified by scholars of the content of the Hadith itself. It is inconsistent with Qur'anic verses on marriage such as Surah ar-Rum 30:21 and Surah al-Baqarah 2:187, which describe husbands and wives as garments for each other, and it is also inconsistent with the Prophet's (*saw*) own conduct with his wives.⁵

⁵ Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*, Oxford, Oneworld, 2001, pp. 210-15.

4. What about the term *nushuz* (disruption to marital harmony)? Can a husband beat a wife if she is *nushuz*?

The Qur'anic discussion of *nushuz* is not restricted to verse 4:34. *Nushuz* is used for both women (4:34) and men (4:128). So *nushuz* cannot mean then a woman's disobedience to her husband as is sometimes assumed. According to Syed Qutb in *The Shade of the Qur'an*, *nushuz* is a disruption of marital harmony. In the event that there is a disruption of marital harmony, the Qur'an suggests three methods for regaining harmony. In order of preference, they are:

- (i) consultation or *shura*: consultation as the preferred method suggested for regaining marital harmony is the same mechanism discussed in the Qur'an for the coordination of affairs between groups of people. Consultation can be between two parties (as in 4:34) or between the two parties with the help of arbiters or *hakim* (4:35, 4:128).
- (ii) "time-out" (to separate from the bed, time and space, at least one night): if consultation does not lead to marital harmony, the second suggestion of time-out, a phrase to denote a separation in time and/space between two people or two groups. It can be for an immediate cooling-off period only, or could presumably continue indefinitely, which in the context of marriage can only mean divorce.
- (iii) *daraba* (which Qutb translated as a single strike): if the first two methods are used in their preferred order to the fullest extent, the need for the third method, of a single strike, would never be reached.

The Qur'an places great importance on a state of harmony between a husband and wife, and stresses the importance of regaining it. Therefore, these methods are not meant to be used as a disciplinary measure against a "disobedient" wife – rather, it is suggested that the first two methods are capable of bringing about a return to harmony. The first method appears to be the best solution offered, as it is discussed in the two instances of *nushuz* referred above and is in line with the principle of *shura*.⁶ There is also opinion that in 4:34, the ill-conduct of the wife could also mean "disloyalty" and in such cases, should the first two methods fail, then the third step is to be taken to mean to "strike her out" (i.e. move her out from the house or marriage, or for the husband to move out of the house, as the Prophet (saw) once did when there was some tension between him and his wives, to give them some space for reflection).

5. Why has the Qur'an included the method of *daraba*?

Actually, there is a range of opinions as to the meaning of the term *daraba*, and the ambiguity of the term lends itself to many interpretations. It has been noted that *daraba* does not necessarily indicate force or violence, and should not be confused with a second form of the verb, *darraba*, which means "to strike repeatedly or intensely." *Daraba* can be used when someone "strikes out" on a journey, and the word has also been used in the Qur'an to mean "gives or sets as an example".⁷ Some examples are:

- (i) Surah *al-Imran* 3:156: "O you who believe! Be not like those who disbelieve and who say about their brethren when they travel through the earth (*iza darabu fil ardi*) or go out to fight..." In this instance, "*darabu*" means "they travel".

⁶ Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*, New York, Oxford University Press, 1999, pp. 74-5.

⁷ *Ibid.*, p. 76.

- (ii) Surah *an-Nisa'* 4:101: "And when you travel in the land (*iza darabtum fil ardi*), there is no sin on you if you shorten *as-salaat* (prayer)..." In this instance, "*darabtum*" means "you travel".
- (iii) Surah *al-Anfal* 8:12: "... I will cast terror into the hearts of those who have disbelieved, so strike them (*fadhribu*) over the necks..." In this instance, "*fadhribu*" means "strike them".
- (iv) Surah *Zukhruf* 43:58: "And say: Are our gods better or is he (Jesus)? They quoted not (*ma darabuhu*) the above example except for argument..." In this instance, "*darabuhu*" means "they quoted not that".

