

**COMPARISON BETWEEN ISLAMIC FAMILY LAW BILL (FEDERAL TERRITORIES) (2005) AND AMENDMENTS  
MADE BY SYARIAH COMMUNITY (MAY 2006)**

ISLAMIC FAMILY LAW BILL (FEDERAL TERRITORIES) 2005 (AMENDMENTS)	COMMENTS TO ISLAMIC FAMILY LAW BILL (FEDERAL TERRITORIES) 2005 (AMENDMENTS)	AMENDMENTS MADE BY SYARIAH COMMUNITY	COMMENTS BY JOINT ACTION GROUP TO AMENDMENTS BY SYARIAH COMMUNITY
<p><b>Application for Polygamy</b></p> <p>Section 23 (4)</p> <p>On receipt of the application, the Court shall summon the applicant and his existing wife or wives, <b>the woman to be wedded, the wali of the woman to be wedded and any other person who, in the opinion of the Court, may provide information relating to the proposed marriage</b>, to be present at the hearing of the application, which shall be in camera, and the Court may grant the permission applied for if satisfied-</p>	<p>Although this amendment makes it compulsory for Court to call upon individuals connected to polygamous marriage to attend hearing of application, it had also relaxed conditions needed to be fulfilled by husband's application for polygamous marriage. Husband now will only have to prove that the said polygamous marriage is 'just OR necessary' and not 'just AND necessary' as stated in the former Act. It allows husband to contract polygamous marriage easily. He only has to fulfill either one of the conditions of (a).</p>	<p>1. Section 23 (4) (a)</p> <p>'that the proposed marriage is <b>just..</b>'</p> <p>2. Section 23 (4) (b)</p> <p>'that the applicant has such means <b>including financially</b> as to enable him to support as required by Hukum Syara' all his wives and dependants, including persons who would be his dependants as a result of the proposed marriage.</p>	<p>1. Amendment to Section 23(4)(a) is closer to the principles of polygamous marriage laid down in Surah an Nisa' 4:3 and 4:129:</p> <p><i>'If you fear that you shall not be able to deal <b>justly</b> with the orphans marry women of your choice, two or three or four; but if you fear that you shall not be able to deal justly (with them), then only one...' (4:3)</i></p> <p><i>'You are <b>never able to be fair and just</b> as between women, even if it is your desire...' (4:129)</i></p>

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(a) where the proposed marriage is <b>just or</b> necessary...			<p>Husband must prove that he is able to be JUST towards his existing and future family. Wife can bring <u>witnesses and other proofs</u> to Court to show husband's incapability to be just, if she disagrees with the proposed polygamous marriage. Proofs could also include husband's past unjust behaviour, decreased living standard and economic status of wife and children, or insufficiency of husband's salary to maintain persons under his custody including existing family and future family.</p> <p>2. Amendment to section 23(4)(b) stressed the need of husband's financial capabilities when he wants to be polygamous. He has to bring proofs showing his ability to maintain all his dependents (existing and future) without affecting or lessening economic status of existing family.</p>

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<p><b>Division of Matrimonial Assets upon Polygamy</b></p> <p>Section 23 (9)</p> <p>Every Court that grants the permission or orders a marriage to be registered under this section shall have the power on the application by any party to the marriage –</p> <p>(a) to require a person to pay maintenance to his existing wife or wives; or</p> <p>(b) to order the division between the parties of the marriage of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division of the proceeds of the sale.</p>	<p>1. This amendment only allows Court to grant order for maintenance or division of matrimonial assets if it is applied by either wife or husband. If it is not applied Court has no obligation to make any order of such.</p> <p>2. If the order is applied, the amendment only allows the Judge to grant <b>EITHER</b> maintenance <b>OR</b> division of matrimonial assets. Maintenance is a right of wife and obligation of husband to provide. Wife too has right on any matrimonial assets accumulated during subsistence of marriage.</p>	<p><b>Section 23 (9)</b></p> <p><b>In granting permission or ordering a marriage to be registered under this section, the Court shall—</b></p> <p><b>(a) make an order to require a man to pay maintenance to his existing wife or wives, his children and his other dependants; and</b></p> <p><b>(b) declare the apportionment of the <i>harta sepencarian</i> between the parties to the subsisting marriage.</b></p> <p><b>4. Section 23 (10)</b></p>	<p>1. <u>Declaration of Matrimonial Assets</u> – This amendment makes it compulsory for the Courts to make an order of maintenance to all dependents <b>AND</b> a declaration of existing wife’s rights on matrimonial assets without it having to be applied by any party. Each time Court allowed an application for polygamy, both of this order has to be made simultaneously.</p> <p>This allow wives to receive:</p> <p>1. maintenance for herself and children; <b>and</b></p> <p>2. declaration of her portion on the matrimonial assets.</p> <p>There will be no confusion on rights of any wives on matrimonial assets.</p>

