

MEMBERS OF THE CEDAW STEERING COMMITTEE

1. Ministry of Foreign Affairs
2. Ministry of Human Resources
3. Ministry of Rural and Regional Development
4. Ministry of Entrepreneur and Cooperative Development
5. Ministry of Agriculture and Agro Based Industry
6. Ministry of Higher Education
7. Ministry of Education
8. Ministry of Internal Security
9. Ministry of Home Affairs
10. Ministry of Housing and Local Authority
11. Ministry of Health
12. Attorney General's Chambers
13. Department of Legal Affairs, Prime Minister's Department
14. Department of Islamic Development of Malaysia (JAKIM)
15. Public Services Department
16. National Registration Department
17. Department of Syariah Judiciary Malaysia
18. Department of Social Welfare (DSW)
19. Department of Women's Development (DWD)
20. Employees Provident Fund (KWSP)
21. Social Security Scheme (PERKESO)
22. Department of Immigration
23. Legal Aid Bureau
24. Small and Medium Industries Development Corporation (SMIDEC)
25. Central Bank of Malaysia
26. National Council of Women's Organisations (NCWO)

SEVERAL LEGISLATIONS THAT HAVE BEEN ENACTED OR AMENDED BY THE GOVERNMENT

- The amendments to the Income Tax Act 1967 provides an option for married women to have separate income tax assessment from the husband;
- The amendments to the Distribution Act 1958 (Act 300) in 1997 repealed the distinction between wives and husbands in terms of the distribution of the estate of an intestate to the surviving spouse.
- Amendments to the Guardianship of Infants Act 1961 (Act 351) in 1999 provides legal recognition to the parental rights of mothers. Previously, only the father of an infant was recognised as the guardian of his/her infant's person and property. The Act now provides that: "In relation to the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income of any such property, a mother shall have the same rights and authority as the law allows to a father, and the rights and authority of mother and father shall be equal."
- The Juvenile Court Act 1947, the Women and Girls Protection Act 1973 and the Child Protection Act 1991 were repealed and streamlined into the Child Act 2001 which provides for the care, protection and rehabilitation of children including the girl child.
- The Amendment to the Land (Group Settlement Areas) Act 1960 in 2002 provides wives of settlers a joint stake in the land awarded to their husbands.
- The Amendment to the Pensions Act 1980 in 2002 allows widows who remarried to continue receiving their husband's pensions.
- The enactment of the Domestic Violence Act in 1994 provides protection for battered wives and other victims of domestic violence.

ACHIEVEMENTS OF THE MINISTRY OF WOMEN, FAMILY AND COMMUNITY DEVELOPMENT SINCE ITS INCEPTION

INTRODUCTION

1. The Ministry of Women and Family Development was established on 17 January 2001.
2. Subsequently, the ministry was expanded on 27 March 2004 and renamed the Ministry of Women, Family and Community Development.
3. The Ministry of Women, Family and Community Development functions through three main approaches:
 - (i) drafting of policies, legislations and Government regulations;
 - (ii) advocacy programmes with the cooperation of other ministries, departments and agencies as well as non-governmental organisations (NGOs) and the private sector; and
 - (iii) implementation of the Ministry's own programmes as well as with other Government agencies.

ACHIEVEMENTS

4. It is noted that since the inception of the Ministry, other Government agencies, the NGOs and the private sector are more sensitive to matters and issues related to gender equality. Among the major achievements of the Ministry are:
 - (i) **Drafting of policies, legislations and Government regulations**
 - (a) **Amendment to the Article 8(2) of the Federal Constitution**
 - Article 8(2) of the Federal Constitution was amended on 1 August 2001 to disallow discrimination on the basis of gender apart from religion, race, descent and place of birth.

- This amendment has a profound impact on all existing legislations and Government regulations. It means that legislations and regulations that have elements of gender discrimination have to be amended accordingly.
- Policy makers are more aware now on the importance of gender equality at all levels of the Government machinery.

