

LEGAL APPROACH TO DOMESTIC VIOLENCE IN MALAYSIA AND NIGERIA: AN EXPOSITORY STUDY OF THE EXPERIENCE IN SELECTED JURISDICTIONS

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Abstract

The menace of domestic violence has eaten deep into the national fabric of many nations. Women and children suffer most from this form of violence. The paper examines the issues and problems with the law of domestic violence in Nigeria and makes an expository study of the positions in some selected countries. The paper notes that despite the availability of laws nationally and internationally to cure this menace, it still persists. This is due to the problems being faced with respect to the law.

Key words: Domestic violence, Women, Child rights, Human rights

1.0 Introduction

Domestic violence is defined as consisting of a number of actions such as threatening to injure, causing injury, force, detention, etc, against a spouse, a former spouse, a child, an incapacitated adult or other members of the family.^[1] It is not really regarded as a specific crime with new penalties and enforcement procedures.^[2] It is also defined as ‘behaviour which results in physical, sexual and/or psychological damage, forced social isolation, or economic deprivation or behaviour which leaves a woman in fear’.^[3] This behaviour includes destruction of property, threats, harassment and ridicule. The key element in all of these actions is controlled through the exercise of force or destructive verbal or

emotional harassment. Domestic violence is predominantly violence by men physically, sexually or psychologically against wives or *de facto* partners and often has a number of victims in any one family. Children are often direct victims and can be victims indirectly of the violence occurring between their parents.

The effect on children of witnessing and experiencing violence within the family are physically, psychologically, emotionally and cognitively damaging.^[4] Domestic violence is now recognized as a child protection issue and related family member issue, and the country should formulate policies taking into account the needs of all battered women, their children and other related members in the family. It has however resulted in numerous social ills. It affects not only the women but also the whole family. It has therefore attracted academic attention.^[5] Children who witness abuse are highly affected.^[6] It is against this backdrop that the paper makes an examination of the problems and issues of the law on domestic violence in Malaysia and Nigeria and makes an expository study of the positions in selected jurisdictions.

2.1 Domestic Violence in Malaysia

There is no doubt about the prevalence of domestic violence in Malaysia. Research in 1989 alone reveals that in Peninsular Malaysia, at least 1,700,000 women suffered from abuse either by their husbands or lovers.^[7] Research showed that one out of ten women respondents had been battered.^[8] Research also shows that 847,000 women are battered either by their husbands or lovers every year.^[9]

As provided under the Domestic Violence Act 1994, ‘domestic violence’ means the commission of any of the following acts:

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

- (b) causing physical injury to the victim by such act which is known or ought to have been known would result in physical injury;
- (c) compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain;
- (d) confining or detaining the victim against the victim's will; or
- (e) with intent to cause, or knowing that it is likely to cause, distress or annoyance to the victim, causing mischief or destruction or damage to property, and protection is not only given to wives but extended to:
 - (i) his or her spouse;
 - (ii) his or her former spouse;
 - (iii) a child;
 - (iv) an incapacitated adult; or
 - (v) any other member of the family.

However, there are some problems with the law here which deserves the paper's attention. Thus, they are explained below.

Domestic violence is not a specific crime under the Act

In the DVA, domestic violence is not considered as a specific crime.^[10] In order for the abuse to constitute a crime under the DVA, the victims have to rely on the current provisions for assault in the Penal Code.^[11] How the police handle an assault case is determined by the Criminal Procedure Code^[12], i.e. by the nature of the offence, as to whether it is a 'seizable' or 'non-seizable' offence. Under the CPC,^[13] the police are only required

to conduct immediate investigations in cases of ‘seizable’ offences unless otherwise ordered by the public prosecutor.^[14]

This has serious implications in cases of domestic violence because violence involving punching, bruising, assault, battery, etc, would be classified under s. 319 of the Penal Code which is a ‘non-seizable’ offence. Seizable offences are described as offences where the offender uses ‘dangerous weapons or means’ to cause hurt, or causes ‘grievous hurt’ which is defined as permanent loss of sight or hearing, fracture or dislocation of the bones.^[15] Therefore, since acts of domestic violence are classified as non-seizable, the police are not compelled to investigate the incident immediately or to protect the victims in most cases of domestic violence. The DVA, in relying on the Penal Code, does not make any extraordinary changes to strengthen the current police power of investigations in cases of domestic violence.

Victims who have suffered injuries not regarded as the outcome of a crime have to file a private summons in a magistrates’ court to prosecute the abuser and police records show that very few victims do so.^[16] This is because the said process is time consuming, costly and requires the victim to initiate the charge against a family member, and being victims, they do not have the time and money to do so. The reasons as to why the police do not react immediately in most domestic violence cases are because the cases fall under the category of ‘non-seizable’ offences and the lack of power of the police to intervene under the current penal law and procedures. In view of this, the relevant law and procedures pertaining to such issues need to be changed and amended to achieve the main objective of the DVA in curbing domestic violence. The DVA must provide that domestic violence is a crime punishable irrespective of whether the injuries sustained are minor or serious; just as what is provided in the Child Protection Act 1991. Only then will the seriousness of the abuse of a family member by another in terms of psychological

trauma, impact on life and the personal rights of family members be recognized and acted upon effectively by the police and the legal system.