With the diverse possibilities of meaning, it is strange to insist that in the context of 4:34, only one meaning should be used, i.e. "*wadhribuhunna*" to be taken to mean "beat them". A number of commentators and scholars such as Rafi Ullah Shahab and Ahmad Ali of Pakistan assert that *daraba* does not mean "to strike". Rafi Ullah Shahab says that *daraba* also means "to prevent", thus his reading of 4:34 asserts that the verse is instructing husbands to "leave [the wives] alone in their beds and prevent them from going outside of houses". Riffat Hassan, taking the use of *salihat* in 4:34 to be a reference to women's child-bearing role, argues that only if *all* the women rebel against this role must they be disciplined – but by the *community* and not their husbands. This disciplining is to be in the form of confinement, not acts of violence.

Furthermore, even though classical Muslim jurists have traditionally understood it to mean "to strike" or "a single strike", this does not mean they agree that Muslim men are allowed to beat their wives as they wish. Hadith on striking in such a way as not to cause pain (*ghayr mubarrih*) are reported by Muslim, Tirmidhi, Abu Daud, Nasa'i and Ibn Majah. Tabari and Razi stress that if a single strike is resorted to, it should be merely symbolic such as a strike with a toothbrush or a folded handkerchief. Imam Shafi'i is of the opinion that striking should preferably be avoided.⁸

Therefore, even if we were to accept that *daraba* means to strike, a study of the historical context would tell us that it is not a licence for men to beat their wives. Consider that if the Qur'an is looked at as an integrated and cohesive text, situations can be identified where the Qur'an calls for the prohibition of certain things in stages. For example, whereas early revelations discourage the use of intoxicants (Surah al-Baqarah 2:219, Surah an-Nisa' 4:43), the final revelation on this matter clearly condemns and prohibits them (Surah al-Ma'idah 5:93-94). As Muslim society in Medina developed towards an ideal state, the final verse in the Qur'an on male-female relationships (Surah at-Taubah 9:71) regards women and men as being each other's protective friends and guardians (*'awliyya*) which emphasises their cooperation in living together as partners.

6. What about the historical context? Did domestic violence occur in many societies in the past?

It is known that in the pre-Islamic period known as the Age

⁸ Muhammad Asad, *The Message of the Qur'an*, Gibraltar, Dar Al-Andalus, 1980, pp. 109-10.

of Ignorance (*Jahiliyyah*), there were gross practices of physical and emotional violence against girls and women such as female infanticide (killing of babies) and the custom of inheriting the wives of deceased relatives against the will of the women. Surah an-Nisa' 4:34, which refers to *daraba*, was revealed early in the Medinan period, at a time when cruelty and violence against women were rampant. Seen within this context, *daraba* is a *restriction* on existing practice, and not a recommendation.

In fact, it was not only in pre-Islamic Arab *Jahiliyyah* that domestic violence was a frequent occurrence. For instance, even up to the earlier decades of the 20th century, the English law looked lightly upon the most flagrant cases of domestic violence. The latitude allowed by the law in the matter of personal chastisement of the wife included cases of flogging a wife till she was covered with bruises, driving her out of the house on a winter's night in her nightgown, kicking her when she was with child, and other assaults too abominable to mention which were held insufficient to entitle the wife to a separation.⁹ In the early 1900s, the idea of an Englishman's right of ownership over his wife's person and liberty still remained so deeply ingrained that when flagrant cases of cruelty or injustice to a wife came before the court, it was condoned by a small fine, or a totally inadequate punishment.¹⁰

7. Was Prophet Muhammad (*saw*) ever known to hit or be cruel to his wives?

No. In the Qur'an and the authentic Hadith there is no mention of the Prophet (*saw*) mistreating any of his wives even when he was dissatisfied. He was known to be a very kind-hearted

man who even helped with the housework. The Prophet (*saw*) had contracted marriages with women of diverse backgrounds to assist the individual women in time of need or to reconcile tribes, yet there is no mention of the Prophet (*saw*) losing his temper and striking his wives.