(b) Pensions Act 1980

- The Pensions Act was amended so that widows (whose husbands were civil servants) will not lose their pensions even after they remarry. The purpose of this new ruling is to protect and ensure the well-being of widows and their children. Before this new ruling, widows who remarry experience hardship in taking care of their families and bringing up their children due to the loss of their husbands' pensions.

(c) Land (Group Settlement Areas) Act 1960 (Revised 1994)

- This Act, which was amended by the Parliament in 2002, allows wives or ex-wives or the next-of-kin of settlers - who have jointly developed the estate - to become joint owners of the settlement.

(d) Penal Code

- Section 375 of the Penal Code was amended where the penalty for rape offences increased to a maximum of 30 years imprisonment, for incest to a minimum of 15 years imprisonment and death sentence for rape cases that caused the death of the victims. The tough sentences will act as a deterrent to reduce the number of rape and incest cases.

(e) Immigration Regulations

- Effective 1 September 2001, the Immigration Regulation was amended to allow foreign men married to Malaysian women to renew their social visit pass every year while foreign women who are divorced or separated from their Malaysian husbands can apply for social visit pass on an annual basis.

(f) Policy on 30% Women in Decision-Making Level

- The Government has agreed to the policy of having at least 30% women in decision-making level in the public sector. The Government hopes that the private sector and non-governmental organisations will also adopt this policy.

(g) Uniformity of the Syariah Law

- The government is taking efforts to standardise the Syariah Law at the state level. Currently five model laws i.e Islamic Family Law, Administration of Islamic Law, Syariah Court Evidence, Syariah Criminal Procedure and Syariah Court Civil Procedure were adopted by all the states except Kedah, Perlis, Pahang, Kelantan and Terengganu including the Federal Territories. This uniformity among the states particularly the Islamic Family Law will better protect and safeguard the rights of women and children.

In line with the Government's aspiration to strengthen the family institution and promote "family first" spirit, the following regulations have been amended or formulated:

(h) EPF Regulations

- The Employees Provident Fund Regulation was amended and effective from November 2002, the financial assistance to families on the demise of a contributor was increased from RM2,000 to RM2,500. This amendment was made to reduce the burden of the deceased families.

(i) Unrecorded Leave

- Male civil servants can now enjoy longer paternity leave to assist their wives and children. In line with the "family first policy", the Government has increased the paternity leave from three days to seven days effective 2003.
- Beginning 2003, civil servants are entitled to three days of compassionate leave with regards to the demise of their nearest family members. The private sector is also encouraged to adopt this policy.

(j) Stamp Duty

- To reduce the financial burden on transfer of property among family members, instruments of transfer between husband and wife, parents and children on the basis of love and affection are exempted from 50% of the stamp duty.

(k) Child Care Centre

- Establishment of community based Child Care Centres to increase the access of low-income parents to quality child care services.

(ii) Advocacy programmes with the cooperation of non-governmental organisations (NGOs) and the private sector;

(a) Special Assistance to NGOs

- The Ministry of Women, Family and Community Development has established smart partnerships with NGOs to implement programmes, such as legal literacy, skills training and awareness campaigns. Special funds have been allocated to implement these programmes. For the period 2001 through 2004, RM57.6 million has been disbursed to 547 NGOs and the State Women and Family Development Councils for the implementation of 700 capacity development programmes that benefited 448,273 women.

(b) Mentor-mentee Training Programme

- The mentor-mentee training programme under the Micro-Credit Scheme of Bank Simpanan Nasional was implemented by the Ministry with the cooperation of the National Association of Women Entrepreneurs Malaysia (NAWEM) to assist new women entrepreneurs to obtain systematic loans as well as to provide training and to encourage networking among women entrepreneurs.

(c) Incentives To Private Companies

- The government is encouraging the private sector to be good corporate citizens and contribute to society. In this regard, incentives are provided to companies

who adopt children of single mothers and support them financially in pursuing their education.