The Problem of protection order (PO)

The DVA makes provisions for interim and long-term protection orders,^[17] aimed at ensuring the needs of the victim for personal safety, a safe place and/or financial support. Unlike quarrelsome neighbours who can return to the safety of their own home, the battered wife has to return to the same house which shelters the very person responsible for her injuries. There are a lot of battered women who do not wish to think further than protecting themselves and their children from the violent husband. Therefore, the PO is a very valuable provision of the DVA for the battered woman in real terms. However, in the present provisions of the DVA, there are serious flaws that may result in inadequate or no protection at all, thus destroying the objectives that the DVA intended to achieve.

The problems that could arise on the PO are specifically as follows:

- (a) An interim PO can only be obtained under s. 4 of the DVA if investigations are pending. Such investigations may not even take place if the offence is a non-seizable one, as the police will not investigate such cases without orders from their superiors, whereas for the victim, immediate protection is very much needed. Therefore, in the majority of domestic violence cases, where the women were punched, kicked, and bruised severely, *even an interim PO may not be obtained*. She has to be literally knifed or have her bones broken before she can even consider applying for an interim PO.
- (b) The long-term PO^[18] can be obtained only if there are proceedings involving a complaint of domestic violence; for

example, if the accused is *charged* with a crime that is committed under the circumstances that fall within the definition of domestic violence. Such provisions make the situation worse, as in order to protect themselves, these women might possibly cause their husbands to be sent to jail! To enable the PO to serve its objective, the PO should not be dependent on any criminal proceedings or any investigations.

- (c) The third disturbing factor of the PO is the issue of excluding the assailant from the matrimonial home. Here, the DVA provides that the order excluding the abuser would be revoked if a suitable alternative residence was found for the protected person.^[19] ‘*Alternative residence*’ is defined in the Act^[20] as ‘premises or accommodation which the victim is or has been compelled to seek or move into as a result of domestic violence’. If this is the meaning of the provision, then the very intention of providing the PO is defeated. It is the perpetrator of the violence who should be punished or removed from the shared residence and not the victim. Here, the perpetrator continues to enjoy the comfort of his home while the victim has to be displaced even if she jointly owns the home.

There is inadequate effective implementation of the DVA

This law has not been able to meet its purpose as there has been poor implementation of the law. In order for the DVA to make a real difference to the lives of victims of domestic violence, the provisions in the DVA should be carried out effectively by the relevant authorities, specifically the police and the legal system. Regulations necessary to strengthen the implementation processes of the DVA should be provided for and police procedures for domestic violence should be specified and

accessible to the public to help various women or interested organizations speed up their efforts in attending to such cases. Examples of police procedures which are crucially needed are as follows: Taking a report of a domestic violence case; there should be specific forms to be filled up and the police should be briefed on the seriousness of a domestic violence case. When to investigate a domestic violence case; this should be done in all cases of domestic violence, even if they are classified as ‘non-seizable’. This can be done if there is a standing instruction from the public prosecutor to investigate all cases of domestic violence irrespective of the extent of injuries. How to investigate a domestic violence case? The police should be properly trained on all these procedures to ensure that there is standardization of actions in all cases of domestic violence. Monitoring the implementation of the DVA should also be carried out by government agencies involved.

Apart from the Domestic Violence Act, Malaysia seeks to protect children from many forms of violence both domestic and outside. Thus, it has ratified convention on the rights of the child. The child has a right to be protected from being hurt and maltreated physically and psychologically^[21] and the government should strive to achieve this. It prohibits corporal punishment in school.^[22]

2.2 Domestic Violence in Nigeria

Over the years, there have been clamours for laws in relation to domestic violence.^[23] The Lagos State now has a law on domestic violence since 2007, containing 19 sections and this has rarely been tested in courts. It appears many people are not aware of these laws as there are a paucity of judicial authority on this law. This is despite the fact that there are many cases of domestic violence in Nigeria. This includes physical and sexual abuse, economic, spiritual and emotional abuse.^[24] This has attracted very little academic attention.^[25]

In Nigeria, reports reveal “shockingly high” levels of violence against women (Afrol News, 2007). Amnesty international (2007) reports that a third (and in some cases two-thirds) of women are believed to have been subjected to physical, sexual and psychological violence carried out primarily by husbands, partners and fathers while girls are often forced into early marriage and are at risk of punishment if they attempt to escape from their husbands. More pathetic is the revelation of gross under reporting and non documentation of domestic violence due to cultural factors (Oyediran and Isugo, 2005, afrolnews, 2007).

The common forms of abuse reported were shouting at a partner (93%), slapping or pushing (77%) and punching and kicking (40%). It is however disturbing to note that many women do not know if they had been abused or not (afrolNews, 2007). This could be due to the acceptance of some abusive behaviour as ‘normal’. Oyediran and Isugo (2005), in a study of women’s perception of wife-beating in Nigeria, found that 64.4% and 50.4% of married and unmarried women, respectively, expressed acceptance of wife beating. Reports in the print and electronic media reveal vicious attacks on women by intimate partners in different forms such as ‘acid bath’, rape, beatings, some of which sometimes result in the death of the victim. Many victims do not report for fear of reprisal from abusers or the belief that the police and the judicial system cannot help. The police are also reported to frequently dismiss complaints of domestic violence as a ‘private matter.’