The Prophet (*saw*) was in fact reported in many authentic Hadith to have abhorred the idea of beating one's wife. In one, he was reported to have said:

“Could any of you beat your wife as he would a slave, and then lie with her in the evening?”¹¹

8. If all of the above is true, then why do we still hear that it is permissible for husbands to beat their wives if the wives are *nushuz*?

Unfortunately, in marriage courses offered by religious authorities, many *ustaz* and *ustazah* are still promoting the belief that a wife must obey her husband and that beating is justified if she disobeys. They are in a position to continue propagating the practice, and under the circumstances of mandatory marriage courses it can be difficult to counter their arguments when they feel they are absolutely correct. They seem to have forgotten that even in the past, in those days when wife-beating and personal chastisement of the wife was tolerated or accepted among peoples of other faiths, classical Muslim jurists such as Imam Shafi'i considered striking a wife as most inadvisable, or that at the most, it should be merely symbolic and should not cause any physical hurt.

9 Helena Swanwick, 'The Future of the Women's Movement', London, G. Bell, 1913. In Marie Roberts and Tamae Mizuta (eds.), *The Suffragists: Towards the Vote*, London, Routledge/Thoemmes Press, 1995, pp. 80-1.

10 Marion Holmes, 'The A.B.C. of Votes for Women', London, Women's Freedom League, 1910. In Marie Roberts and Tamae Mizuta (eds.), *The Suffragists: Towards the Vote*, London, Routledge/Thoemmes Press, 1995, p. 7.

11 Asghar Ali Engineer, *The Qur'an, Women and Modern Society*, New Delhi, Sterling Publishers, 2005, p. 60. citing Muhammad Asad.

There was also the view among Muslim jurists, that the “disobedience” of the wife referred to in the Qur’an, did not refer to the wife’s disobedience to her husband’s demands, such as her refusal to do housework, since classical jurists certainly did not regard housework as part of a wife’s duties; so they regarded the “disobedience” as meaning disobedience to God’s commands as to religious obligations. It must be noted therefore that there are also husbands who disobey God’s commands as to religious obligations.

The Prophet (*saw*) used to walk away when his wives made him angry. In choosing to walk away and not inflict violence on his wives, was the Prophet (*saw*) disobeying God’s edict in Qur’an – according to interpretations of 4:34 that allow for wife-beating? Perhaps we should take his action as that of a prophet who lived as the Qur’an prescribed, as an example of how husbands should behave.

9. Relatives and friends sometimes advise women who are being beaten by their husbands to be patient and pray for change. Do husbands usually change if women remain patient?

The Qur’an states, “never will God change the condition of a people until they change it themselves” (Surah a-Ra’d 13:11). Of course there is a possibility of change over time, but an abusive husband has to want to change his behaviour before the change actually happens and the violence stops. Unfortunately, research shows that very few abusive men do change. Even when it happens, the process takes a long period of time, during which women and children suffer through more violence. Some women are seriously injured or killed by their husbands. Others

become very fearful and depressed. Children are psychologically affected when parents have a violent relationship.¹² Boys who witness their fathers abusing their mothers are more likely to be violent against their wives as adults, and children of both genders are traumatised by the violence, whether they themselves were abused or witnessed their mothers being beaten.

While it is acknowledged that taking action on a violent marriage is difficult and takes great courage, battered women have options they can act on to improve their circumstances.

10. What do you mean by women have to “act”?

Women are able to do something themselves if they want to improve a marriage and stop or leave violent husbands. They may need, as the Qur’an suggests, to consult close friends or relatives. Today, there are also professional agencies that can help. (A list of useful agencies to consult is given at the end of this booklet.)