(e) Government Grants

- Annual grants are given to welfare institutions for women and children managed by Non Governmental Organisations (NGOs).

(iii) Implementation of the Ministry's programmes and programmes with other Government agencies

(a) Low Cost Housing

- The Government has introduced the low-cost house ownership programme for single mothers under the Economic Stimulus Package. The single mothers are given priority to own these houses and given 20% discount under the hire-purchase concept of National Housing Company Berhad.

(b) Smart Start Package

- His Majesty the Yang Dipertuan Agong launched the Smart Start package on 31 May 2003, which is a comprehensive guide for newly-weds and those intending to get married. The content of this package, among others, focuses on preparations for marriage, communications within a family, health and parenting.

(c) Nur Sejahtera Clinics and Nur and Family Information Centres

- The Nur Sejahtera Clinics as well as the Nur and Family Information Centres were launched on 4 March 2004. The clinic offers various services such as reproductive health, women and men wellness, cancer screening for women, senior citizens and body weight management programmes for both men and women. Meanwhile, the Nur and Family Information Centres act as referral centres with regards to family institutions and women's health.

(d) Women's Health and Healthy Lifestyle 2005

- This programme aims at enhancing the awareness of women on all aspects of health.

(e) State Women and Family Development Councils

- State Women and Family Development Councils were established in all states and parliamentary constituencies to implement the Government's programmes and activities more effectively at the grassroots level.

(f) Home Office

- The Government is introducing the home office concept to encourage homemakers to earn income from home. Through this concept, women will be able to set-up small-scale businesses or enterprises at home. Presently, the Ministry of Women, Family and Community Development with the cooperation of the Ministry of Housing and Local Government are in the midst of preparing guidelines for the implementation of the concept.

(g) Gender Budgeting

- To ensure that gender equality is incorporated into all government programmes and projects, a pilot project on gender budgeting has been implemented in five ministries that is the Ministry of Education, Ministry of Higher Education, Ministry of Health, Ministry of Human Resources and Ministry of Rural and Regional Development. These ministries are implementing gender budgeting in their operating budget for 2006/2007.

(h) Cabinet Committee on Gender Equality

- In line with the Article 8(2) of the Federal Constitution and the Ministry's vision and mission, the Government has agreed to the setting-up of a Cabinet Committee on Gender Equality. This committee, chaired by the Prime Minister and several Cabinet ministers as its members, oversees the direction, policies as well as monitoring the programmes and projects with regards to women and

family development. At the first meeting of this committee, three important decisions were made as follows:

i. Gender Focal Point

A Gender Focal Point (GFP) to be established in every ministry and relevant Government agencies. The GFP will act as a liaison officer for the Ministry of Women, Family and Community Development in implementing Government programmes and projects with the ultimate aim of achieving gender equality. This will bring about more consideration to be given to issues related to women's development and gender equality in the country.

ii. Special Protection Homes for Women and Children

Special Protection Homes for Women and Children will be set-up in the existing Rumah Nur in five states, namely Kelantan, Pahang, Selangor, Melaka and Sabah. These homes will provide temporary shelter to women and children who are victims of violence. The Rumah Nur in Selangor will be a dedicated shelter for foreign victims of trafficking-in-persons.

iii. Uniformity of Islamic Laws

Action to implement the uniformity of Islamic Laws in Malaysia will be expedited. This is to overcome problems related to the implementation of different Islamic Laws by the various states in the country, which affects the well-being of women and children.