Apart from the dilemma of violence of the wife, children also suffer domestic violence. As a result, the Government ratified both the United Nations Convention on the Rights of the Child (CRC) and the African Union Charter on the Rights and Welfare of the Child (CRWC).^[26] The Act recognizes the rights of children, restores their confidence and self-esteem and improves their status. It will also enable children with disabilities, to enjoy their rights fully, as it provides special measures for

their care and protection. All sectors of the society, including government and the people, will benefit from the production of well-rounded and self-confident future leaders.

The Act prohibits a Nigerian child from being subjected to physical, mental or emotional injury, abuse or neglect, maltreatment, torture, inhuman or degrading punishment, attacks on his/her honor or reputation.^[27] Other offences considered grave include sexual abuse, general exploitation which is prejudicial to the welfare of the child, recruitment into the armed forces and the importation/exposure of children to harmful publications. It further preserves the continued application of all criminal law provisions securing the protection of the child whether born or unborn.

The Act makes provisions for the establishment of “Family Courts”. The courts which will operate at the High Court and Magistrate Court levels have been vested with the jurisdiction to hear all cases in which the existence of a legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child is in issue, and any criminal proceeding, relating thereto. The Act has provided for Child Justice Administration, to replace the Juvenile Justice Administration, which has been in existence for several decades in Nigeria. The provisions prohibit the subjection of any child to the criminal justice process, and guarantees that due process be given to any child subjected to the child justice system, at all the stages of investigation, adjudication and disposition of any case against such a child. It has prohibited the use of capital punishment, use of imprisonment and use of corporal punishment for children under 18 years, and further provides for the use of scientific tests in deciding paternity cases.^[28]

The issue or problem here is that since the Child’s Rights Act was passed into law in 2003, there has not been adequate dissemination of

information to the rural areas and therefore lack of knowledge by rural communities' dwellers, including youth in the rural community schools in Ebonyi State of the existence of the Child's Rights Law. From polls conducted in most rural communities in the State, up to 85% of both children and adults respectively do not know that there is a law protecting the rights of the child in Nigeria. This service project will disseminate information to the rural areas on the Child's Rights Law.^[29] Issue of enforceability is another problem facing the law. Research reveals that enforcing this has always been a problem in Nigeria.

3.1 Domestic Violence in the United States.

Domestic violence is a serious problem in the United States today.^[30] Studies show that 50% of all American wives may be 'battered'.^[31] While it is estimated that one-third to one-half of all women in the United States will be in a violent relationship during their lifetime, and the Federal Bureau of Investigation reports that a woman is beaten by her husband or boyfriend every 12 seconds. The FBI also reveals that domestic violence 'is under-reported by, a factor greater than ten to one'.^[32] In an average 12-month period in the United States, approximately two million women are severely assaulted by male partners.^[33] And about 1,800,000 women are beaten in their homes each year. Pregnancy appears to be a particularly hazardous time for women: 30% of all pregnant women are battered.^[34] Surprisingly, more babies are born with birth defects as a result of the mothers being battered than a combination of all diseases and illnesses.^[35] National research findings agree that the true incidence of partner violence is probably double - about four million women per year.^[36] Each day in the United States, approximately four women are killed by their male intimate partners.^[37] Domestic violence, particularly wife abuse, has been a subject of much social, political and academic attention for some years in the United States.^[38]

In order to cater for children and other forms of domestic violence, the US has the Family Rights Act. It recognizes that the current patchwork of Family Law in the United States has become a tragedy in which both parents and children are victims.^[39] This Act has also, in a number of ways, prevented violence against children.

Reports on the occurrence of domestic violence differ a great deal. A study conducted by Murray A. Straus of the University of New Hampshire and Richard J. Gelles of the University of Rhode Island, both veterans, researched into family violence and discovered that roughly four million people every year are victims of various forms of domestic assault, varying from trivial threats and thrown objects to serious beatings.^[40] This figure represents women and men who report experiencing attacks by partners. In a 1995 study carried out by Dr. Jeanne McCauley of Johns Hopkins University School of Medicine, one out of three women reacting to a private feedback form showed that she had experienced physical or sexual attack, and half of these occurrences happened before the age of 18. The National Coalition against Domestic Violence testified in 1993 that 50 percent of all married women will be victims of domestic violence from their men, and that over one-third are beaten-up repeatedly every year.^[41]

Prevalence of the awareness and an increase in cases of domestic violence resulted in extensive legal response since the 1980s.^[42] Domestic violence is now treated as a criminal offence even though it was formally thought not to require legal solution.^[43] Several states and municipalities have taken steps to cure the menace of domestic violence abusers. The government's efforts to protect the victims of domestic violence from further abuse resulted in programs fashioned to find solutions to the main causes of this abuse.^[44] For instance, Alexandria, Virginia since 1994 began prosecuting abusers under a Virginian law which makes the third conviction for assault and battery a felony

punishable by up to five years imprisonment.^[45] Furthermore, the city created a shelter for battered women, a victims' task force, and a domestic-violence intervention program which includes a compulsory arrest policy and court-ordered counseling. Consequently, domestic homicides in Alexandria fell from 40 percent of all homicides in 1987, to 16 percent of those between 1988 and 1994.^[46] Other states also embraced similar measures. States that already had detailed laws aimed at domestic violence increased the punishments in the 1990s. For instance, a 1995 alteration to California's domestic-abuse law (West's Ann. Cal. Penal Code section 14140-14143) expunged a provision that permitted first-time abusers to have their criminal record removed if they attended counseling.^[47]

