



A SOCIO-LEGAL STUDY ON ADEQUACY OF  
LAWS IN PROVIDING PROTECTION FOR  
BATTERED WIVES IN MALAYSIA

BY

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## **ABSTRACT**

This thesis examines the adequacy and effectiveness of the legal principles governing Domestic Violence Act (DVA) 1994 in protecting battered wives. The study works on the premise that despite the presence of a specific law, the occurrence of violence within the household never ends. In assessing the efficacy of the existing law, an empirical research was conducted utilizing a qualitative method apart from conducting library research. Files from courts, the welfare department and police department were examined to identify the various problems encountered by battered wives when dealing with violence committed against them. To further support the data obtained from various agencies, the study also carried out several interviews with relevant authorities to identify consistencies between the reports and personal encounters experienced by those who have handled cases on domestic violence. References were made to several legislations where the law governing DVA acts as a guideline and has been improvised to provide better protection to the victims. In addition, these references provide a firm platform in understanding the methods executed in dealing with domestic violence. Suggestions for reform to the existing DVA by using comparative analysis have also been mooted. The study clearly proves that the Malaysian Domestic Violence Act 1994 has to some extent provided comprehensive rules relating to protection for the victims. However, the absence and ambiguity of certain provisions in providing the necessary and appropriate protection for the victims show that there is lacuna and room for improvement. Malaysia has to a certain degree succeeded in providing a law for the betterment of battered wives. Nonetheless, weaknesses exist in the implementation of the law which in fact is crucial for protecting these women. This study also shows that the nexus between all interrelated agencies is still poor and weak as there is no proper comprehensive and standardized procedure applicable.

## خلاصة البحث

تهدف الرسالة إلى فحص مدى كفاية وفعالية المبادئ القانونية التي تحكم قانون العنف المنزلي DVA (1994) في حماية الزوجات المعنفات. وتنطلق الدراسة من فرضية أنه على الرغم من وجود قانون محدد فإن وقوع العنف داخل الأسرة ما زال موجودا. من أجل تقييم فعالية القانون الحالي فقد أجري البحث التجريبي عن طريق استخدام الأسلوب النوعي إضافة إلى إجراء البحوث المكتبية. وكذلك تمت دراسة الملفات الوادرة من المحاكم ودائرة الرعاية الاجتماعية ودائرة الشرطة لتحديد المشاكل المختلفة التي تواجهها الزوجات المعنفات عند التعامل مع العنف التي ترتكب ضدهن. ولدعم البيانات التي تم الحصول عليها من مختلف الجهات ، أجريت عدة مقابلات مع السلطات المختصة لتحديد الاتساق بين التقارير واللقاءات الشخصية التي يعاني منها أولئك الذين تعاملوا مع الحالات التي تتعلق بشأن العنف المنزلي. وترجع الدراسة إلى إلى العديد من التشريعات التي تنظم فيها قانون العنف المنزلي (DVA) الذي قام بدور توجيهي لتوفير حماية أفضل للضحايا. بالإضافة إلى ذلك توفر هذه المراجع وسيلة قوية إلى فهم أساليب مستخدمة في التعامل مع العنف المنزلي. وتم أيضا اقتراحات لإصلاح القانون الحالي الموجودة عن طريق التحليل المقارن. أثبتت الدراسة بوضوح أن قانون العنف المنزلي الماليزي عام 1994 قد وفرت إلى حد ما القواعد الشاملة المتعلقة بحماية للضحايا. ومع ذلك ، فإن عدم وضوح بعض الأحكام في توفير الحماية اللازمة والمناسبة لضحايا يدل على أن هناك ثغرة ومجالا للتحسين. نجحت ماليزيا إلى حد ما في تقديم قانون من أجل تحسين الزوجات المعنفات. ومع ذلك توجد مواطن ضعف في تطبيق القانون الذي يعتبر أمرا حاسما لحماية هؤلاء النساء. تشير الدراسة أيضا إلى أن العلاقة المترابطة بين جميع الجهات لا تزال لينة وضعيفة حيث لا يوجد إجراء مناسب شامل وموحد للتطبيق.