ACHIEVEMENTS AT THE INTERNATIONAL LEVEL

The Ministry of Women, Family and Community Development has played an active role in ensuring the basic rights of women and the development of women, family and community at the international arena. Among the Ministry's activities at international level are:

- (a) The Ministry of Women, Family and Community Development, acting on behalf of the Government of Malaysia, signed a Memorandum of Understanding with the Indonesian Government on 8 August 2002. The spirit of this Memorandum is towards strengthening women and family development cooperation as well as exchanging experiences, knowledge and programmes for the benefit of both countries.
- (b) The Memorandum of Understanding between the Ministry of Women, Family and Community Development and the Government of Iran was signed on 22 July 2002. This Memorandum also aims to enhance cooperation between the two countries in matters related to women and family development.
- (c) The endorsement of the Declaration on Elimination of Violence against Women in the ASEAN Region. This Declaration, signed by the ASEAN Foreign Affairs Ministers in June 2004, stresses the importance of regional cooperation to eliminate violence against women.
- (d) As chairman of the Non-aligned Movement (NAM), Malaysia undertook an initiative to include the concerns of women as part of the agenda of the Movement. In this regard, for the first time, the Ministerial Meeting of NAM on the Advancement of Women was held in May 2005 with Malaysia as the host. The meeting endorsed the Putrajaya Declaration and the Programme of Action for the Advancement of Women in Member Countries of NAM. Among the outcomes of this meeting was the establishment of the NAM Centre for Gender and Development in Kuala Lumpur.
- (e) The Ministry of Women, Family and Community Development organised several workshops and dialogues at the international level. Among them are:
 - i. Asia Regional Workshop on Strengthening Partnerships for Eliminating Gender-based Violence (Kuala Lumpur, 20 – 22 May 2002);
 - ii. The First Ladies' Dialogue on Investing in Peace in conjunction with the Thirteenth Non-Aligned Movement Summit (Putrajaya, 24 February 2003);

- iii. Organisation of Islamic Countries First Ladies' Dialogue on Women, Peace and Development in conjunction with the Tenth OIC Summit (Kuala Lumpur, 17 October 2003); and
- iv. Regional Training Workshop for NGOs and Women Organisations from South East Asia on Poverty Alleviation with the cooperation of the Islamic Development Bank (Kuala Lumpur, 14 – 16 October 2002).

TERM OF REFERENCE FOR GFP

The ministry involved appoints an officer at grade M54 and above as the GFP for that ministry. The officer appointed will have to carry out the following duties:

- i) assist the Government with the implementation of the National Women Policy and the National Action Plan for Women as well as other government policies;
- ii) assist to facilitate the implementation of gender budgeting in the ministry involved;
- iii) assist in compiling sex-disaggregated data and statistics;
- iv) assist to facilitate the implementation of gender mainstreaming in their respective ministries;
- v) provide inputs for talks/intervention notes/reports for delegations to attend conferences/international meetings, and if needed, be part of the country's delegation to the said conferences and meetings;
- vi) provide inputs and assist in preparing country reports with regard to women issues under the purview of their respective ministries;
- vii) provide feedback to MWFCDC, as the main coordination agency, with regard to the progress, challenges and problems faced by the ministry involved, and its agencies in implementing the National Women Policy and the National Action Plan for Women, and also the implementation of other conventions / resolutions that are agreed by Malaysia at the international level;
- viii) attend meetings that are organised by MWFCDC pertaining to the development of women under their respective purviews; and
- viii) attend courses/training to increase the capacity, knowledge and experience of GFPs with regard to women development issues.

Table II: Foreigners Suspected to be Involved in Prostitution Arrested from the Year 2000 until 2005

Years	2000	2001	2002	2003	2004	2005
Arrestee	3,607	4,132	5,149	5,878	5,783	6,484

Source: Royal Malaysian Police, Malaysia

Table III: Statistics on the Number of Foreign Women Saved from Vice Activities from the Year 2004 until February 2006

Countries	Total
Indonesia	150
China	76
Thailand	62
Philippines	52
Myanmar	2
Russia	1
Cambodia	1

Source: Royal Malaysian Police, Malaysia

Table IV: Statistics of Action Taken Against Syndicate of Prostitutions, 2000-2005

Year	2000	2001	2002	2003	2004	2005
Accused In Session Court 372/373 PC	-	-	9	31	73	34
Restricted Residence Act 1933	47	27	24	14	41	64

Source: Royal Malaysian Police, Malaysia.