Public reaction over domestic violence also led to the insertion of the Violence against Women Act as title IV of the Violent Crime Control and Law Enforcement Act.^[48] The Act sanctioned research and education programs for judges and judicial staff to improve dissemination of information and knowledge on domestic violence and sexual assault.^[49] It further provided funds for police training and for shelters, increased punishments for domestic violence and rape, and provided for enhanced privacy protection for victims.^[50] However, the U.S. Supreme Court declared the Act as unconstitutional in 2000.^[51]

One of the more contentious parts of the original act regards gender-motivated crimes a breach of federal civil rights law. In 2000, the U.S. Supreme Court examined the relevance of this provision in *United States v. Morrison* (529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658 (2000)).^[52] In that case, a woman at the district court sued a group of University of Virginia students whom she alleged had raped her. It held that Congress did not have the power to enact the provision under the Commerce Clause or section 5 of the Fourteenth Amendment to the U.S. Constitution.^[53] The U.S. Appeal Court for the Fourth Circuit upheld the decision, and the

United States, which intervened to defend the act, appealed to the U.S. Supreme Court.^[54] The Court agreed with the lower courts and held that Congress had acted ultra vires. The outcome of the case is that the civil-remedy provisions in the main statute should be within the powers of the states and the federal government.

3.2 Domestic Violence in United Kingdom

In UK, it was reported that although women do not form the majority of the victims of homicide or assaults, men clearly form the majority of assailants.^[55] When women do kill, their victims tend to be their husbands, lovers, or children - ‘domestic murders’.^[56] Many women in the United Kingdom are subjected to persistent violence. Research estimates that between one in four and one in ten families experience domestic violence.^[57] This has therefore gained social and academic attention for a while.^[58]

The courts in United Kingdom have accepted that domestic violence can be considered by the jury in making their decision. It was first recognized implicitly by the court in *R v. Thornton*.^[59] In this case Beldom LJ stated: It is within the experience of each member of the court that in cases of domestic violence which culminate in the death of a partner there is frequently evidence given of provocative acts committed by the deceased in the past, for it is in that context that the juries have to consider the accused’s reaction.

In the case of *R v. Ahluwalia*,^[60] the defence counsel argued that the appellant was suffering from the ‘battered woman syndrome’ and the course of ill-treatment had affected her personality so as to produce a state of learnt helplessness. He argued that the learned judge ought to have referred to this characteristic in his direction to the jury. In this case, there had however been no medical evidence that the accused suffered from the battered woman syndrome or post-traumatic stress

disorder. However, the Court of Appeal had been furnished with a quantity of material, not before the trial judge and jury, suggesting that the accused suffered from diminished responsibility. This new evidence detailed the effects of long-term battering. The Court of Appeal stated: ... the present case is most unusual. We have been shown a report ... from a recognized medical practitioner ... that doctor expressed the opinion that the appellant was suffering from endogenous depression at the material time, a condition which, in the opinion of some experts, would be termed, ‘a major depressive disorder.’^[61] ...The fresh evidence was admitted and considered by the court, the accused was freed on Friday 25 September 1992 and a retrial was ordered.

Children are also affected by many forms of violence whether domestic or externally. Thus, in order to solve this problem in the United Kingdom, the legal regime applying to children’s rights in England and Wales becomes voluminous and complex, with a large number of Acts providing varying rights for children.^[62] As an industrialized Western nation, children do have relatively extensive rights regarding both their protection in areas such as the criminal justice system and their entitlement regarding health and protection from violence.

3.3 Domestic Violence in Australia

In Australia, the New South Wales Bureau of Crime Statistic and Research published a report in 1986 stating that spousal killings amounted to 23.2%. A history of marital violence (almost exclusively male violence on women) was recorded in the police files in at least 48% of the spousal killings.^[63] A history of officially recorded violence occurred in 70% of cases which involved wives killing their husbands, and at least 40% of cases of husbands killing their wives.^[64] This has therefore gained an academic^[65] and judicial attention for a while in Australia.

There have been quite a number of judicial decisions on domestic violence in Australia. Expert evidence concerning the battered woman syndrome has now been accepted in the Australian courts on some occasions. It became an issue before the court in South Australia in 1991 in *Runjanjic and Kontinnen v. The Queen*.^[66] Two women defendants were convicted of false imprisonment and causing grievous bodily harm. They had sought to admit evidence of the battered woman syndrome in support of their defence of duress. The defendants claimed to have been compelled to commit the crimes by one Hill, with whom they both shared a particularly violent domestic relationship. The Court of Criminal Appeal held that the trial judge had wrongly refused to admit expert evidence of the syndrome. In this case, the battered woman syndrome was used in relation to the defence of duress. It was held that the syndrome would be relevant both to the issue of whether the wills of the accused were overborne by the threatener and to the issue of whether a person of reasonable firmness, placed in the same situation as the accused, would have succumbed to the pressure to commit the offences with which they were charged. According to King CJ: "... the primary thrust of the evidence is to establish a pattern of responses commonly exhibited by battered women."