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	<p>It is unfair to give wife options to either seek maintenance OR division of matrimonial assets. Both are her rights and would lead to injustice if she was asked to choose between these rights.</p>	<p><b>(10) Where the Court has made a declaration under paragraph (9)(b), a party to the marriage may apply to the Court for an order for the <i>harta sepencarian</i> to be divided between the parties or for the <i>harta sepencarian</i> to be sold and the proceeds of the sale thereof to be divided between the parties if the applicant can satisfy the Court that –</b></p> <p><b>(a) where the applicant is a wife, the husband has refused or neglected to pay maintenance to her, his children or any of his other dependants;</b></p> <p><b>(b) where the applicant is a wife, the husband has acted in such a manner that can be construed as to deprive her rights to the <i>harta sepencarian</i>; or</b></p>	<p>First wife’s rights will be on all property accumulated during the subsistence of her marriage and any additional property accumulated during polygamy as long as she remains married to her husband.</p> <p>2. <u>Distribution of Matrimonial Assets</u> –</p> <p>a. If after declaration has been made by Court, husband had failed to provide maintenance to his wife children or any other dependents, or he had sold/transferred property which had been declared as wife’s wife then would be able to enforce Court’s declaration and apply for division of property.</p> <p>Wife is also able to lodge a police report against husband’s ‘criminal breach of trust’.</p>

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		<p>(c) it has become necessary for the <i>harta sepencarian</i> to be divided between the parties or for the <i>harta sepencarian</i> to be sold and the proceeds of the sale thereof to be divided between the parties,</p> <p>and provided that, in relation to <i>harta sepencarian</i> that involves any property, share, equity or interest in a business, the division of the <i>harta sepencarian</i> would not adversely affect the holding of such property, share, equity or interest; and the burden to prove that the holding of such property, share, equity or interest would be adversely affected lies on the party who asserts it</p>	<p>b. Division would also be allowed if there arose a necessity to distribute by either <u>husband or wife</u> Application which states the necessity has to be submitted to Court.</p> <p>c. <u>Restrictions on division</u> - However, if property declared involves the holding of any property share, equity or interest in business division must not have any adverse impact on the business. Hence parties can have an agreement on methods of distribution, whether or not with involvement of Court. The company could make installment payment to ensure non disruption of business.</p>

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			<p>5. <u>Gender neutral language</u> – Gender neutral language is still retained in sections pertaining distribution of marital assets including section 23(9)(b) and 23(10)(c). Its usage is not apt as it leads to discrimination against wives. This is because wives are at the weaker end of bargaining power as divorce processes and economic powers continue to favor men but these sections on processes for distribution of marital assets have put husbands and wives on equal position.</p> <p>These processes differ in civil law as there exist an equality of rights between both husband and wife where divorce processes are gender neutral. Parties have to go through the same divorce processes; hence usage of gender neutral language here is just. But is unjust if used on Muslim.</p>

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	<p>3. Amendments using gender neutral language has led to husbands being allowed to seek division of matrimonial assets upon him being granted permission to be polygamous. The most apparent impact is when husband does not have enough financial means to be polygamous, he now can apply for division of matrimonial assets of existing marriage thus giving him the financial means for intended polygamy. It clearly would result in injustice for existing wife. The basic concept of matrimonial assets (harta sepencarian) is to protect wife's interest on accumulated wealth during subsistence of marriage especially when she is a fulltime housewife. Her effort in caring for her family, enabling husband to accumulate wealth are taken into account when during divorce procedure.</p>		<p>The reasoning behind giving wife rights to marital assets is to protect her rights especially for wives who are unable to contribute directly towards obtaining the property. Hence system for distribution of marital assets has to maintain this concept and not resort to using gender neutral language.</p>

