

CONTENTS

Chapters
Page

1- INTRODUCTION

1

2- MARRIAGE AND DIVORCE ACCORDING TO SHARI'AH

4

3- MARRIAGE AND DIVORCE IN MAURITIUS

27

4- SOLUTIONS TO MARRIAGE PROBLEMS

47

5- CONCLUSION

52

APPENDIX

56

BIBLIOGRAPHY

69

Chapter 1

INTRODUCTION

Fourteen centuries ago, through the arrival of the Holy Prophet of Islam, Hazrat *Muhammad Mustafa* (Peace Be Upon Him – (s.a.w)), the idolatrous age of ignorance was changed to a society based on the Islamic Law (the *Shari'ah*). The two sources of the *Shari'ah* were the Divine Revelation in the form of the *Qur'an*, and the practice of the Holy Prophet *Muhammad* (s.a.w) known as the *Sunna*. This code was meant for all peoples and all times. The study of the Law of *Allah* has always shed light on the most problematic situations. According to the *Shari'ah*, *Allah* has illuminated the right path to be followed for a healthy family life. In this matter, the two concepts of Marriage and Divorce have been clarified in the Holy *Qur'an* and the *Hadith* (Sayings)/*Sunna* (Practices) of our Prophet *Muhammad* (s.a.w).

However, both marriage and divorce are observed in different ways in different countries, all depending on the Islamic beliefs of the concerned parties and also on the customs and traditions of the respective countries. In Mauritius, where there are some religious sects with their own concepts, doctrines, beliefs and ideologies, they are observed according to the understanding of their religious tenets by the parties. The reasons for choosing this topic are the following: personal experience about the misconceptions relating to marriage and divorce by Mauritian Muslims, the extent to which the

importance of these institutions is ignored and unknown, the atrocities especially faced by wives and children, the deviations from the path shown by the Holy Prophet *Muhammad (s.a.w)* of Islam and lastly, to present to the Mauritian Muslims with the true insights into the institutions of marriage and divorce based on the Islamic Law. I am an eyewitness, for more than six years, to the sufferings of a mother and wife alongside her son.

The research methodology comprises an exposition of theoretical principles in Islam relating to marriage and divorce, followed by fieldwork findings on this topic. Concerning the fieldwork that is included in this dissertation, much difficulty has been endured in collecting the required data and information for supplementing the work with vivid cases. It is good to note at this point that both parties, the officers in charge of abuse cases and the victims, were much reluctant to collaborate with me. As days passed by, I got their confidence and they unveiled all their secrets openly. Through all my sessions I had with them, they were the ones to decide on what they would like to reveal and to what extent of their life. I had to respect them and in this connection, their names have been omitted. This fieldwork has shown the social reality of Muslims lives. As no such work has been produced in Mauritius before, this is a pioneering effort for answering a very critical need of Mauritian Muslims.

The basic sources for guidance in Islam, the *Qur'an* and *Hadith*, outline the principles of marriage and divorce. Tragically, ignorance of them has caused extreme domestic disruptions and misery.

This work is pioneering in two respects:

- It is the first effort at documenting the deprivation of the greatest victims, namely women and children.

- It serves as a contextual guideline to all Mauritian Muslims interested in knowing the true importance of marriage and divorce.

The research methodology begins with an exposition of Islamic principles on marriage and divorce in Chapter 2, followed by a presentation of these institutions in Chapter 3. Reasons for the discrepancy are also given. Chapter 4 offers solutions to marriage and divorce problems. The Conclusion encapsulates preceding discussion and proposes broader solutions like the establishment of a social movement for promoting the rights and dignity of women together with the implementation of a more vigorous educational policy.

Key terms:

Islamic marriage
Islamic divorce
Marriage / Mauritius
Divorce / Mauritius
Religious leaders
Wife abuse
Male domination

We begin our analysis by presenting an overview of marriage and divorce according to the *Shari'ah*.