This does not mean that battered women are at fault for the violence perpetrated against them. The abusive husband always has a choice to not commit violence, and his actions are his responsibility.

11. What should a woman do if her husband beats her or is mentally cruel to her?

If the husband refuses to recognise that he is committing an offence and does not try to change, the woman can take a number of actions:

12 See ‘Violence against Women’ in *Asian and Pacific Women’s Resource and Action Series: Health*, Kuala Lumpur, Asian and Pacific Development Centre, 1989.

- (i) confide in and consult with close relatives, both hers and her husband's, who can be trusted to listen and advise the woman and her husband. In fact, Islam recommends the appointment of arbiters, one on each side (wife's side and husband's side), to try and resolve marital disharmony (Surah an-Nisa' 4:35 and 4:128).
- (ii) find out and inform herself of her rights under the law. Contact the nearest Legal Aid Bureau for information on the law, especially the Domestic Violence Act 1996. Furthermore, a number of women's organisations offer the services of social workers or counsellors and free legal advice to women living with violence.
- (iii) report the most recent violent incident to the medical authorities, preferably a government hospital, and the police. These reports mean that an official record of any injuries sustained will be available, which will be useful for the police investigation and later in court. If she wishes to file a police report but is scared of doing so alone, it is perfectly fine to bring an informed friend or a social worker/counsellor from a women's organisation to accompany her to the police station.
- (iv) There are several options for the woman if she wishes to seek counselling, depending on which is most accessible to her:
 - she can file a complaint with the Family Counselling Unit of the Religious Department. This Unit will ask the woman and her husband to attend a counselling session.

- she can contact the Counselling Unit of the Ministry of Women, Family and Community Development, offered through its Department of Women Development.
- she can seek the counselling and legal services offered by women's organisations. They can also refer her to a shelter.

Upon filing a police report, the woman may obtain an Interim Protection Order (IPO) against her husband while a police investigation is on-going. An IPO is issued by the court and it prohibits the person on whom the IPO is served (in this case the husband) from using violence against her again. If the husband is charged with an offence, he can be served with a Protection Order, which has greater powers.

The woman also has the option of filing a complaint on the husband's cruelty with the Shari'ah Court in the local district. This shows the intent to seek legal action, either to prosecute for cruelty, request a divorce or to ask for protection. If the woman wishes to seek a divorce, this court can be asked to protect her from further violence by way of issuing a restraining order (legally called an injunction) to stop the husband from harassing or hurting her. If he does act violently towards her again he can be imprisoned or fined.

12. Can a woman leave her husband if he is cruel to her?

When a woman fears for her life, the safety of herself and the children, or she is no longer able to stand the cruel acts of her husband, she can leave the marital home to seek safety and peace of mind. It is advisable for her to go first to the Religious

Department or Shari'ah Court to inform the Court why she is leaving. Even if her husband knows or agrees to her leaving the home, it is still better to inform the Court just in case the husband later denies his consent.

Furthermore, it is advisable for her to be in contact with someone or an organisation that can give her legal advice and help if needed. There are safe shelters she and her children can stay at temporarily if they do not have anywhere to go.

13. Can a woman get a divorce if her husband has been cruel?

Yes. In fact the definition of cruelty mentioned in Question 2 is actually grounds for divorce in the Islamic Family Law (Federal Territory) Act 1984, through a court-ordered divorce (*fasakh*). The woman must check the law of the state in which she resides to know the law applicable to her. She can seek the assistance of the agencies listed at the end of this booklet to find out this information.

If women are afraid and unsure, there are people who can give support. Contact the agencies mentioned. Women do not need to be alone.

14. If there are laws in place to protect women, why do we still see concern being expressed in the media by women's groups?