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	<p>This is as working husbands had more opportunities to accumulate wealth and have a better economic status than wives. This concept has currently been expanded to husbands without granting wives any additional rights to her traditional rights.</p>		
<p><b>Order for dissolution of marriage or fasakh</b></p> <p>Section 52</p> <p>(1) A woman <b>or man</b> married in accordance with Hukum Syarak, shall be entitled to obtain an order for the dissolution of marriage or fasakh on any one or more of the following grounds, namely-</p>	<p>Amendment to Section 52 had enhanced and extended rights of husband to claim for fasakh.</p> <p>This extension of right given to husbands to claim fasakh should be amended as it brings injustice and discriminates women.</p>	<p><b>Section 52</b></p> <p>(1) A <u>woman</u> married in accordance with Hukum Syarak shall be entitled to obtain an order for the dissolution of marriage or <i>fasakh</i> on any one or more of the following grounds:</p>	<p>1. The amendments has accepted most of the proposals submitted by women organisations:</p> <p>a. Amendment has amended most sections which gave husbands right on fasakh, it can now only be grounds of fasakh for wives. (Please refer Sec. 52(1)).</p>



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<p>(a) that the whereabouts of the husband <b>or wife</b> have not been known for a period of more than one year;</p> <p>(b).....</p> <p>(c) that the husband <b>or wife</b> has been sentenced to imprisonment for a period of three years or more;</p> <p><b>(d) that the husband or wife has failed to perform, without reasonable cause, his or her marital obligations for a period or one year;</b></p> <p>(e).....</p> <p>(f) that the husband <b>or wife</b> has been insane for a period of two years or is suffering from leprosy or vitilago or is suffering from a venereal disease in a communicable form;</p>	<p>Husband has unilateral right of talaq and his power to make pronouncement of talaq outside Court is still retained.</p> <p>There are diverse opinions in the Sunni's mazhab on types of fasakh allowed for husbands. For example, Hanafi's school of law only give right of fasakh to wife, and other mazhabs which allowed right of fasakh to both husband and wife, it is only on grounds of contagious disease or diseases which impede sexual intercourse. The amendment had obviously, extended this right; giving husband rights which was not even extended to him during the early days of Islam.</p>	<p>(a) that the whereabouts of the husband have not been known for a period of more than <b>four months</b>;</p> <p>(b) that the <b>husband</b> has neglected or failed to provide for her maintenance for a period of <b>three months</b>;</p> <p>(c) that the <b>husband</b> has been –</p> <p>(i) sentenced to imprisonment for a period of six months or more; or</p> <p>(ii) banished or deported pursuant to an order of banishment or deportation respectively under the laws relating to banishment or immigration;</p>	<p>b. The waiting period for wife to claim for fasakh on grounds of not receiving maintenance, no consummation and that the marriage is still not consummated, has been shortened. (Please refer Sec 52 (1)(b), (d) and (h)).</p> <p>c. Only wife may claim for fasakh on ground that husband has disposed of her property. (Please refer Sec 52 (1)(g)(iv)).</p> <p>2. Nevertheless, there are still provisions which both husband and wife may use as grounds for fasakh. Among those are regarding health matters and any other reasons recognized by Hukum Syarak. (Please refer Sec 52(3)).</p>