The proffered evidence is concerned not so much with the particular responses of these appellants than with what would be expected of women generally, that is to say women of reasonable firmness, who find themselves in a domestic situation such as the appellants were in. It also serves to explain why even a woman of reasonable firmness would not escape the situation and participate in criminal activity.^[67]

A few months later, the South Australian Supreme Court admitted evidence of the battered woman syndrome in the murder case of *Kontinnen v. The Queen*.^[68] The defendant was one of the appellants to the earlier case discussed above. She was charged with murdering Hill,

her *de facto* spouse, who was asleep. She had shot him whilst he slept after he had threatened to kill her, another woman and a child. Kontinnen argued self-defence and the battered woman syndrome was introduced in support of that defence.

The accused lived with the victim and another woman. Both women lived in constant fear of the victim (Hill), and had suffered extreme violence from him. Medical evidence was given at the trial concerning injuries which both women had suffered in the past. The accused successfully argued that she had killed the deceased in self-defence and that she had reasonably believed in the necessity of her action because she suffered from the syndrome.

In the third Australian case of *Hickey v. The Queen*,^[69] the accused was acquitted of the murder of her *de facto* husband. At the time of the fatal stabbing, the deceased had stopped strangling her and was sitting by the side of the bed. Evidence was presented of a long history of violence by the deceased against the accused and also against their children. The accused had moved out of the house she shared with the deceased three weeks before the killing. She had obtained a domestic violence order against the deceased but he had simply ignored it. On the night of the killing, the accused had agreed to meet the deceased to allow him to see the children. He tried to prevent her from taking the children, threw her on the bed and strangled her. After the deceased had stopped his attack and sat on the bed with his back towards her, the accused grabbed a knife and struck him in the chest. The accused claimed that she had stabbed the deceased in a state of rage and fear over what he had just done to her and also over the prospect of future violence. The defence raised the plea of self-defence, contending that there was a history of escalating violence by the deceased towards the accused. She had reasonable grounds to believe that his latest attack was life-threatening and that she had stabbed him before he could mount another assault on her. The defence also

sought to admit expert opinion evidence on the battered woman syndrome with a view to showing that the accused suffered from such a syndrome. The Crown did not object to the admissibility of such evidence and the trial judge admitted it without question.

Australia also has a number of provisions for the protection of children and other family members from violence. In Australia, state and territory governments are responsible for the administration and operation of child protection services. Legislative Acts in each state and territory govern the way such services are provided. There are principal child protection Acts in each Australian state and territory.^[70] There are other Acts of Parliament pertinent to the operation and delivery of various services to children and families across Australia.^[71]

3.4 Islamic Perspective on Domestic Violence

Islam frowns at domestic violence as it is considered as oppressive. A number of academic works have been done in the area of domestic violence in Islam.^[72] Marriage in the Islamic context should translate tranquility, protection, peace and comfort. Abuse of any sort offends the principles of marriage. Violence in marriage contradicts what Allah (swt) has revealed and the example of Prophet Muhammad.

“And among His signs is this: He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts): Verily in that are signs for those who reflect.”^[73]

The Believers, men and women, are protectors one of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practice regular charity, and obey Allah and His Messenger. On them will Allah pour His mercy: for Allah is Exalted in power, Wise.^[74]

Allah commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition.^[75]

O believers treat women with kindness even if you dislike them; it is quite possible that you dislike something which Allah might yet make a source of abundant good.^[76]

Under no circumstances is violence against women encouraged or allowed. The holy Qur'an contains tens of verses extolling good treatment of women. Several specifically enjoin kindness to women.^[77] These verses make it clear that the relationship between men and women is to be one of kindness, mutual respect, and caring. Some verses, where Allah calls men and women "protecting friends of one another," refer to the mandated atmosphere of mutual kindness and mercy in the marital home.^[78] Others show disapproval of oppression or ill treatment of women."

In the event of a family dispute, the Qur'an exhorts the husband to treat his wife kindly and not overlook her positive aspects.^[79] If the problem relates to the wife's behavior, her husband may exhort her and appeal for reason. In most cases, this measure is likely to be sufficient. In cases where the problem continues, the husband may express his displeasure in another peaceful manner, by sleeping in a separate bed from hers. There are cases, however, in which a wife persists in deliberate mistreatment and expresses contempt of her husband and disregard for her marital obligations. Instead of divorce, the husband may resort to another measure that may save the marriage, at least in some cases.

4.0 Conclusion

From the foregoing, it is submitted that domestic violence is a nagging problem that has eaten deep into the fabric of many nations. Violence is

not only against women, children have also had their own share of violence. There are many laws and convention apart from the Domestic Violence Act to solve this problem. Yet, this issue still persists. The major problems with the law of domestic violence in Malaysia is the fact that it is not regarded as a crime; the enforcement mechanism is weak and ineffective and the problem of protection orders. The United States has criminalized the act of domestic violence and courts have reacted to it. In the United Kingdom and Australia, courts frown upon cases of domestic violence. In Nigeria however, only Lagos State of Nigeria has passed a law in this respect. Despite the fact that it's rampant in Nigeria, many cases are unreported and many people are unaware of the existence of any law in this regard.