Chapter 2

MARRIAGE AND DIVORCE ACCORDING TO SHARI'AH

The most important principle operating for marriage and divorce is justice, which is a comprehensive term, and may include all the virtues of good behaviour. But the Islamic Religion asks for something warmer and more human, the doing of good deeds even where perhaps they are not strictly demanded by justice, such as returning good for ill, or obliging those who in worldly language “have no claim” on you, and of course the fulfilling of the claims of those whose claims are recognized in social life. Likewise the opposites are to be avoided, everything that is recognized as shameful, and everything that is really unjust, and any inward rebellion against *Allah's* Laws with our own conscience in its most sensitive form. In this trend, *Allah* has established a pattern of laws and orders to be put into practice from the time we came on this world till the time we will have to leave it for the next. As such, God has assigned injunctions concerning the family way of life. He has imbibed them upon the Holy Prophet (s.a.w) of Islam, *Muhammad* (s.a.w), first, then upon us as his followers. *Allah* revealed upon the Holy Prophet *Muhammad Mustafa* (s.a.w) (*Qur'an* 7: 29): **“Say: My Lord hath commanded justice; and that ye set your whole selves (to Him) at every time and place of prayer and call upon Him making your**

devotion sincere as in His sight: such as He created you in the beginning so shall ye return.”

Whether it is for the institution of marriage or divorce, the ethics of the Holy *Qur'an* must be abided with awareness of *Allah*. Both marriage and divorce must be conducted according to the Islamic Law, that is, the *Shari'ah* based on the Words of *Allah*, the Holy *Qur'an*, the sayings (*Hadith*) and deeds (*Sunna*) of His Beloved Prophet (s.a.w), the institutions of *Ijma'* (Consensus of Scholars), *Qiyas* (Analogy) and *Ijtihad* (Reasoning). But at the same time, we must bear in mind that these institutions are dealt with in different ways depending on the doctrines, customs, traditions, sources and beliefs of the different parties. So, there are the four Schools of Sunni Jurisprudence, named after their leaders *Imam* Abu Hanifa (may *Allah* be pleased with him – (r.a)), *Imam* Malik (r.a), *Imam* Shafi'i (r.a), *Imam* Hanbal (r.a), which have contributed extensively to this topic.

2.1 Marriage

Family life is the basis of the Islamic society and its origin goes back to the beginning of the creation of man and woman – Adam and Eve. So, it is an institution founded by the will of *Allah* as He says (*Qur'an* 4: 1): **“O mankind! Be careful of your duty to your Lord Who created you from a single soul and from it created its mate and from them twain hath spread abroad a multitude of men and women. Be careful of your duty toward *Allah* in whom ye claim (your rights) of one another, and toward the wombs (that bore you). Lo! *Allah* hath been a Watcher over you.”**

Marriage is the basis of the Islamic family. *Allah*, *Rabbul 'Izzat Jalla Wa'ala*, has created men and women so that they

can provide companionship to one another, love one another, procreate children and live in peace and tranquility according to His Commands and the directions of His Messenger Hazrat *Muhammad Mustafa* (s.a.w). Marriage develops love, care and harmony between the husband and the wife. It gives peace of mind and provides a secure atmosphere for the growth and progress of the whole human race. Without marriage, the human race would come to a standstill. Marriage (*Nikah*) was the practice of most of the prophets (Peace Be Upon Them) including our Holy Prophet *Muhammad* (s.a.w). In order for a Muslim couple to live contentedly, both the husband and the wife must follow the principles of the Holy Prophet (s.a.w).

Allah says (*Qur'an* 30: 21): **“And among His signs is that He created for you mates from among yourselves so that you may dwell in peace and tranquility with them. And He has ordained between you love and mercy. Indeed in that are signs for those who reflect.”**

Alongside the Book of *Allah*, the *Hadith* of the Holy Prophet (s.a.w) says: **“None honours women except he who is honourable, and none despises them except he who is despicable.”** (Hendricks 1998: 1).

In another *Hadith*, it is said that marriage is the greatest source of mutual affection and amity: **“The affection which comes through *Nikah* does not come from any other source”** and also: **“You have seen nothing like marriage for increasing the love of two people”** (al-Tirmidhi 1995: 3093).

The above verse and many prophetic sayings form an almost natural part of our repertoire of Islamic knowledge.