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<p>(g)....</p> <p><b>(h) that the husband or wife treats her or him with cruelty, that is to say inter alia-</b></p> <p><b>(i) habitually assaults her or him or makes her or his life miserable by cruelty of conduct; or</b></p> <p><b>(ii) associates with women or man of evil repute or leads what, according to Hukum Syarak, is infamous life; or</b></p> <p><b>(iii) attempts to force the wife to lead an immoral life;</b></p> <p><b>(iv) disposes of her or his property or prevents her or him from exercising her or his legal rights over it;</b></p> <p><b>(v) .....</b></p> <p><b>(vi) .....</b></p>	<p>Among the amendments which had extended right of husband is subsection (h)(iv) which states – “disposes of her or his property or prevents her or him from exercising her or his legal rights over it.</p> <p>According to Hukum Syarak, husband has no right to dispose his wife’s property, but wife has right to dispose husband’s property if he failed to provide sufficient maintenance (Hadith of Rasulullah (saw) regarding Hendon and her husband Abu Suffian).</p> <p>The usage of gender neutral words has lead to discrimination towards wives.</p>	<p>(d) that the husband has failed to perform, without reasonable cause, his marital obligations (<i>nafkah batin</i>) for a period of four months;</p> <p>(e) that the husband was impotent at the time of marriage and remains so and she was not aware at the time of the marriage that he was impotent;</p> <p>(f) that she, having been given in marriage by her <i>wali Mujbir</i> before she attained the age of <i>baligh</i>, repudiated the marriage before attaining the age of eighteen years, the marriage not having been consummated;</p>	<p>3. There is one ground which is exclusively given to husband that is when wife is not able to perform conjugal duties due to the existence of bone or growing flesh which prevents sexual intercourse. This does not include situation where wife is sick and incapable to consummate.</p> <p>4. Gender neutral words had been retained in few sections in this Act. Husband can still claim for <i>fasakh</i> on certain grounds although it was not permitted in the former Act.</p> <p>Although there are opinions which allow <i>fasakh</i> for husbands, opinion among <i>mazhabs</i> are not unanimous. The context of society nowadays and the reality of inequality of rights have to be taken into consideration and it is clear that rights to <i>fasakh</i> should not be extended to husbands.</p>

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<p>(i) that even after the lapse of four months the marriage has still not been consummated owing to the willful refusal of the husband to consummate it;</p> <p>(j) .....</p> <p>(k).....</p> <p>(2) No order shall be made on the ground specified in paragraph (1)</p> <p>(c) until the sentence has become final and the husband or wife has already served one year of the sentence.</p>		<p>(g) that the husband treats her with cruelty, that is to say, <i>inter alia</i>–</p> <p>(i) habitually assaults her or makes her life miserable by cruelty of conduct;</p> <p>(ii) associates with women of evil repute or leads what, according to Hukum Syarak, is an infamous life;</p> <p>(iii) attempts to force the wife to lead an immoral life;</p> <p>(iv) disposes of her property unlawfully or contrary to Hukum Syarak or prevents her from exercising her legal rights or her rights under Hukum Syarak over the property;</p> <p>(v) obstructs her in the observance of her religious obligations or practice; or (vi) if he has more than one wife, does not treat her equitably in accordance with the requirements of Hukum Syarak;</p>	<p>Currently husband do not face any problem to divorce any of his wife hence why is there an extension o divorce rights granted to men?</p> <p>Why when there are mazhab opinions which favour women, it i not being recognized?</p> <p>Each amendment need to address lacuna of former Act but thi extension of rights is given withou there being any valid grounds o necessity.</p>

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<p>(3) Before making an order on the ground specified in paragraph (e) of subsection (1) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of twelve months from the date of the order that he has ceased to be impotent, and if the husband so satisfies the Court within that period, no order shall be made on that ground.</p> <p>(4) No order shall be made on any of the grounds specified in subsection (1) if the husband satisfies the Court that the wife, with knowledge that it was open to her to have the marriage repudiated, so conducted herself in relation to the husband as to lead the husband reasonably to believe that she would not seek to do so, and that it would be unjust to the husband to make the order.</p>		<p>(h) that even after the lapse of four months the marriage has still not been consummated owing to the wilful refusal of the husband to consummate it;</p> <p>(i) that she did not consent to the marriage or her consent was not valid, whether in consequence of duress, mistake, unsoundness of mind, or any other circumstances recognized by Hukum Syarak</p> <p>(j) that at the time of the marriage she, though capable of giving a valid consent, was, whether continuously or intermittently, a mentally disordered person within the meaning of the Mental Disorders Ordinance 1952 [<i>Ord. 31 of 1952</i>] in the case of the Federal Territories of Kuala Lumpur and Putrajaya,</p>	

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		<p>or the Lunatics Ordinance of Sabah [<i>Sabah Cap. 74</i>] in the case of the Federal Territory of Labuan, and her mental disorder was of such a kind or to such extent as to render her unfit for marriage.</p> <p>(2) A <b><u>man</u></b> married in accordance with Hukum Syarak shall be entitled to obtain an order for the dissolution of marriage or <i>fasakh</i> on the ground that the wife is incapacitated <b>in accordance with Hukum Syarak</b> which prevents sexual intercourse.</p> <p>(3) A <b><u>man or woman</u></b> married in accordance with Hukum Syarak shall be entitled to obtain an order for the dissolution of marriage or <i>fasakh</i> –</p>	