## APPROVAL PAGE

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## DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Daleleer Kaur Randawar

Signature .....

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INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

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# TABLE OF CONTENTS

Abstract .....	ii
Abstract in Arabic .....	iii
Approval Page .....	iv
Declaration Page .....	v
Copyright Page .....	vi
Acknowledgements .....	vii
List of Tables .....	xiv
List of Figures .....	xv
List of Cases .....	xvi
List of Statutes .....	xvii
List of Abbreviations .....	xix

<b>INTRODUCTION.....</b>	<b>1</b>
Background .....	1
Statement of Problem .....	3
Research Questions .....	4
Hypothesis .....	4
Objectives of the Research .....	4
Literature Review .....	5
Scope and Limitations of the study .....	27
Research Methodology .....	27
Chapterization .....	30

<b>CHAPTER ONE: SOCIAL THEORIES OF THE LAW OF DOMESTIC VIOLENCE - WIFE BATTERING .....</b>	<b>32</b>
1.0 Introduction .....	32
1.1 Historical Perspective: Wife Battering .....	32
1.2 Nature and Scope of Domestic Violence-Wife Battering .....	35
1.3 Theoretical Framework of Wife Battering .....	37
1.3.1 Physical abuse or violence .....	38
1.3.2 Sexual abuse or violence .....	39
1.3.3 Psychological or emotional abuse .....	40
1.3.4 Destruction of property or pets .....	43
1.3.5 Economic or Financial abuse .....	44
1.4 Causes of Domestic Violence .....	45
1.4.1 Alcohol and Drugs Abuse or Substance Abuse .....	45
1.4.2 Stress .....	46
1.4.3 Learned Pattern of Behaviour .....	47
1.4.4 Domination of Power/Powerlessness .....	48
1.5 Theories on Family Violence .....	50
1.5.1 Psychiatric or Psychological Theories .....	51
1.5.2 Sociological or Socio-Cultural analysis .....	51

1.5.2.1 Subculture of Violence Theory .....	52
1.5.2.2 Feminist Theory .....	53
1.5.2.3 Sex Role Socialization Theory .....	54
1.5.2.4 Social Learning Theory .....	56
1.5.2.5 Intergenerational Transmission Theory.....	58
1.5.2.6 Resource Theory.....	59
1.5.2.7 Strain Theory.....	60
1.5.2.8 Social Exchange Theory.....	60
1.5.2.9 Family Systems Theory.....	62
1.5.2.10 The Frustration-Aggression Theory .....	63
1.5.2.11 The Ecological Theory .....	63
1.5.2.12 The Sociobiology or Evolutionary Theory.....	64
1.5.2.13 Social-Situational/Stress and Coping Theory.....	64
1.5.2.14 Provocative Behaviour Theory.....	65
1.6 Overview of Theories.....	65

**CHAPTER TWO: LEGAL FRAMEWORK OF DOMESTIC VIOLENCE WITH EMPHASIS ON WIFE BATTERING..... 68**

2.0 Introduction.....	68
2.1 Statutory Provisions Prior To the Domestic Violence Act 1994 .....	68
2.1.1 Married Women Act 1957 .....	69
2.1.2 Law Reform (Marriage and Divorce) Act 1976.....	70
2.1.2.1 Non molestation order under LRA.....	73
2.1.2.2 Divorce under LRA .....	78
2.1.3 Criminal Law .....	86
2.1.4 Private Prosecutions (Summons) .....	88
2.2 The Domestic Violence Act 1994.....	89
2.3 General Framework of the Domestic Violence Act 1994 (DVA).....	93
2.3.1 Definition of Domestic Violence under the Domestic Violence Act 1994.....	94
2.3.2 Domestic Violence Act 1994 and the Malaysian Penal Code .....	97
2.3.3 Protection Order .....	103
2.3.3.1 Interim Protection Order (IPO) .....	103
2.3.3.2 Protection Order (PO) .....	106
2.3.3.3 Powers of Arrest.....	114
2.3.3.4 Contravention of Protection Order .....	115
2.3.4 Compensation and Counselling .....	116
2.3.4.1 Compensation.....	116
2.3.4.2 Counselling.....	118
2.3.5 Procedures on Protection Order .....	120
2.3.6 Miscellaneous.....	123
2.4 Conclusion.....	130