There is therefore an urgent need to criminalise domestic violence in order to reduce it in society. There is also the need to provide for an easy enforcement mechanism of the law. Apart from the legal approach, other approaches to solving domestic problems should also be looked into in order to solve the problem. This is because as studies have shown, domestic violence still persist despite many laws and international conventions prohibiting such acts. Although Islam has not made it a crime punishable in this world, a person may face the consequences in the hereinafter because of the injustices such a person commits because of his act of domestic violence. There is therefore the need for an integrated approach in order to solve the problem of domestic violence.

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Endnotes:

[¹] See section 2 of Domestic Violence Act.

[²] This is unlike the Child Protection Act 1991 in which child abuse was given a wider definition and is now a specific crime punishable by new penalties, thus having provisions allowing the police to exercise their powers more effectively. See Sections 2(2)(a)-(k), 3(a)-(c) of the DVA.

[³] This definition is offered by The National Committee on Violence Against Women. See ‘The Heart of the Mother: Families at the Centre of Public Policy’, a discussion paper prepared by the National Council of the International Year of the Family, March 1994, Australian Government Publishing Service at p 59. Also see H Ator’s position paper on ‘Mediation, National Committee on Violence Against Women’ (1991, Canberra).

[⁴] Parkinson, ‘Children Who Witness Domestic Violence’, paper presented at Catholic University and Center care Conference on Family Violence, Macquarie University, 4-5 February 1994.

[⁵] See Nithiyanautham Murugesu, The Role of the Law and the Court in Preventing The Abuse of Children - The Malaysian Perspective [2010] 5 MLJA 41; Nor Aini bte Abdullah, Domestic Violence Act 1994: An End To A Nightmare? [1995] 1 MLJA 41; Abu Bakar Munir, The Battered Women Syndrome Woman Syndrome [1993] 3 MLJA 40; Nor Aini Abdullah, Marital Rape-Domestic Violence? [1995] 2 MLJA 57; Alfred Choi, Formal Protection of Women From Wife Assault in Singapore” [1994] 3 MLJA 41.

[⁶] see Merry Hofford, “Domestic Violence and Children: What should the courts consider?” 1 *Juvenile and Family Justice Today* No 4 (1993). They are more likely to attempt suicide, to abuse drugs and alcohol, to run away from home, to engage in teenage prostitution and other delinquent

behaviour, and to commit sexual assault crimes. 63% of all males between the ages of 11 and 20 who are doing time for homicide in America killed their mothers' batterers.

[7] *Utusan Malaysia*, 10 June 1992.

[8] *Ibid.*

[9] *Ibid.*

[10] Elizabeth A Sheehy, Julie Stubbs and Julia Tolmie, 'Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations' (1992) 16 Crim LJ 369. However, it is defined as consisting of a number of actions such as threatening to injure, causing injury, force, detention, etc, against a spouse, a former spouse, a child, an incapacitated adult or other members of the family.

[11] Section 351 provides: Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force on that person, is said to commit on assault.

[12] (FMS Cap 6) ('the CPC').

[13] Section 2 of the CPC provides that 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. See also 'Domestic Violence and Self-help' (1990) NLJ 127.

[14] See Mimi Kamariah, *Criminal Procedure in Malaysia* (1987), University of Malaya at p 59. See also Frances Lawrenz, James F Lembo and Thomas Schade, 'Times Series Analysis of the Effect of a Domestic Violence Directive on the Number of Arrests per Day' (1988) *Journal of Criminal Justice* 493.

[15] Judge Leonard P Edwards, ‘Reducing Family Violence: The Role of the Family Violence Council’ [1992] *Juvenile & Family Court Journal* 1.

[16] 1 *Juvenile and Family Justice Today* No 4 (1993).

[17] See section 4 and 5 of the DVA.

[18] See section 5 of the DVA.

[19] See Sections 6(a)-(f), (3), (4) of the DVA.

[20] See section 2 of the DVA.

[21] See Article 19

[22] See Article 20. See also Malaysia Child Act 2001. See also promoting children’s right through the law in Malaysia. <http://www.unicef.org/malaysia/Unicef-ChildrensRights.pdf> accessed on 13th Nov, 2011.

[23] See Abdulwahab Abdullah, Nigeria: Law on Domestic Violence-How Far it Can Bite? *Vanguard* 25th March, 2010.

[24] See Aihie Ose N. Prevalence of Domestic Violence in Nigeria: Implications for Counseling, (200) vol. 2, no. 1, *Edo Journal of Counseling*, 1-8.

[25] See Itoro Eze Anaba, “Domestic Violence and Legal Reports in Nigeria: Challenges and Prospects,” (2006), Bepress Legal Series. Working Paper 1507 available at <http://law.bepress.com/expresso/eps/1507> accessed on 24th October, 2011.