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		<p><i>(a) on the ground that his wife or her husband-</i></p> <ul style="list-style-type: none"> <li>(i) is suffering from an incurable mental illness;</li> <li>(ii) is suffering from leprosy or vitiligo;</li> <li>(iii) is suffering from a venereal disease in a communicable form; or</li> <li>(iv) is suffering from any disease which may endanger the health of the other party to the marriage; or</li> </ul> <p><b><i>(b) on any other ground that is recognized as valid for the dissolution of marriages or fasakh under Hukum Syarak</i></b></p> <p>(4) No order shall be made on the ground stated in subparagraph (1)(c)(i) until the sentence has become final and the husband has already served four months of the sentence.</p>	

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		<p>(5) No order shall be made on the ground stated in subparagraph (1)(c)(ii) until four months have lapsed from the date of the banishment or deportation order is executed.</p> <p>(6) Before making an order on the ground stated in paragraph (1)(e) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of the order that he has ceased to be impotent, and if the husband so satisfies the Court within that period, no order shall be made on that ground.</p>	

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<p><b>Disposal of harta sepencarian</b></p> <p>Section 107A</p> <p>(1) The Court may, on the application of any party to a marriage -</p> <p>(a) where any matrimonial proceeding is pending; or</p> <p>(b) in any proceeding where the Court may make an order under section 122,</p> <p>Make an order prohibiting the wife or husband, as the case may be, from disposing of any assets acquired by them, jointly or solely, during the subsistence of their marriage if the Court is satisfied that it is necessary to do so.</p>	<p>Provisions in Act 1984 allows Court to set aside and prevent disposition of assets by husband or parents intended to lessen husband's ability to pay maintenance, compensation (mutaah) or defeat any claims by wife.</p> <p>The newly amended section of 107A (2005) had extended Court's power and allows Court to set aside or prevent disposition of property by wife.</p> <p>According to traditional Islamic laws, husband is not allowed to claim any maintenance from wife, and neither does he has any rights over wife's assets.</p>	<p><b>Section 107A</b></p> <p>A party to a marriage shall not dispose of <i>harta sepencarian</i> with the intention of depriving the right of the other party to the <i>harta sepencarian</i>.</p> <p><b>Injunction against the disposal of harta sepencarian</b></p> <p><b>Sec 107B</b> (1) The Court may on the application of any party to a marriage—</p> <p>(a) where any matrimonial proceedings is pending; or</p> <p>(b) in any proceedings where the Court may make an order under section 122,</p>	<p>1. This new section restrict either husband or wife from disposing harta sepencarian with intention to deprive another of it. Again gender neutral language had been used.</p> <p>2. Court may grant an injunction to restrain disposal of assets in any of the reasonings stated at 107B(1) (a), (b) and (c), but this order must not have any adverse effects on standard of living and welfare of husband, wife or any dependents.</p> <p>This means that if there is any application for injunction against disposal of harta sepencarian, Court would ensure that family's maintenance will not be affected. If there is any adverse impact Court will disallow such application.</p>



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	<p>Wife's property belongs to her only and it shall not be claimed by any other, but wife has rights of maintenance from husband, and these different rights and obligations on assets and maintenance has connection with the larger portion obtained by men in inheritance.</p> <p>Is the amendments made on grounds of equal rights of men and women?</p> <p>If the law drafters want to reinterpret Islamic law by using concepts of gender equality and with accordance to the changing era, the reinterpretation must be done in total and ensuring equal rights exist for both men and women.</p>	<p>grant an order of injunction restraining the husband or wife, as the case may be, from disposing of any <i>harta sepencarian</i> during the subsistence of their marriage if the Court is satisfied that it is necessary to do so.</p> <p>(2) Each proceedings for an application under subsection (1) shall be in accordance with the procedures prescribed in the Syariah Court Civil Procedure (Federal Territories) Act 1998.</p> <p>(3) The Court shall, in granting an order of injunction under subsection (1), ensure that the injunction will not affect the standard of living and welfare of any party to the marriage and any existing dependants.</p>	