Marriage therefore is a duty upon each and every one capable of affording marriage in every sense. Careful consideration of the *Qur'anic* injunctions and the traditions of the Prophet *Muhammad* (s.a.w) clearly shows that marriage is

compulsory (*Wajib*) for a man who has the means to easily pay the *Mahr* (the Dowry) and to support a wife and children, and is healthy, and he fears that if he does not get married, he may be tempted to commit fornication (*Zina*). It is also compulsory for a woman who has no other means of economic independence and who fears that her sexual urge may push her into fornication. But even for a person who has a strong will to control his/her sexual desire, who has no wish to have children, and who feels that marriage will keep him/her away from his/her devotion to *Allah*, it is commendable (*Mandub*).

Allah says (*Qur'an* 24: 32): **“And marry those without spouses among you, and your slaves and maidservants that are righteous.”**

Allah says (*Qur'an* 4: 3): **“Marry of the women who seem good to you, two or three or four.”**

The two verses of the *Qur'an* cited above should be enough to convince the believer of the strict necessity of marriage, in cases where there is no risk of unlawful sexual behaviour, *Zina*, as well as in cases where such risk actually present.

According to Islamic principles, in choosing a wife, a man should look for a woman with a respectable family background. This applies also to a woman choosing a man. It is also appropriate for the would-be-husband to make an effort to catch a glimpse of the face and hands of his prospective bride, without actually being alone with her in private, before the marriage is contracted. The would-be-wife also has that same right. However, the decision whether to accept or reject a proposal lies in the hands of the would-be-couple. Weddings should not be ostentatious nor are they supposed to be expressions of pride and competition. But this is exactly what can be seen in Mauritius in the majority of marriages celebrated. Once the man has actually married a woman, the husband must treat her

decently and not cause her any harm. *Allah* has commanded both partners to live honourably with one another, treating one another kindly and refraining from harming one another. Neither of them should deny or withhold the rights of the other, or object to fulfilling those rights.

According to the Hanafi School of thought, marriage is compulsory (*Fard*) upon a man for the following reasons:

- (a) If he can commit *Zina* (adultery) if he does not get married.
- (b) If though fasting, he cannot control his sexual desires.
- (c) If no slave girl is available to him to get married.
- (d) If he can pay the Dowry (*Mahr*) and afford a lawful way of living.

According to the Hanafi School, if he does not possess the means to maintain his wife and children or if he suffers from an illness, serious enough to affect his wife and progeny, then marriage is forbidden (*Haram*) to him. However, to the Maliki School of thought, only the first three conditions mentioned above for the Hanafi School are acceptable to him. *Imam* Abu Hanifa (*r.a*), *Imam* Ahmad bin Hanbal (*r.a*) and *Imam* Malik bin Anas (*r.a*) say that although marriage in its origin may be deemed to be recommended, in the cases of certain individuals it becomes obligatory. However, *Imam* Shafi'i (*r.a*) considers marriage to be supererogatory (*Mubah*). Within this scope, let us see what are the features of a marriage. (Doi 1984: 118, 119)

According to *Shari'ah*, there are some important matters to be taken into consideration. They can be listed as follows:

- (a) The consent of both the man and woman.
- (b) The presence of a religious guide. (Only recommended)
- (c) The Dowry (*Mahr*).

(d) Two witnesses (One from each side).

(e) The guardian (Parents or relatives).

Concerning the consent of the parties, that is, husband and wife, there should be an agreement in a lawful way. Marriage in Islam can only be contracted with the free consent of the two parties. (Doi 1984: 123). Both the man and the woman should approve of each other and be happy to be married.

2.1.1 Marriage Sermon

It is recommended that a marriage (*Nikah*) be conducted with the *Khutbah*, the sermon of a religious leader. He is the one who will conduct the religious ceremony. This can be an excellent opportunity on the part of the religious guide and the future couple to have an overview their responsibilities in Islam.