**Table V: Key Officials in Ministry of Education
According to Sex, 2005**

Post	Total Post	Male	Female	Vacancy	% Female
Secretary General	1	1	0	0	0
Director General	1	1	0	0	0
Deputy Secretary General	2	0	2	0	100
Deputy Director General	6	4	2	0	33.33
Divisional Heads	34	27	5	2	14.71
State Director	15	11	4	0	20

Source: Ministry of Education

**Table VI : Participation by Rural Women in Cooperatives under KEDA
(Kedah Regional Development Authority)**

No.	No. of Co-operatives	Total No. of Women			
		2002	2003	2004	2005
1.	20	998	1,008	1,091	1,139

Source : Ministry of Rural and Regional Development

**Table VII : Board of Directors of Cooperatives under KEDA
(Kedah Regional Development Authority)**

Total No. of Woman As Board of Directors of Cooperatives	2002	2003	2004	2005
		27	30	32

Source : Ministry of Rural and Regional Development

**Table VIII : Trainings for Rural Women to Enhance Skills and Leadership Abilities under
the Ministry of Rural and Regional Development**

No.	Name of agencies	Name of the programme	2004-2005		2003	
			M	F	M	F
1	INFRA Institute For Rural Advancement	Management of Community Institutions Courses	3,490	1,974	2,181	758
2	KEDA Kedah Regional Development Authority	Institutional Development Programme (Cooperatives)	310	142	157	119
3	FELCRA Bhd.	GDW (Rural Vision Movement) Course For Leadership	88	168	50	87

Source : Ministry of Rural and Regional Development

ANNEX VIII

**Table XI: Women Participation in Women Smallholders Group (PWPK) of RISDA
(till August 2005)**

State	No. of PWPK	No. of Members	Type of Project	Gross Income (RM)
Perlis	6	161	Food processing, sewing, rubber leaves flowers and quail rearing	17,665.62
Kedah	53	572	Food processing, sewing, rubber leaves flowers and chili sauce production	468,775.00
P. Pinang	3	40	Rubber leaves flowers and handicraft	20,734.50
Perak	43	819	Food processing, sewing, rubber leaves flowers and chili sauce production	362,323.70
Selangor	39	950	Food processing, sewing, rubber leaves flowers and handicraft	464,842.91
N. Sembilan	49	1,044	Food processing, sewing and rubber leaves flowers	20,165.14
Melaka	32	292	Food processing, sewing, soya drinks, dried soya sheets and rubber leaves flowers	111,314.75
Johor	93	1,770	Food processing, sewing, chili sauce production, handicraft and rubber leaves flowers	1,200,910.50
Pahang	57	1,237	Food processing, sewing, chili sauce production, cash crops, handicraft and chili sauce production	713,027.08
Terengganu	36	694	Sewing, rubber leaves flowers and handicraft, chili sauce production and food processing	340,157.00
Kelantan	96	2,213	Chili sauce production, food processing, sewing/handicraft and rubber leaves flowers	1,123,503.77
Total	507	9,792		4,843,449.97

Source : Ministry of Rural and Regional Development

RESPONSE TO THE ASSERTION REGARDING CERTAIN PROVISIONS IN THE ISLAMIC FAMILY LAW (FEDERAL TERRITORIES) (AMENDMENT) BILL 2005