[26] International treaties and protocols on women and children ratified by the Government include: ILO Convention 182 on Minimum Age. ILO Convention 138 on Elimination of the Worse Forms of Child Labour;

Optional Protocol to the Convention on Elimination of All Forms of Discrimination Against Women; Optional Protocol on the involvement of Children in armed Conflicts; Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography; Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment; Convention against Trans-national Organized Crime; Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. International treaties and protocols on women and children ratified by the Government as at December 2001, include: ILO Convention 182 on Minimum Age; ILO Convention 138 on Elimination of the Worse Forms of Child Labour; Optional Protocol to the Convention on Elimination of All Forms of Discrimination Against Women; Optional Protocol on the involvement of Children in armed Conflicts; Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography; Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment; Convention against Trans-national Organized Crime. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

[27] Causing tattoos or marks, and female genital mutilation are made punishable offences under the Act; and so also is the exposure to pornographic materials, trafficking of children, their use of narcotic drugs, or the use of children in any criminal activities, abduction and unlawful removal or transfer from lawful custody, and employment of children as domestic helps outside their own home or family environment. Child abduction and forced exploitative labor (which is not of a light nature) or in an industrial undertaking are also stated to be offences. The exceptions to these provisions are where the child is employed by a family member, in work that is agricultural, horticultural or domestic in nature, and if such a child is not required to carry or move any thing heavy that is likely to adversely affect its morale, mental,

physical, spiritual or social development. Buying, selling, hiring or otherwise dealing in children for purposes of begging, hawking, prostitution or for unlawful immoral purposes are made punishable by long terms of imprisonment.

[28] These are all novel. Presently the CRA has been promulgated into Law in 15 States: Abia, Anambra, Bayelsa, Eboniyi, Ekiti, Imo, Jigawa, Kwara, Lagos, Nassarawa, Ogun, Ondo, Plateau, Rivers, Taraba.

[29] See The Child Rights in Nigeria, <http://events.tigweb.org/18037> accessed 13th November, 2011.

[30] Frances Lawrenz, James F Lembo and Thomas Schade, “Times Series Analysis of the Effect of a Domestic Violence Directive on the Number of Arrests per Day” (1988) *Journal of Criminal Justice* 493.

[31] Ibid.

[32] Judge Leonard P Edwards, ‘Reducing Family Violence: The Role of the Family Violence Council’ [1992] *Juvenile & Family Court Journal* 1.

[33] 1 *Juvenile and Family Justice Today* No 4 (1993).

[34] Ibid.

[35] Ibid.

[36] Ibid.

[37] Ibid.

[38] See M Brygger and J Edleson, ‘The Domestic Abuse Project: A Multi-system Intervention in Woman Battering’ (1987) 2 *Journal of Interpersonal Violence* 324; M Straus, R Gelles and S Steinmetz, *Behind Closed Doors: Violence in the American Family* (1980, Anchor Books); Dobash and Dobash, *Violence Against Wives* (1979, Free Press); Van

Nostrand Reinhold, *Battered Women* (M Roy, editor) (1977). For further reading, see Tjaden, Patricia & Thoennes, Nancy, National Institute of Justice and the Centers of Disease Control and Prevention, “Extent, Nature and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey,” (2000); Costs of Intimate Partner Violence Against Women in the United States. 2003. Centers for Disease Control and Prevention, National Centers for Injury Prevention and Control. Atlanta, GA; Bureau of Justice Statistics Crime Data Brief, *Intimate Partner Violence, 1993-2001*, February 2003; U.S. Department of Justice, Bureau of Justice Statistics, “Criminal Victimization, 2005,” September 2006; U.S. Department of Justice, Bureau of Justice Statistics, “Intimate Partner Violence in the United States,” December 2006; Frieze, I.H., Browne, A. (1989) Violence in Marriage. In L.E. Ohlin & M. H. Tonry (eds.) *Family Violence*. Chicago, IL: University of Chicago Press.

[39] It also recognizes that one of the most basic Civil Rights of any person is to associate with their children; that the vast, vast majority of mothers and fathers are good people and good parents trying to do the best they can; that most practitioners in the present “system” mean well but are operating in a difficult environment where there is great administrative power, that the “best interests of the child” are served by recognition of these rights and regular and equal contact with both parents.

[40] “Domestic Violence” Retrieved from http://lawbrain.com/wiki/Domestic_Violence [accessed on the 09/02/2012]

[41] Ibid.

[42] See <http://legal-dictionary.thefreedictionary.com/Domestic+dispute> accessed on 14th February, 2012.

[43] Ibid.

[44] Ibid.

[45] Ibid. see also Va. St. section 18.2-57.2 Code 1950, section 18.2-57.2.

[46] <http://legal-dictionary.thefreedictionary.com/Domestic+dispute>
accessed on 14th February, 2012.

[47] Ibid. For more detail view see, Douglas, Heather, and Lee Godden
“The Decriminalization of Domestic Violence: Examining the Interaction
between the Criminal Law and Domestic Violence.” (2003) *Criminal Law
Journal* 27 (February), 32-43.

[48] See Violent Crime Control and Law Enforcement Act of 1994.

[49] “Domestic Violence” Retrieved from
http://lawbrain.com/wiki/Domestic_Violence [accessed on the
09/02/2012]

[50] Ibid.

[51] “Domestic Violence” Retrieved from
http://lawbrain.com/wiki/Domestic_Violence [accessed on the
09/02/2012]

[52] Ibid.

[53] Ibid.

[54] Ibid.

[55] ‘Domestic Violence and Self-help’ (1990) NLJ 127.

[56] Ibid.

[57] Ibid.