There are gaps in the implementation of the Domestic Violence Act as well as the law itself. While the Domestic Violence Act defines domestic violence, for a charge to be brought to court, that act of domestic violence must be an existing crime in the

Penal Code. For example, if a husband hits his wife, he is not charged with the crime of domestic violence under the Domestic Violence Act, but with "voluntarily causing hurt" under section 323 of the Penal Code.¹³ Domestic violence is a unique crime that is repetitive in nature – a woman may be hit many times by her husband over a period of years – but the Penal Code addresses only individual acts of violence and does not take this into account.

Furthermore, though many battered women suffer from psychological violence at the hands of their husbands, stalking and causing psychological distress are not defined as domestic violence or crimes under the Penal Code. Therefore, for example, an abusive husband who stalks his wife at her place of work or makes abusive phone calls cannot be charged for these forms of psychological violence. Marital rape is not yet criminalised under Malaysian law. Though section 375A of the Penal Code makes it an offence for a husband to threaten his wife or someone else with hurt or death in order to have sexual intercourse, it does not provide for threats that are not related to hurt or death, for example, threats to withdraw financial support.

The loopholes in implementation mean that women often face difficulties and bureaucratic red-tape when reporting domestic violence cases to the police. Experiences encountered by women's groups point to unsympathetic attitudes or ignorance of the law on the part of staff at police stations and hospitals as a barrier. Women are not always told what the procedures are and what they need to do when they come in to file a police report. The process of obtaining IPOs is complicated and takes

13 The Joint Action Group for Gender Equality (JAG), *Press Statement cum Frequently Asked Questions on the Report by the Parliamentary Special Select Committee on the Penal Code (Amendment) 2004 and the Criminal Procedure Code (Amendment) 2004, 2006.*

a long time, as the procedures are not laid down in the Domestic Violence Act.

15. Is anyone doing anything to address these gaps?

Women's groups have been lobbying for years for the Domestic Violence Act to be strengthened. In 2006, amendments proposed by a Parliamentary Special Select Committee to the Penal Code and the Criminal Procedure Code were passed by Parliament. Some of the amendments included part of the proposals in previous memoranda submitted by women's groups in 2004 and 2005, including the inclusion of a new section 375A (see above) and section 376(2) on aggravated rape. However, the amendments do not reflect a full recognition of the spectrum of violence women face in their lives, as the memoranda by women's groups sought to include.

The road towards full legal reform is long. Furthermore, for women, freedom from violence can only be achieved when society at large is informed and when people change their attitudes towards the role of women in the family. Various groups and individuals are working with service providers such as the police and government hospitals to sensitise the staff on issues concerning violence against women, and enable them to streamline procedures to make it easier for women to seek help. A number of women's groups are also working with students and young people so as to correct misconceptions and teach them to reject violence against women at an early age.

Moreover, getting rid of violence and unjust attitudes against women cannot be achieved through legal reform alone. Boys and girls need to be educated from an early age by their parents,

teachers and role models in society that domestic violence is not acceptable, and it certainly cannot be justified in the name of religion.

We can all do something to end domestic violence. Tackling this problem starts from the home, as in how we conduct our relationships with our loved ones, be it between spouses or between parent and child. A family environment that is non-violent and emphasises equality between men and women creates individuals who respect each other and seek solutions in line with the Islamic principle of *shura* (consultation).

Conclusion

Based on the points mentioned earlier, we need to assert that we do not tolerate violence. We must work towards giving women the security and protection of the law which they deserve. A woman should remind herself of her right when domestic violence happens in her house. She should insist that the police take down her report prior to being referred to the relevant agencies for help. Any action for matrimonial proceedings in the Shari'ah court may be taken later.