2.1.2 Dowry

No marriage can be regarded as legally valid, according to Islam, for which dowry has not been stipulated. If the amount of dowry is not fixed, the wife is entitled to proper dowry, even if the marriage was contracted on the express condition that she should not claim any dowry. And where the amount of dowry to be fixed is concerned, it must be a reasonable amount, not to burden the would-be-husband and at the same time not as a misery to the would-be-wife. The dowry may be in the form of wealth, property, assets or money. In any case it is important to be handed over to the wife and she is the sole decision maker concerning the dowry she obtains. She can handle it as she wishes.

2.1.3 Witness

For the two witnesses, one should be from the side of the man and the other one should be from the woman's side and both of them should be male agent. According to the Hanafi and Hanbali Schools of thought, the fifth condition is optional, that is, a marriage can be celebrated and is accepted in front of *Allah* with or without the agreement, acceptance of the parents or relatives of the girl or/and the boy. It is important to note that the witnesses should be first of all Muslims. They can be friends, relatives or parents.

2.1.4 Guardianship

The jurists of the Shafi'i and the Maliki Schools have considered the approval of the guardian to marry a certain person by his ward as one of the essential ingredients of valid Muslim marriage. But the Hanafi and the Hanbali Schools have considered the consent of the guardian merely as a condition and optional. The later two schools put greater emphasis on the proposal and acceptance. (Doi 1984: 140)

2.1.5 Marriage of Divorced and Widowed Women

The jurists have all of them given their ideas, point of views and knowledge concerning marriage of virgins, widows and divorced women.

Allah says (*Qur'an* 2: 232): **“When ye divorce women and they fulfill the term of their ‘Iddah do not prevent them from marrying their (former) husbands if they mutually agree on equitable terms. This instruction is for all amongst you who believe in *Allah* and the Last Day. That is**

(the course making for) most virtue and purity amongst you and Allah knows and ye know not.”

As can be noticed from the verse, a divorced woman is not to be prevented from marrying in a lawful manner, given all the conditions necessary for an acceptable marriage (*Nikah*). In the case of a widow, Allah says (*Qur'an* 2: 234): **“If any of you die and leave widows behind they shall wait concerning themselves four months and ten days, when they have fulfilled their term there is no blame on you if they dispose of themselves in a just and reasonable manner. And Allah is well acquainted with what ye do.”**

This verse recognizes the widow's right to marry herself. These two verses clearly recognize the right of the *Thayyiba* (the divorced woman or the widow) to give herself in marriage, and prohibit the guardian from interference when the woman herself is satisfied. This is quite in accordance with a *Hadith* stating that the widow or the divorced woman has greater right to dispose of herself in marriage than her guardian (Abu Dawud 1990: 2084, 2095 and Doi 1984: 141). *Imam* Abu Hanifa (r.a) gives freedom to the virgin who has reached the age of puberty to marry according to her choice and he also argues that a woman who has attained the age of majority can dispose of her property without reference to a guardian, so she is also entitled to dispose of her person. And as it is stated in *Sahih al-Bukhari* (Al-Bukhari 1984: VII / 69, IX / 78), when a man gives his daughter in marriage and she dislikes it, the marriage shall be repudiated. It is allowed for both the man and the woman who will be engaged through a life partnership to have at least a look at their future bridegroom and bride. But in no circumstances would the suitor and the would-be-bride be allowed to remain alone in a room, because the Holy Prophet (s.a.w) said that whenever you leave a man and a woman alone there is always a

third person present and that is the *Shaitan* (Satan) (Doi 1984: 122). There is no notion of courtship in Islam as it is the practice in the West where a man, willing to marry a girl, dates with her for a certain period of time on the pretext that they will be familiarized and they will know their common interests better (Doi 1984: 122).