**CHAPTER 3: ISLAMIC PERSPECTIVE ON WIFE BATTERING IN DOMESTIC VIOLENCE ..... 132**

3.0 Introduction .....	132
3.1 Relationship between Husband and Wife .....	132
3.2 The Theory of Wife Battering in Islamic Law .....	137
3.2.1 Limitations on the Theory of Wife Battering.....	139
(1) Admonition .....	140
(2) Desertion of the Marriage Bed .....	141
(3) Light Beating .....	142
3.3 Legal Provisions on Wife Battering .....	146
3.3.1 Fasakh .....	147
3.3.2 Ta'liq.....	150
3.3.3 Other Remedies-Injunction under Islamic Family Law (Federal Territories) Act 1984 .....	153
3.3.4 Other Remedies-Injunction under Specific Relief Act 1950 .....	154
3.6 Conclusion.....	155

**CHAPTER 4: EMPIRICAL STUDY ON THE LEGAL MECHANISMS AND ENFORCEMENT OF THE DOMESTIC VIOLENCE ACT ..... 156**

4.0 Introduction .....	156
4.1 Demographic Study on Domestic Violence Cases Involving Wife Battering In the State of Selangor .....	157
4.1.1 Survey of court/welfare department files.....	157
4.1.2 Survey of Investigation Papers .....	186
4.1.3 Survey of Charge Files.....	187
4.2 Analysis of Data .....	189
4.2.1 How effective are the legal provisions governing Domestic Violence Act in providing protection for the battered wives?.....	189
4.2.1.1 Lack of Implementation .....	190
4.2.1.2 Lack of effectiveness of Interim Protection Order.....	191
4.2.1.3 Issuance of Interim Protection Order Not Standardized .....	194
4.2.1.4 Minimal use of Protection Order .....	195
4.2.1.5 Insufficient Records .....	197
4.2.1.6 Leniency in Punishment.....	198
4.2.1.7 Delay in Obtaining an Interim Protection Order.....	199
4.2.1.8 Unaware of the Processes and Procedures .....	202
4.2.1.9 Delay in Obtaining Medical Reports .....	203
4.2.1.10 Causes and Common Beliefs of Wife Battering .....	205
4.2.1.11 Relying on the Penal Code.....	207
4.2.1.12 Lack of Effectiveness to Invoke Contravention Orders.....	208
4.2.1.13 Delay in Investigations.....	208
4.2.1.14 Failure to Utilize Compensation Orders .....	209
4.2.1.15 Insufficient use of the Counselling Orders.....	210
4.2.2 What are the possible reforms viable to the Act?.....	211
4.2.2.1 The Domestic Violence Act be made Independent.....	211
4.2.2.2 Standardized Issuance of Interim Protection Order with Mandatory Warrant of Arrest .....	213
4.2.2.3 Commensurate the Punishment Orders.....	213

4.2.2.4 Strict Rules on Withdrawing a Particular Case.....	215
4.2.2.5 Mandatory Counselling.....	216
4.2.2.6 Compulsory Pre-Marital Courses.....	217
4.2.2.7 Enforcement of Compensation Order.....	218
4.2.2.8 Establishment of a service agency.....	218
4.2.2.9 Increase of Awareness Programmes.....	219
4.3 Conclusion.....	220

**CHAPTER FIVE: AN APPRAISAL OF SELECTED LEGISLATIONS AND INTERNATIONAL HUMAN RIGHTS LAW PERTAINING TO WIFE BATTERING.....221**