The Bill makes polygamy easier for men

- (i) We reiterate that Islam favours monogamy and polygamy under Syariah is regarded as an exception. In Syariah polygamy is only permissible when certain conditions are fulfilled. This is reflected in the provisions relating to polygamy in the Islamic Family Law (Federal Territories) Act 1984 (hereinafter referred to as "IFLA"). Under section 23(1) of IFLA before a polygamous marriage can be entered into by a man, the permission of the Syariah Court must be obtained. In considering the application, the existing wife or wives have the right to be present at the hearing of the application. Section 23(4) of IFLA provides that the Court may grant the permission to polygamy if it is satisfied that the proposed marriage is **just and necessary** having regard to circumstances such as sterility, physical infirmity, physical unfitness for conjugal relations, wilful avoidance of an order for restitution of conjugal rights, or insanity on the part of the existing wife or wives.
- (ii) In addition it shall also be satisfied that the applicant is able to support all his wives and dependants, capable of according equal treatment to all his wives and that the proposed marriage would not cause *darar syarie* (harm according to what is normally recognised by Islamic law affecting a wife in respect of religion, life, body, mind, moral or property) to the existing wife or wives.
- (iii) The Bill amended section 23(4) of IFLA by providing that the Court may grant the permission for polygamy if it is satisfied that the proposed marriage is **just or necessary** having regard to the circumstances stated in the above paragraphs. We wish to highlight to the Committee that although the phrase "just and necessary" in section 23(4) of IFLA was amended to "just or necessary" by the Bill, the circumstances such as sterility, physical infirmity, physical unfitness for conjugal relations, wilful avoidance of an order for restitution of conjugal rights, or insanity on the part of the existing wife or wives are still being considered by the Court to determine the permissibility of polygamy. In addition conditions on the ability of the applicant to support his wives and dependants, to accord equal treatment to all his wives and that the polygamy would not cause *darar syarie* to the existing wife or wives must still be fulfilled by the applicant before the Court may grant the permission for polygamy.
- (iv) As such the amendment to section 23(4)(a) of IFLA as stipulated by the Bill in no circumstances makes polygamy easier for men.

Allowing a Muslim man the right to claim a share of his existing wife's assets upon his polygamous marriage.

- (i) The relevant section under the Bill on the above issue is new section 23(9) which reads as follows -

"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-

- (a) to require a person to pay maintenance to his existing wife and wives; or
(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."

(The relevant phrase in the section is as underlined.)

- (ii) Based on the provision of the said section we wish to highlight to the Committee that **either party to the marriage** can make an application to the Court for an order for the division of the assets jointly acquired by the husband and wife during the marriage. Where an application is made by either party to the Court it is on the Court to decide base on evidence tendered before it on whether the said assets are assets jointly acquired by the husband and wife during their marriage which can be distributed among them.
- (iii) We would also like to direct the Committee's attention to sub-paragraph (b) of section 23(9) which provides that the distribution of assets under the said section is on **assets which are jointly acquired by husband and wife during marriage** and not the wife's assets as asserted.
- (iv) Jointly acquired assets are assets which are acquired from the joint effort of the husband and wife. It does not include assets which are acquired solely by the wife. It is to be noted that contribution of the wife to the acquisition of the asset is not confined to monetary contribution. A housewife's work in managing the home and raising the children is also regarded as contribution from the wife to the acquisition of the asset.
- (v) As such it is clear that new section 23(9) of the Bill does not provide the right to a Muslim man to claim a share of his existing wife's assets as asserted by the Committee.

Forcing a wife to choose maintenance or division of marital property upon a husband's polygamous marriage

- (i) The above issue also relates to new section 23(9) of the Bill. The said section is reproduced below and the relevant word in the provision is as underlined -

"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-

- (a) to require a person to pay maintenance to his existing wife and wives; or
 - (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.".
- (ii) It has been held by the Court that whether the word "or" should carry an exclusive force or otherwise depends on the context in which the word is used in the whole phrase.¹ If the word "and" is used in sub-section (b) of section 23(9), it would connote that application to the Court shall be for both, an order for maintenance and an order for the distribution of assets jointly acquired by the husband and wife during marriage. This would be contrary to Syariah which provides that only maintenance is compulsory on the husband.
- (iii) To avoid the above inconsistency, the word "or" is used by the draughtsman to provide an option to the applicant to either apply to the Court for maintenance **and** the distribution of assets jointly acquired by the husband and wife during marriage, or, to apply for maintenance **or** the distribution of assets jointly acquired by the husband and wife during marriage. The word "or" in the said sub-section would also be suitable in a situation where there is no jointly acquired assets in the marriage.
- (iv) Nevertheless, for clarity on the intention of sub-section (b) of section 23(9) of the Bill, measures are undertaken to amend the said subsection to include language which allows the Court, on an application by a party, to make either any or all of the following orders-
- (a) for the husband to provide maintenance to the wife;
 - (b) for the husband to provide maintenance for the children; or
 - (c) for the distribution of the assets jointly acquired by the husband and wife during marriage.