2.1.6 Counter Proposal

Concerning two suitors, the Holy Prophet (s.a.w) disapproved of two persons competing with one another to secure marriage with the same girl. This is because such a situation is likely to develop bitter enmity between the two Muslim brothers. Doi declares (1984: 126): **“The Holy Prophet (s.a.w) said: ‘A believer is a brother of a believer. Hence it is not lawful for him to bargain upon the bargain of a brother, nor propose for (the hand of a girl) after the marriage proposal of his brother, until the latter (voluntarily) withdraws the proposal.’”**

Imam Abu Hanifa (r.a), *Imam* Shafi'i (r.a) and *Imam* Malik (r.a) hold the view that it is a sin to put a counter proposal after the proposal of a brother, and if marriage is contracted it will suffice if the second suitor who was successful seeks the forgiveness of the first suitor and of *Allah*, the Most Merciful. Some people regard this as only a moral obligation whereas others view it as a moral as well as legal obligation. But to reduce the efficacy of the above tradition to the level where the second proposer will not be compelled to opt out of his proposal will be tantamount to paying less attention to the *Qur'anic*

injunction where *Allah* says (*Qur'an* 59: 7): **“What *Allah* has bestowed on His Apostle (and taken away) from the people of the townships belongs to *Allah* to His Apostle and to kindred and orphans, the needy and the wayfarer; in order that it may not (merely) make a circuit between the wealth among you. So take what the Apostle assigns to you and deny yourselves that which he withholds from you. And fear *Allah*; for *Allah* is strict in Punishment.”**

Now, we discuss the celebration of *Nikah* (marriage). According to Islam, it is *Mustahab* or a commendable act to deliver a sermon (*Khutbah*) before the marriage rites are performed. This may provide a forum for informing and advising the bride and the bridegroom of their marriage responsibilities in Islam. After praise for *Allah* and salutations and benedictions on the Messenger *Muhammad* (s.a.w) have been said, it is the *Sunna* (practice) of the Holy Prophet (s.a.w) to recite the verses 3: 102, 4: 1 and 33: 70-71 as mentioned below.

Allah says (*Qur'an* 3: 102): **“O ye who believe! Fear *Allah* as He should be feared and die not except in a state of Islam.”**

Allah says (*Qur'an* 4: 1): **“O mankind! Be careful of your duty to your Lord Who created you from a single soul and from it created its mate and from them twain hath spread abroad a multitude of men and women. Be careful of your duty toward *Allah* in whom ye claim (your rights) of one another, and toward the wombs (that bore you). Lo! *Allah* hath been a Watcher over you.”**

Allah says (*Qur'an* 33: 70): **“O ye who believe! Fear *Allah* and (always) say a word directed to the Right (straight to the point).”**

Allah says (*Qur'an* 33: 71): **“That He may make your conduct whole and sound and forgive you your sins: he that obeys *Allah* and His Apostle has already attained the highest Achievement.”**

All these verses deal with the fear of *Allah* or *Taqwa*. These verses give a reasonable and implicit order to man to avoid harm to himself or to people whom he wishes to protect like his wife and children and other people in his family and friendship circles. After that, there is no harm in reciting prayers, long or short.

2.1.7 Walimah

Likewise, the *Walimah* (marriage feast), according to the *‘Ulama* (authorities) of all the Schools of law is *Sunna al-Mu’akkadah* (practice that the Holy Prophet (s.a.w) never omitted to do). However, there should be no extravagance or pompousness in the feast. It may be bread and meat or just a small goat slaughtered and feasted upon. Doi says (1984: 140): **“This was a condition laid by the Prophet while giving Fatima in marriage to ‘Ali: The Messenger of Allah said: ‘The bridegroom will have to give *Walimah*.’”** *Walimah* is the wedding reception given to friends and family after the consummation of marriage. The husband gives it on this auspicious occasion for sharing his happiness with his friends and family.

According to a *Hadith*, Hazrat Anas (r.a) narrated: **“When ‘Abdur-Rahman came to us, the Prophet established a bond**

of brotherhood between him and Sa'd bin Ar-Rabi'." (Al-Bukhari 1984: VIII / 105)

Once the Prophet (s.a.w) said: **"As you (O 'Abdur-Rahman) have married, give a wedding banquet even if it be with one sheep."** (Al-Bukhari 1984: VIII / 105)

Narrated Abu Musa (r.a): **"The Prophet (s.a.w) said: "Set the captives free, accept the invitation (including to a wedding banquet), and pay a visit to the patients."** (Al-Bukhari 1984: VII / 103)

By means of these sayings of the Holy Prophet *Muhammad* (s.a.w), it is also enjoined upon us to join in the happiness of our brothers and sisters.