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	<p>In other words, it is cruel and unfair to use concepts of gender equality to extend rights of men, allowing them to enjoy rights and special protection accorded to women traditionally but at the same time retaining rights and special privileges traditionally enjoyed by men. This would worsen and lead to further discrimination against women.</p> <p>If the authorities want to enforce concepts of gender equality, all provisions which retained traditional rights of men has to be looked again and necessary amendments have to be made. This would include provisions on disobedience in marriage (nunsyuz), talaq procedure, custody and unequal distribution in inheritance.</p>	<p>(4) The failure to comply with an order of injunction under subsection (1) shall be punishable as a contempt of Court.</p>	

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<p><b>Power of Court to order division of Harta Sepencarian</b></p> <p>Section 122</p> <p>(1) The Court shall have power, when permitting the pronouncement of talaq or when making an order of divorce, to order the division between the parties of any assets acquired by them during their marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.</p> <p>(2) In exercising the powers conferred by subsection (1), the Court shall have regard to –</p>	<p>This amendment is unfair especially towards wives who are not working, not earning any salary or had been married for a long period of time. She does not have any assets and upon divorce does not have high economic value as she had served willingly to her husband and family. Husbands who were able to accumulate wealth because of wife's service, are now able to apply for division of harta sepencarian. In the former Act only wives are able to claim for division of harta sepencarian.</p> <p>Usage of gender neutral language in this provisions are similar to provisions in civil law, Law Reform (Marriage and Divorce) Act 1976 for persons of other faiths.</p>	<p>1. Section 122(1) has been replaced with a new (1) :</p> <p><b>122. (1) A Court shall have power –</b></p> <p><b>(a) when making an order of divorce or when a party to the marriage has obtained an order of divorce ;</b></p> <p><b>(b) when both parties to the marriage are Muslims and one of them dies; or</b></p> <p><b>(c) when an application is made by a party to the marriage under subsection 23(9),</b></p> <p>to—</p>	<p>1. This Section gives Court the authority to divide harta sepencarian on all types of divorce, when divorce is declared, upon death of spouse and upon declaration of portion of harta sepencarian upon polygamy.</p> <p>It is currently more defined/clear that Court has power to divide harta sepencarian upon death of either husband or wife. This means that before deceased's property is divided according to faraid, wife's rights on harta sepencarian has to be given first. This division has to be applied from Court. We have asked for all forms pertaining division of deceased's estates to be revised and to include columns for division of harta sepencarian, to inform all beneficiaries of wife's rights.</p>

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<p>(a) the extent of the contributions made by each party in money, property, or labour towards the acquiring of the assets;</p> <p>(b) any debts owing by either party that were contracted for their joint benefit; and</p> <p>(c) the need of the minor children of the marriage if any,</p> <p>and, subject to those considerations, the Court shall incline towards equality of division.</p>	<p>Its usage in this Act is unjust and would lead to discrimination on Muslim wives as there is no equality of rights between men and women in current syariah legislative system. Husband and wife has similar rights on divorce and division of property under civil law but Muslim's husband and wife has different rights.</p> <p>Traditional laws in many communities, whether in the West or East, had privileged men in many aspects but this are then balanced by men having more responsibilities. This amendments however had extended traditional rights of men without extending their responsibilities which they should bear.</p>	<p>(A) order the division between the parties of any <i>harta sepencarian</i> or the sale of any <i>harta sepencarian</i> and the division between the parties of the proceeds of sale thereof; and</p> <p>(B) in the case of paragraph (b), determine the proportion and divide the <i>harta sepencarian</i> to the surviving party; and</p> <p><b>(C) in the case of paragraph (c), declare the apportionment of the <i>harta sepencarian</i> or the division of the <i>harta sepencarian</i> between the parties to the subsisting marriage.</b></p> <p>(2) In exercising the powers conferred by subsection (1), the Court shall have regard to—</p>	<p>When ordering for division of property, Court will take into account contributions made by husband and wife, debts incurred and needs of minor children. For example, if <i>harta sepencarian</i> is in the form of matrimonial house which is still under bank loan and there are minor children, these need will be taken into account by Court when making an order for division of <i>harta sepencarian</i>.</p> <p>2. It has given a better and wide definition of <i>harta sepencarian</i>. It is much clearer now that wife's contribution in maintaining the family and marriage will be accepted as her contribution toward accumulation of wealth. Wife's property obtained during the subsistence of marriage will not be considered as <i>harta sepencarian</i>.</p>