Allowing a Muslim man the right to get a court order to stop his wife from disposing of her assets.

- (i) The relevant section under the Bill on the above issue is new section 107A which reads as follows -

“Prohibitory order against the disposal of *harta sepencarian*

107A (1) The Court may, on the application of any party to a marriage-

- (a) where any matrimonial proceedings is pending; or
- (b) in any proceeding where the Court may make an order under section 122, make an order prohibiting the wife or husband, as the case may be, from disposing of any assets acquired by them, jointly or solely,

¹ Federal Steam Navigation Co.Ltd and Anor v Department of Trade and Industry [1974] 2 All ER 97

during the subsistence of their marriage if the Court is satisfied that it is necessary to do so.

(2)...”.”

(The relevant phrase in the section is as underlined.)

- (ii) We would like to clarify to the Committee that the intention of this section is to prevent parties to the matrimonial proceedings from disposing their assets whether jointly or solely acquired before the conclusion of the proceedings. This is to ensure that order relating to the assets made by the Court at the conclusion of the proceedings is complied with by the parties to the proceedings. Assets which are solely acquired by the Parties are also mentioned in the provision because it would be difficult to determine the status of the asset (whether it is a jointly acquired asset or otherwise) before the conclusion of the matrimonial proceedings.
- (iii) The language of section 107A can being reviewed to ensure that the provision will not operate to allow the husband to prohibition the disposal of assets solely acquired by the wife and to provide for maintenance of the wife and children to from assets prohibited by the Court from being disposed.

Extending the wife’s right to fasakh divorce to the husband while not giving the husband’s right of talaq to the wife.

- (i) Under Syari’ah different implications arise when a husband divorces a wife by *fasakh* compared to divorce by *talaq*. Where a wife is divorced by *talaq*, the husband is obligated to provide *iddah* maintenance and *mutaah* (consolidatory gift). In the case of *fasakh* divorce by the husband he is only obligated to pay *mahar* (payment to the wife at the time of marriage) and *mutaah* if the marriage is consummated. Where the marriage is not consummated the husband is not obligated to pay *mahar* or *mutaah*.
- (ii) The Schools of Maliki, Syafie, Hanbali and Syiah Immamiah provides that the husband can exercise *khiyar* (the option to stay in a marriage or to divorce by *fasakh* his wife) under the following conditions -
 - (a) the wife is insane;
 - (b) the wife is suffering from leprosy or vitiligo;
 - (c) the wife is suffering from a defect of the vagina which prohibits the consummation of the marriage .
- (iii) However, where the insanity of the wife or the defect of the vagina can be cured or the husband is aware of his wife’s insanity or the defect of the vagina before the marriage, the husband cannot exercise *khiyar*. In addition the Hanbali School held that any reason which cause *darar* (harm) and defeats the intention of marriage can also be a ground for a *fasakh* divorce.

- (iv) We wish to highlight to the Committee that the right of *fasakh* divorce is extended to the husband only on the above grounds. This is founded on the grounds that it is only fair that a husband is not obliged to pay maintenance to the wife where the marriage brings *darar* to him and conditions of the wife defeats the intention of the marriage. Therefore the husband is given the right to divorce his wife by *fasakh* as opposed to *talaq* in the above situations. To ensure that the provision reflects the above intention, the language of the same is being reviewed