Concerning the Islamic way of the bride's departure, the bride is taken to her husband after the *Nikah*. This should be done with extreme simplicity. The bride can either go with the womenfolk of her household or with the womenfolk of the husband's family. The Holy Prophet *Muhammad* (s.a.w) sent his daughter, Hazrat Bibi Fatimah (r.a) to her husband, Hazrat 'Ali (r.a) with Hazrat Aiman (r.a), his female servant.

As can be noticed, a marriage can take place between two persons if all the conditions are present. The main conditions stipulated are that both the man and the woman should consent to the marriage, that there should be the Dowry and that there should be the two witnesses. There is another condition which is optional, that is, the availability of a guardian. Whether it is for a virgin, a divorced woman or a widow, the right and decision of refusing and accepting a proposal should be given and granted. Both the man and the woman should at least have a look at their respective future life partner. Without the consent of any party, the marriage cannot take place. It is the right of the man and the woman to choose

his or her own partner. Marriage is an institution based on Divine Law and if well implemented, leads to harmony.

In order to ensure a happy home and a really stable family, Islam has assigned to marriage the status of a contract dissoluble if either party develops grievances against the other leading to a final and irrevocable break in their mutual relations. The aim of the *Shari'ah* is to establish a healthy family unit through marriage, but if for some reasons this purpose fails, there is no need to linger on under false hopes. Islam encourages reconciliation between spouses rather than severance of their relations. But where good relations between spouses become distinctly impossible, Islam does not keep them tied in a loathsome chain to a painful and agonizing position. It then permits divorce.

Allah says (*Qur'an* 4: 35): **“If you fear a break between them two, appoint (two) arbiters, one from his family, and the other from hers, if they wish for peace, *Allah* will cause them reconciliation, for *Allah* has full knowledge and is acquainted with all things.”**

2.2 Divorce

Divorce is the necessary corollary of the freedom given to men and women to choose their partners.

Turning to divorce proceedings, *Allah* declares (*Qur'an* 33: 49): **“O you who believe! When you marry believing women, and then divorce them before you have sexual intercourse with them, no *'Iddah* (prescribed period following divorce) have you to count in respect of them. So give them a present, and set them free (that is divorce) in a handsome manner.”**

Allah says (*Qur'an* 65: 4): **“Such of your women as have passed the age of monthly courses for them the prescribed period if ye have any doubt is three months and for those who have no courses (it is the same): for those who carry (life within their wombs) their period is until they deliver their burdens: and for those who fear *Allah* He will make their path easy.”**

Divorce, in the terminology of the jurists, is the abolition of the bond of marriage. If all means of reconciliation between the spouses fail, then divorce is inevitable. Though divorce is the last resort, both the husband and the wife can practice it. The husband can pronounce *Talaq* three times and the wife can make a request for divorce through the institution of *Khul'* in an Islamic court. In order for divorce to be effective, no goodwill or proper prayer is required. It is effected by the man's saying: “I divorce you”, normally on three different sittings. And if it is the wife who seeks divorce, then a judge will pronounce divorce through the institution of *Faskh*. Human fallibility makes forgiveness and tolerance essential prerequisites for a happy marriage. However, severe incompatibility may make divorce necessary and inevitable, although divorce is the most hated thing in the sight of *Allah*. There is a special procedure to be followed, so that all the channels of reconciliation are first exhausted. All the jurists of the four Schools of Islamic Jurisprudence have given clarifications on divorce.

According to *Imam Abu Hanifa (r.a)*, it is *Talaq* in the following cases:

- (a) Pronouncements of divorce by husband.
- (b) *Ila*. (If a man vows he will abstain from intercourse with his wife for a period of 4 months (cycles)).

- (c) *Khul'*. (Request of divorce to an Islamic court by the wife).
- (d) *Li'an*. (When either party accuses the other of adultery, for instance, there is what is known as mutual curse (imprecation) and then divorce will take place).
- (e) Separation because of sexual defect in the husband.
- (f) Separation due to denial by the husband of Islam.