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	<p>SIS had received many complaints by Muslim women, claiming that they had to forego rights on harta sepencarian to obtain husband's agreement for divorce. There are also complaints of husbands who had threatened to claim for harta sepencarian on property belonging to wife if she refuse to agree on his divorce conditions.</p> <p>Currently, wives are still at the lower end of bargaining power in divorce processes as the processes favor men, but this amendment which does not favor women, tried to put both husbands and wives on equal footing. This would create further discrimination towards women.</p> <p>Drafters of syariah laws need to pay attention and address realities of Muslim women lives.</p>	<p>(a) the extent of the contributions made by each party to the marriage in money, property, or labour in acquiring the <i>harta sepencarian</i>;</p> <p>(b) any debts owing by either party which were incurred for their joint benefits; and</p> <p>(c) the needs of the minor children of the marriage, if any,</p> <p>and, subject to those considerations, the Court shall divide the <i>harta sepencarian</i> or proceeds of the sale thereof in such proportions as the Court deems reasonable.</p> <p>2. A new definition for harta sepencarian at Section 2:</p> <p>“(iiiia) by substituting for the definition of “<i>harta sepencarian</i>” the following definition:</p>	<p>Husband's financial responsibility towards maintaining his family will not be considered as contribution as it is his responsibility to do so as : husband and father.</p> <p>This definition further protect right of husband and wife on persona assets obtained before marriage o any other property obtained by way of presents, gift (hibah), will sedekah, inheritance or any property obtained in similar nature.</p> <p>If either husband or wife had added value on property by making any development o improvement on property obtained before marriage; on property obtained by way of presents, gif (hibah), will, sedekah, inheritance o any property obtained in similar nature;</p>

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		<p>“<i>harta sepencarian</i>” includes—</p> <p>(a) property acquired by husband and wife through their joint efforts during the marriage;</p> <p>(b) property acquired by the husband during the marriage through his sole efforts with indirect contributions from the wife; and</p> <p>(c) any proceeds and added value from any development and improvement through the sole efforts of the other party to the marriage or the joint efforts of the parties to the marriage during the subsistence of the marriage in respect of—</p> <p>(i) any property belonging to the husband or wife before the marriage;</p>	<p>or on wife’s property obtained during marriage, the added value will be considered as <i>harta sepencarian</i> without considering the actual value of the said property. Only the added value will be considered.</p> <p>3. Gender neutral language is still being used in some provisions.</p>

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		<p>(ii) any property acquired by the wife through her sole efforts during the marriage; or</p> <p>(iii) any present, gift (<i>hibah</i>), will, <i>sedekah</i> or estate received or any other property acquired by the husband or wife before or during the marriage.</p> <p style="text-align: center;"><i>EXPLANATION</i></p> <p>(a) <i>Property acquired by the wife during the marriage through her sole efforts is not harta sepencarian.</i></p> <p>(b) Any contribution by the wife in taking care of the family and home or any other dealings relating to the acquisition of property shall be treated as joint efforts for the purpose of interpreting the definition of “harta sepencarian”.</p>	

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		<p><i>(c) Any contribution by the husband in discharging his duties to take care of family and home as stipulated by Hukum Syarak shall not be treated as joint efforts for the purpose of interpreting the definition of “harta sepencarian”.</i></p> <p><i>(d) Any contribution by the husband other than the contributions in (c) leading to the acquisition of property shall be treated as joint efforts for the purpose of interpreting the definition of “harta sepencarian”.</i></p> <p><i>(e) Property belonging to the husband or wife before the marriage, or present, gift (hibah), will, sedekah, inheritance or any other property received or acquired by the husband or wife before or during the marriage is not harta sepencarian</i></p>	



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<p>(3) The Court shall have power, when permitting the pronouncement of talaq or when making an order of divorce, to order the division between the parties of any assets acquired during the marriage by the sole efforts of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.</p> <p>(4) In exercising the powers conferred by subsection (3), the Court shall have regard to –</p> <p>(a) the extent of the contributions made by the party who did not acquire the assets to the welfare of the family by looking after the home or caring for the family; and</p>			