5.0 Introduction.....	221
5.1 The United Nation Convention on the Elimination of All Forms of Discrimination against Women.....	222
5.2 Best Practices on Domestic Violence Legislation.....	227
5.2.1 A Comprehensive Definition of Domestic Violence.....	227
5.2.2 Measures of Protection for the Battered Wife.....	233
5.2.2.1 Interim/Immediate Protection Order.....	234
5.2.2.2 Occupation Order.....	239
5.2.2.3 Child Custody and Visitation Rights.....	243
5.2.2.4 Protection Order.....	246
5.2.3 Police Power.....	249
5.2.4 Protection, Support and Assistance to Victims.....	254
5.2.4.1 Employment Benefits.....	254
5.2.4.2 Mediation/Reconciliation Programmes.....	255
5.2.4.3 Compensation/Monetary Relief.....	257
5.2.4.4 Counselling.....	260
5.2.5 Inter Agency Collaboration.....	263
5.2.6 Dissemination of Information and Providing Education and Training.....	265
5.3 Conclusion.....	267

**CHAPTER SIX: CONCLUSIONS AND RECOMMENDATIONS.....269**

6.0 Introduction.....	269
6.1 Strength and weaknesses in the law and suggestions for reforms.....	270
6.1.1 Elucidation of the Meaning, Scope and Application of Domestic Violence.....	271
6.1.1.1 Meaning and Scope of Domestic Violence.....	272
6.1.1.2 Application and Reference of the DVA and the Penal Code.....	274
6.1.2 Inadequacy of the Protection provided to Battered Wives.....	276
6.1.2.1 Breach and Contravention of the IPO.....	277
6.1.2.2 Issuance of Orders.....	278
6.1.3 Inadequacy of the Procedure.....	282
6.1.3.1 Delay in obtaining IPO.....	282
6.1.3.2 Standardizing the Issuance of IPO.....	285
6.1.3.3 Delay in the Investigation Process.....	287
6.1.3.4 Delay in obtaining Medical Reports.....	290

6.1.4 Provisions regarding Compensation, Counselling and Temporary Custody and Visitation of Children .....	291
6.1.4.1 Compensation.....	292
6.1.4.2 Counselling .....	294
6.1.4.3 Provision pertaining to Temporary Custody Order and Visitation Rights.....	297
6.1.5 Rehabilitation Measures and Reconciliation Processes .....	298
6.1.5.1 Rehabilitation Measures.....	298
6.1.5.2 Mediation Process .....	301
6.1.6 Inter Agency Collaboration.....	303
6.1.7 Social Reform .....	305
6.1.7.1 Awareness of the Procedure.....	306
6.1.7.2 Safe keeping of Records and Documents .....	310
6.1.7.3 Employment Benefits.....	312
6.2 Latest Amendments To The Domestic Violence Act 1994 And The Direction For Future Research .....	312
6.3 Conclusion.....	313

<b>BIBLIOGRAPHY .....</b>	<b>315</b>
---------------------------	------------

## LIST OF TABLES

<u>Table No.</u>		<u>Page No.</u>
1(a)	Duration in Obtaining Medical Reports from the Shah Alam and Petaling Jaya Courts	174
1(b)	Duration in Obtaining Medical Reports from the Petaling and Subang Welfare Departments	175
2.0	Classification of Offences under the Penal Code from 1998 to 2008 (January-July)	100
2(a)	Duration in the Issuance of Interim Protection Order from the Petaling Jaya and Shah Alam Courts	176
2(b)	Duration in the Issuance of Interim Protection Order from the Petaling and Subang Welfare Departments	177
3(a)	Reasons for termination of IPOs from the Petaling Jaya and Shah Alam Courts	179
3(b)	Reasons for IPOs being terminated from the Petaling and Subang Welfare Departments	180
4(a)	Length of time taken to complete Investigation from the Petaling Jaya and Shah Alam Courts	183
4(b)	Length of time taken to complete Investigation from the Petaling and Subang Welfare Department	184
5	Contravention of IPO from the Petaling Jaya and Shah Alam Courts	185
6	Charge Files	188