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LIST OF USEFUL AGENCIES

Legal Aid Bureau State Offices

Putrajaya

Ibu Pejabat Biro Bantuan Guaman
Bangunan Hal Ehwal Undang-Undang
Aras 1, Precint 3
Pusat Pentadbiran Kerajaan Persekutuan
62692 Putrajaya
Tel : 03-8885 1000
Fax : 03-8885 1827

Kuala Lumpur

Pengarah
Biro Bantuan Guaman Wilayah Persekutuan Kuala Lumpur
Tingkat 2, Menara EON Bank
Jalan Raja Laut
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Fax : 03-2694 0040
Email : puuwp@bheuu.gov.my

Labuan

Biro Bantuan Guaman Wilayah Persekutuan Labuan
Tingkat 9(A), Blok 4
Menara Pejabat Ujana Kewangan
Jalan Merdeka
87018 Wilayah Persekutuan Labuan
Tel : 087-412 242
Fax : 087-411 531
Email : puulbn@bheuu.gov.my

Selangor

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Tingkat 6, Plaza Perangsang
Persiaran Perbandaran
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Tel : 03-5510 6192 / 03-5510 6298
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Johor

Biro Bantuan Guaman Negeri Johor
Tingkat 6, Bangunan Pusat Profesional
Jalan Dato' Syed Muhamad Mufti
80000 Johor Bahru
Tel : 07-223 4960 / 07-223 7073
Fax : 07-224 7169
Email : puujb@bheuu.gov.my

Kelantan

Biro Bantuan Guaman Negeri Kelantan
Lot PT84 & PT85
Seksyen 15 Wisma Mustapha
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15050 Kota Bharu
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Kedah

Biro Bantuan Guaman Negeri Kedah
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Pusat Pentadbiran Kerajaan Persekutuan
06550 Alor Setar

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Perak

Biro Bantuan Guaman Negeri Perak
Tingkat Bawah, Blok A (A2)
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Pahang

Biro Bantuan Guaman Negeri Pahang
Tingkat 8, Wisma Persekutuan
Jalan Gambut
25000 Kuantan
Tel : 09-516 1135 / 09-516 2639
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Pulau Pinang

Biro Bantuan Guaman Negeri Pulau Pinang
Tingkat 4, Bangunan Gunasama Persekutuan
Jalan Anson
10400 Georgetown
Tel : 04-229 0966 / 04-229 5966
Fax : 04-228 7966
Email : puupng@bheuu.gov.my

Terengganu

Biro Bantuan Guaman Negeri Terengganu
Tingkat 7, Kompleks Mahkamah Kuala Terengganu
Jalan Sultan Mohamad
21100 Kuala Terengganu
Tel : 09-622 1722 / 09-622 3772
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Sabah

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Tingkat B6, Bangunan Sultan Iskandar
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Perlis

Biro Bantuan Guaman Negeri Perlis
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Fax : 04-976 0308

Negeri Sembilan

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Melaka

Biro Bantuan Guaman Negeri Melaka
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75300 Bandar Melaka
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Fax : 06-282 9287
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Bar Council Legal Aid Centres

Johor

Tingkat 5, Mahkamah Sesyen & Majistret
Jalan Ayer Molek
80000 Johor Bahru
Tel : 07-223 5698
Fax : 07-226 9024

Kedah/ Perlis

Suite 22-23, Tingkat Satu
Bangunan Lembaga Padi
Jalan Tunku Ibrahim
05000 Alor Setar
Tel : 04-730 8305
Fax : 04-730 8305

Kelantan

Tingkat Bawah
Bangunan Mahkamah Tinggi
Jalan Hospital
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Tel : 09-744 8660

Perak

Tingkat 1, Wisma Chye Hin
No. 19, Jalan Sultan Idris Shah
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Melaka

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75150 Melaka
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Negeri Sembilan

No. 6, Jalan Campbell
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Pahang

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All Women Action Society (AWAM)
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Tel : 03-7877 4221
Helpline : 03-7877 0224
Fax : 03-7874 3312
Email : awam@awam.org.my

Sisters in Islam (SIS)
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46000 Petaling Jaya
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Women's Aid Organization (WAO)
P.O. Box 493 Jalan Sultan
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Women's Centre for Change (WCC)
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