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<p>(b) the need of the minor children of the marriage, if any,</p> <p>and, subject to those considerations, the Court may divide the assets or the proceeds of sale in such proportions as the Court deems reasonable, but, in any case, the party by whose efforts the assets were acquired shall receive a greater proportion.</p> <p>(5) For the purposes of this section, references to assets acquired during a marriage include the assets owned before the marriage by one party that have been substantially improved during the marriage by the other party or by their joint efforts.</p>			

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<p><b>New Section</b></p> <p><b>Subsisting valid marriages deemed to be registered under this Act and dissoluble only under this Act</b></p>		<p><b>Amendment to Section 6.</b></p> <p><b>(1A) A marriage contracted without permission of the Court under subsection (1) shall not be registered under this Act unless the Court is satisfied that the marriage is valid according to Hukum Syarak and the Court has ordered the marriage to be registered subject to section 123.</b></p> <p><b>(1B) An existing wife or wives whose husband is convicted of an offence under section 123 may submit an application in the prescribed manner to the Court to have the marriage of her or their husband registered pursuant to subsection (1A).</b></p>	<p>Marriage can only be registered if Court finds that the marriage has complied with Hukum Syarak or if it had been ordered to be registered after husband had been found guilty for illegal polygamy. Wife could also register the marriage after Court had found husband guilty of the offence but this does not solve the problem – in case where wife who had knowledge of husband’s secret polygamous marriage but does not have any real evidence to prove this and needs Court’s assistance. Wife needs a place to lodge complaint and to know whether husband has committed illegal polygamy.</p> <p>It is not necessary for wife to apply for registration if husband had been found guilty of illegal polygamy by Court as this should be done automatically – when husband is found guilty, Court has to order registration of polygamous marriage</p>

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			<p>We had requested for amendment to this section to allow wife to seal registration by bringing evidence and witnesses to Court to prove illegal polygamy.</p> <p>This section still allows registration of illegal marriages; marriage without consent of authorities. It still could not restrict marriages done in contempt of laws especially polygamous marriages.</p>

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<p><i>Muta'ah</i> or consolatory gift to wife divorced without any cause in accordance with Hukum Syarak</p> <p><b>Section 56 Islamic Family Law (Federal Territory) Act 1984</b></p> <p>In addition to her right to apply for maintenance, a woman who has been divorced without just cause by her husband may apply to Court for mutaah or a consolatory gift, and the Court may, after hearing the parties and upon being satisfied that the woman has been divorced without just cause, order the husband to pay such sum as may be fair and just according to Hukum Syarak.</p>	<p>Mazhab Shafie stresses husband's duty to pay mutaah or consolatory gift. There should be guidelines to avoid confusion on amount to be given by Court. SIS had received numerous complaints from wives who felt that amount granted by Court is ill justified.</p> <p>Among matters that should be taken into Court's consideration is duration of marriage. The purpose of mutaah is to console wives after divorce. Surely elderly wife and those who had been married for a long period of time feels worse compare to a young wife who only has been married for a shorter period, and may be able to adapt herself to her new surroundings and finds employment easier.</p>	<p><b>Section 56</b></p> <p>(1) In addition to her right to apply for maintenance, a wife who has been divorced without any cause in accordance with Hukum Syarak by her husband may apply to the Court for <i>muta'ah</i> or a consolatory gift, and the Court may, after hearing the parties and upon being satisfied that the wife has been so divorced, order the husband to pay such sum as may be fair and proper in accordance with Hukum Syarak.</p> <p>(2) In exercising the powers conferred under subsection (1), the Court shall have regard, among others, to the following matters:</p>	<p>This amendment stresses that mutaah is part of wife's rights upon divorce and its not dependent on whether or not she was divorced without just cause.</p> <p>The amendments had taken into consideration proposal by women groups for the need of guidelines on matters which Court should take into consideration when granting mutaah. This amendment is more suitable comparing with similar section in the 1982 Act.</p>

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		<p>(a) the needs of the divorced wife in beginning a new life;</p> <p>(b) the standard of living and financial status of the husband during the divorce;</p> <p>(c) the financial difficulties faced by the wife after the divorce;</p> <p>(d) the duration of the marriage of the parties;</p> <p>(e) the contributions rendered by the divorced wife during the marriage.”</p>	