## LIST OF FIGURES

<u>Graph No.</u>		<u>Page No.</u>
1(a)	Total number of files from the Petaling Jaya and Shah Alam Courts	158
1(b)	Total number of files from the Petaling and Subang Welfare Departments	159
2(a)	Age Demographic of Victims of Domestic Violence from the Petaling Jaya and Shah Alam Courts	160
2(b)	Age Demographic of Victims of Domestic Violence from the Petaling and Subang Welfare Departments	161
3(a)	Ethnicity of Victims of Domestic Violence from the Petaling Jaya and Shah Alam Courts	163
3(b)	Ethnicity of Victims of Domestic Violence from the Petaling and Subang Welfare Departments	164
4(a)	Occupations of Victims of Domestic Violence from the Petaling Jaya and Shah Alam Courts	165
4(b)	Occupations of Victims of Domestic Violence from the Petaling and Subang Welfare Departments	166
5(a)	Occupations of Perpetrators of Domestic Violence from the Petaling Jaya and Shah Alam Courts	167
5(b)	Occupations of Perpetrators of Domestic Violence from the Petaling and Subang Welfare Departments	168
6(a)	Penal Codes Employed by the Police in Domestic Violence cases from the Petaling Jaya and Shah Alam Courts	169
6(b)	Penal Codes Employed by the Police on Domestic Violence cases from the Petaling and Subang Welfare Departments	170
7(a)	Causes of Wife Battering from the Petaling Jaya and Shah Alam Courts	172
7(b)	Causes of Wife Battering from the Petaling and Subang Welfare Departments	173

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Abdul Hanif v Rabiah, (1996) 11 JH 47  
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## LIST OF ABBREVIATIONS

Asian Institute for Development Communication (AIDCOM),  
Perintah Perlindungan Interim (PPI)  
The Convention on the Elimination of All Forms of Discrimination Against Women  
(CEDAW)  
Acute stress disorder (ASD)  
Posttraumatic Stress Disorder (PTSD)  
Interim Protection Order (IPO)  
Protection Order (PO)  
Law Reform (Marriage and Divorce) Act 1976 (LRA)  
Joint Action Group Against Violence Against Women (JAG)  
Women's Aid Organization (WAO)  
Association of Women Lawyers (AWL)  
Selangor and Federal Territory Consumers' Association-Women and Media Section  
(SCA) Malaysian Trade Unions' Congress-Women's Section (MTUC)  
University Women's Association (University Malaya)  
National Council of Women's Organizations (NCWO)  
All Women's Action Society (AWAM)  
Sabah Women Action and Resource Group (SAWO)  
Sarawak Women for Women Society (SWWS)  
Women's Crisis Centre (WCC)  
Proposed Domestic Violence Act (PDVA)  
Women's Affairs Department of the Ministry of National Unity and Social  
Development (HAWA)  
Non Government Organisations (NGO)  
Sisters in Islam (SIS)  
Domestic Violence Act (DVA)  
One Stop Crisis Centre (OSCC)  
Criminal Procedure Code (CPC)  
Short Messages (SMS)  
World Health Organization (WHO)  
Child Protection Act (CPA)

## **INTRODUCTION**

### **BACKGROUND**

In Malaysia, the term Domestic Violence is commonly used to refer to violence against women within a family. Tragically the perpetrator, the abuser or the offender is the husband of a woman, i.e. the man whom she is supposed to be closest to and trusts the most in a relationship. Violence within the family unit is not something new and has existed since the beginning of society. Many consider the beating of a wife or child as a male prerogative, right or privilege and by extension not a crime at all. Often some women consider this act as a way to instill family honour. This is quite a norm in most families and is regarded as a social acceptance and therefore more important than to redress the wrongs inflicted on a woman's mind and body.

Family can be considered as a place of refuge from stress and strains of the outside world. This may be true for some but sometimes the home can also be a very dangerous and unsafe place for women and children. Battered women often stay put in the confines of their horrible lives because they have nowhere to go or have no means of sustaining themselves. Therefore, the cycle of violence goes on and the abusive man continues beating, abusing, threatening and mentally torturing the woman.

Besides wife battering, child abuse too occurs within the family. A large number of children are also sexually abused by those whom they love and trust. These abusers include a parent, a stepparent, a grandparent, a close relative etc, regardless of their age. Like wife battering, frequent and repeated abuse on a child impacts the child's mental and physical development negatively. The problem of wife battering

and child abuse is not a new one. Many cases of wife battering and child abuse are never detected and some are not even reported. Since this offence happens within the walls of a home, between a husband and wife, it is usually viewed as 'private family matter'. Hence, at times these problems are just swept under the carpet and such cases are often never detected or reported.

