

THE CONSTITUTIONAL JUDICIARY IN THE MUSLIM WORLD: IT'S
INFLUENCE ON THE INTERPRETATION OF CONSTITUTIONAL AND
LEGISLATIVE TEXTS 1970 – 2008

ISLAMIC LEGAL STUDIES PROGRAM
HARVARD LAW SCHOOL
November, 12 -14 2008

IMPORTANT CHANGES IN FAMILY LAW IN MALAYSIA IN THE LAST
FORTY YEARS

By
(Tun) Abdul Hamid Mohamad
(Rtd.) Chief Justice of Malaysia

This morning I spoke about two important family laws enacted in the last forty years i.e. the Law Reform (Marriage and Divorce) Act and the Islamic Family Law Enactment/Act. I shall only mention two more.

The First is the Domestic Violence Act 1994. The Act aims to give protection to people who have been abused. It covers married women/men and children, de facto wife/husband, former spouses, children below the age of 18, incapacitated adults who live as family members or other adults the court may deem fit to be covered by the Act. I have brought with me a brief write-up on the Act.

The following are considered as domestic violence:

- (a) Causing physical injury where it is known or ought to have been known that the physical injury would be a result;
- (b) Sexual abuse;
- (c) Emotional and psychological abuse;
- (d) Intimidation , harassment, stalking, abusive behavior that harms or may cause harm.

Pending the investigation of a criminal offence, the court may make a protection order prohibiting the person against whom the order is made from using domestic violence against the complainant.

The law is a Federal law and applies to both Muslims and non-Muslims. The law was enacted because domestic violence, even though they may

be offences under the Penal Code, was usually regarded as a private family matter and the police usually were quite reluctant to investigate such cases.

The second is the Child Act 2001. The Act is an amalgamation of three earlier Acts now repealed i.e. the Juvenile Courts Act 1947, Women and Young Girls Protection Act 1973 and Child Protection Act 1991. The Act provides protection for children and tackles the problems of juvenile delinquency, child prostitutions and children out of control. It imposes severe punishments for child trafficking, abuse, molestation, neglect, and abandonment. It also mandates the formation of children's courts which has not been done because there is no necessity as yet, considering the cases that we now have.

This is also a Federal Law and applies to both Muslims and non-Muslims.

Thank you