[58] D Rhodes and S McNeill (Editors), *Women Against Violence Against Women* (1985, Onlywomen Press) (London); J Hanmer, J Radford and E Stanko (Editors), *Women, Policing and Male Violence: International Perspectives* (1989, Routledge) (London).

[59] [1992] 1 All ER 306.

[60] [1992] 4 All ER 889.

[61] Ibid at p 900.

[62] The United Kingdom is party to numerous treaties regarding the rights of children, notable are: United Nations Convention on the Rights of the Child, ratified 12/16/1991; Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, signed 9/7/2000; Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, ratified 6/24/2003; United Nations Declaration of the Rights of the Child, ratified 1/15/1992; European Convention on the Adoption of Children, ratified 12/21/1967, entered into force 4/26/1968; European Convention on the Legal Status of Children born out of Wedlock, ratified 2/24/1981, entered into force 5/25/1981; Convention Against Discrimination in Education, accepted by the UK 3/14/1962; Convention for the Protection of Human Rights and Fundamental Freedoms, acceded to 2/24/1967; Hague Convention on the Civil Aspects of International Child Abduction, ratified 10/20/1986; Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, signed 1/4/2003; Hague Convention on the Protection of Children in Intercountry Adoption, ratified 2/27/2003; European Convention on the Adoption of Children, ratified 12/21/1967; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, acceded to 7/9/1970; International Covenant on Civil and Political

Rights, ratified 5/20/1976; Convention on the Elimination of All Forms of Discrimination Against Women, ratified 4/8/1976; The European Convention on the Recognition and Enforcement of Decisions Concerning the Custody of Children, ratified 4/21/1986; Minimum Age Convention, ratified 7/6/2000; Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ratified 3/22/2000; Universal Declaration of Human Rights; International Covenant on Economic, Social and Cultural Rights, ratified 5/20/1976.

[⁶³] Elizabeth A Sheehy, Julie Stubbs and Julia Tolmie, ‘Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations’ (1992) 16 Crim LJ 369.

[⁶⁴] Ibid.

[⁶⁵] J Scutt, Even in *The Best of Homes: Violence in the Family* (Penguin Books).

[⁶⁶] (1991) 53 A Crim R 362.

[⁶⁷] Ibid at p 368.

[⁶⁸] (1992) 16 Crim LJ 360.

[⁶⁹] (1992) 16 Crim LJ 271.

[⁷⁰] Children and Young Persons (Care and Protection) Act 1998 (NSW); Care and Protection of Children Act 2007 (NT) (NOTE: Not all provisions are in force); Child Protection Act 1999 (Qld); Children’s Protection Act 1993 (SA); Children, Young Persons and their Families Act 1997 (Tas); Children, Youth and Families Act 2005 (Vic); Children and Community Services Act 2004 (WA).

^[71] Other relevant legislations are: Children and Young Persons (Care and Protection) Amendment (Parental Responsibility Contracts) Act 2006 (NSW); Child Protection (Offenders Registration) Act 2000 (NSW) Crimes Act 1900 (NSW); Commission for Children and Young People Act 1998 (NSW); the Ombudsman Act 1974 (NSW); Family Law Act 1975 (Cth); Information Act 2006 (NT); Disability Services Act 2004 (NT); Criminal Code Act 2006 (NT) Family Law Act 1975 (Cth); Commission for Children and Young People and Child Guardian Act 2000 (Qld); Education (General Provisions) Act 2006 (Qld); Public Health Act 2005 (Qld) Adoption of Children Act 1964 (Qld); Family Law Act 1975 (Cth); Young Offenders Act 1994 (SA) Adoption Act 1988 (SA); *Children's Protection Regulations 2006 (SA)*; Family Law Act 1975 (Cth); Family and Community Services Act 1972 (SA); The Family Violence Act 2004 (Tas) Family Law Act 1975 (Cth); Adoption Act 1993 (ACT); Human Rights Act 2004 (ACT); Human Rights Commission Act 2005 (ACT); Public Advocate Act 2005 (ACT); Family Law Act 1975 (Cth); Working with Children (Criminal Record Checking) Act 2004 (WA); Family Court Act 1997 (WA); Adoption Act 1994 (WA); Family Law Act 1975 (Cth); Working with Children Act 2005 (Vic); Child Wellbeing and Safety Act 2005 (Vic); The Charter of Human Rights and Responsibilities Act 2006 (Vic); Family Law Act 1975 (Cth). See generally for more on this, Bromfield, L. M., & Holzer, P. J. *A national approach for child protection: Project report*. (2008) Retrieved 13th November, 2011, from <<http://www.aifs.gov.au/nch/pubs/reports/cds/mac/cds/mac.pdf>>

^[72] Magid, Mohamed. "Affecting Change as an Imam." In Maha B. Alkhateeb and Salma Elkadi Abugideiri, (Eds.). *Change From Within: Diverse Perspectives on Domestic Violence in Muslim Communities*, (2007).pp. 188-202); Great Falls, VA: Peaceful Families Project. <http://www.peacefulfamilies.org/magid.html>; Memon, Kamran. "Wife

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[73] Sura 30 Ayat 21

[74] Sura 9 Ayat 71

[75] Sura 16 Ayat 90

[76] (An Nisa 4:19)

[77] (2:229-237; 4:19; 4:25)

^[78] (30:21; 9:71)

^[79] (see Qur'an 4:19)