In Malaysia, the issue of wife battering is common. There are a number of reports on wife battering and domestic violence in particular. Reports of such incidences are published in the media such as newspapers and magazines and are broadcasted over radio and television.<sup>1</sup>

Statistics of recent years show an increasing number of domestic violence cases reported to the police. In 2002, 2755 cases were reported to the police and this number increased to 3093 in 2005. In 2006 it increased to 3264 cases and increased again to 3756 cases in 2007.<sup>2</sup> Out of these numbers of domestic violence cases reported, in 2002, 1700 cases involved wives being beaten by their husbands. In 2005, there were 1825 cases of wife battering. In the following year, 1850 cases of wife battering were reported and in 2007 the number of wives beaten by their husbands

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<sup>1</sup> Many cases of wife battering and even domestic violence were reported by medias especially the newspapers. For further details see Zulkifli Abdul Rahman, Elizabeth Looi & Florence A. Samy, "Shahrizat: Family violence still a serious problem", *The Star*, 2006, 13 April, p.16; Zanifah Md. Nor, "Kes Keganasan Rumah Tangga Makin Serius", *Utusan Malaysia*, 1997, 3 Februari, p.19; Sariha Mohd Ali, "Suami cederakan isteri dengan seterika panas", *Berita Harian*, 2003, 1 April, p.14; Joseph Masilmany, "The wealthy who beat up their wives", *The Sun*, 2002, 22 August, p.6; Hizreen Kamal, "Be strong, mothers told", *New Straits Times*, 2000, 28 August; Mimi Syed Yusof, "Don't tolerate abuse, women told", *New Straits Times*, 2002, 18 August; Rosmah Dain, "Keganasan rumah tangga: Masalah peribadi antara punca", *Utusan Malaysia*, 2003, 18 Jun; Zulkiflee Bakar, "Tidak serasi... isteri dituduh tidak siuman", *Utusan Malaysia*, 2001, 5 Jun; Hussain Said "Bakar rumah, bunuh diri selepas bertengkar", *Berita Harian*, 2003, 19 Mac; Mohd Amin Jalil, "Kes dera wanita, budak perlu diberi perhatian", *Berita Harian*, 2003, 25 Februari; Zulkifli Abdullah, "Suami bakar isteri minta cerai", *Utusan Malaysia*, 2003, 19 Mac; "Girl, 18, claims hubby threw acid on her", *The Star*, 2004, 16 June, p.10; "Suami pasang radio ketika rotan isteri", *Berita Harian*, 2006, 12 Jun; "Wanita dipukul, digigit suami di rumah madu", *Berita Harian*, 2006, 3 Januari; "Man who slashed wife for dyeing hair jailed", *New Straits Times*, 2004, 7 September; "Keganasan rumah tangga semakin membimbangkan", *Berita Harian*, 2003, 30 June.

<sup>2</sup> Polis Diraja Malaysia (PDRM), *Perangkaan Kes-Kes Keganasan Rumahtangga Bagi Tahun 1998 Hingga 2008 (Januari-Julai)*, Bukit Aman, Kuala Lumpur.

increased to 2205 cases.<sup>3</sup>

In Malaysia, to curb this problem, the Domestic Violence Act 1994 (Act No. 521) was passed in early 1994 by the Malaysian Parliament. The aim of this act is to help victims in domestic violence cases. This act offers battered women protection from the abuser in the form of protective orders and provides for compensation and counseling to be made available to them.

The Domestic Violence Act has been in existence for about ten years since its implementation. Yet, violence within a family is prevalent. Therefore, this study is undertaken to examine the effectiveness of the legal principles governing Domestic Violence and whether the existing legal provisions are sufficient to protect wives who are battered by their husbands. The examination extends to the laws of Domestic Violence applicable in Malaysia governing Muslims and Non Muslims. The outcry by concerned bodies and societies has made this study possible.

## **STATEMENT OF PROBLEM**

This research was undertaken based on the premise that, the present law governing Domestic Violence is not sufficient in providing protection to the victims, and it mainly emphasizes on wives battered by husbands. There are certain flaws in the act that need to be addressed. These flaws have lead to inefficiency when putting the legal provisions into practice. Lack of adequacy has lead to an increase in the number of domestic violence offences in many households.

The application of the existing legal provisions also appears to cause inconvenience to the battered wives often leaving them unable to resort to the protection under the Act. This study will examine the legal principles of wife battering

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<sup>3</sup> Polis Diraja Malaysia (PDRM), *Perangkaan Kes-Kes Keganasan Rumahtangga Bagi Tahun 1998 Hingga 2008 (Januari-Julai)- Mengikut Perhubungan*, Bukit Aman, Kuala Lumpur.

in theory as well as in practice to improve and increase legal protection for battered wives.

## **RESEARCH QUESTIONS**

Thus, the research questions posited in this study are:

- (1) How effective are the legal provisions governing the Domestic Violence Act in providing protection for battered wives?
- (2) What are the possible reforms viable to the Act?

## **HYPOTHESIS**

This research is based on the hypothesis that the law on Domestic Violence does not provide sufficient and adequate remedy for victims. Existing legal provisions have technically caused the inability in providing protection and remedy for battered wives. It can be seen that the Domestic Violence Act is not an independent act, as it has to work in tandem with the Penal Code.

## **OBJECTIVES OF THE RESEARCH**

The objectives of the research are:

1. To examine the current legal provisions (substantive law and procedure) which provide protection to women involved in domestic violence.
2. To study the strength and weaknesses of the existing substantive and procedural laws and identify problems in the implementation and enforcement of these laws.
3. To exploit the findings of this research which will serve as a platform for proposed law and social reforms to improve the implementation of the law and

to protect women's right in Malaysia. Therefore, it is hoped that this study will improvise on the existing laws and provide better solutions for the victims.

## LITERATURE REVIEW

There are extensive literatures available on the issue of domestic violence from the social and sociological perspective. An increase in the number of wife battering and child abuse cases have made the damage and horror now more publicly visible now. The battle against domestic violence involving wife battering appears endless and in order to confront this issue, efforts must be made to address the root of the problem. A man's abusive nature should not destroy a woman's life. The discussion focuses on many crucial aspects relating to domestic violence including the definition of domestic violence, causes of violence within a home, involvement of the police, the response of the legal system towards such cases, the battered women syndrome, protection and solutions available for the victims. The available literature is undeniably extensive and detailed.

Violence against wives is an ancient practice. Researchers such as Ann Duffy,<sup>4</sup> Jerry Brinegar,<sup>5</sup> Richard J. Gelles,<sup>6</sup> Gwen P. Devasto,<sup>7</sup> Susan Atkins and Brenda Hoggett<sup>8</sup> as well as Fareda Banda<sup>9</sup> have agreed that violence against women has been

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<sup>4</sup> Ann Duffy, *Feminist Issues Race, Class and Sexuality*, Chapter 6, 'The Feminist Challenge: Knowing and Ending the Violence' pp. 158, In *Feminist Issues Race, Class and Sexuality* edited by Nancy Mandell, York University.

<sup>5</sup> Jerry Brinegar, *Breaking Free From Domestic Violence*, (Minneapolis: Compcare, 1992) pp. 22-44

<sup>6</sup> Richard J. Gelles, *Intimate Violence in Families*, (United States of America: Sage Publications, 1997), p. 19

<sup>7</sup> Gwen P. Devasto, "Victims of Domestic Violence", In *Victimology: A Study of Crime Victims and Their Roles*, edited by Judith M. Sgarzi and Jack McDevitt, (New Jersey, Prentice Hall, 2003), p. 118, The writer explains domestic violence has been a problem since time began. Battering is prevalent not because of psychological defects in the abuser or victim, but because this behavior has been deeply rooted in our legal and social traditions.

<sup>8</sup> Susan Atkins and Brenda Hoggett *Women and the Law*, 1984 'Power and Violence in the Home', Chapter 7 pp. 127