According to *Imam Abu Hanifa (r.a)*, it is *Faskh* in the following cases:

- (a) Separation due to apostasy of the spouses.
- (b) Separation due to spoiling of marriage. (When either party ruins the atmosphere of the family in any way from outside influences).
- (c) Separation due to lack of equality of status or lack of compatibility of the husband.

According to *Imam Shafi'i (r.a)* and *Imam Hanbal (r.a)*, it is *Talaq* in the following cases:

- (a) Pronouncements of divorce by husband.
- (b) *Khul'*.
- (c) Declaration of *Talaq* by the *Qadi* on the husband's refusal to give divorce because of *Ila*.

According to *Imam Shafi'i (r.a)* and *Imam Hanbal (r.a)*, it is *Faskh* in the following cases:

- (a) Separation due to defect in one of the spouses. (Any physical or mental defect).
- (b) Separation due to difficulties of the husband. (Difficulties of the man to maintain the wife. For example, he is imprisoned and cannot take care of his wife).

- (c) Separation due to *Li'an*.
- (d) Separation due to apostasy of one of the spouses.
- (e) Separation due to spoiling of marriage.
- (f) Separation due to lack of equality of status of the husband.

According to *Imam Malik (r.a)*, it is *Talaq* in the following cases:

- (a) Pronouncement of *Talaq* by the husband.
- (b) *Khul'*.
- (c) Separation due to defect in one of the spouses.
- (d) Separation due to difficulties of the husband in providing maintenance for his wife.
- (e) Separation due to harm. (Ill-treatment, physical and psychological, from the husband).
- (f) Separation due to *Ila*.
- (g) Separation due to lack of compatibility or equality of status.

According to *Imam Malik (r.a)*, it is *Faskh* in the following cases:

- (a) Separation due to process of *Li'an*.
- (b) Separation due to spoiling of marriage.
- (c) Separation due to the denial of Islam by one of the spouses.

2.2.1 Talaq

If the husband utters *Talaq* or divorce three times in the same breath, it is considered as an irrevocable divorce and there remains no chance of reconciliation between the couple. And

under this strict view, which is not supported by many classical and modern Islamic scholars, many families are broken and the women and children are mostly affected. According to all scholars, to utter the three divorces simultaneously in the same sitting is not encouraged in Islam and the person who pursues this undesirable system will be considered sinful. If it is held to be an irrevocable and the final divorce, then the option offered by *Allah* to take back one's wife within three menstrual cycles becomes frustrated as *Allah* says (*Qur'an* 2: 229): **“A divorce is only permissible twice: after that the parties should either hold together in equity or separate in kindness. It is not lawful for you men to take back from your wives any of that portions which you have given them except when both parties fear that they would be unable to keep the God-ordained limits. If you, judges, have reason to fear that the parties will be unable to keep the God-ordained limits, so decree, for there will be no blame on either of them if she hands over a sum in exchange for her freedom. These limits are God-ordained so do not transgress them since that is to wrong yourself as well as others.”**

Imam Malik (*r.a*) says (1993: 644): **“Ibn Shihab has narrated (that) Marwan bin al-Hakam has judged that whoever pronounces the final *Talaq* with his wife, shall pronounce it three times.”**

Now let us take an example concerning the divorce institution and how it was observed in the Caliphate of Hazrat 'Umar (*r.a*). The latter being the second caliph of Islam, found that people were generally careless in divorcing their wives and took the matter rather lightly. Accordingly, he enforced the rule that even if three pronouncements of divorce were delivered at a single sitting, they would have the effect of final separation between the couple. This was a kind of punitive measure to

bring home to the people the seriousness of the matter so that they might be careful in pronouncing divorce. Its enforcement again showed that rules and regulations concerning marriage, divorce, dress and movement of women and men were capable of modification and relaxation, according to the circumstances and conditions. This fact has now been completely forgotten by the Muslims. (Siddiqi 1998: 144 and Hendricks 1998: 2).

Allah states (Qur'an 4: 34): “As for those women on whose part you fear disloyalty and ill-conduct admonish them first, then refuse to share their beds, and then (as a final measure) beat them lightly. But if they heed your call then do not treat them unjustly.”

Firstly, the verse simultaneously assumes complete disloyalty and disgraceful conduct on the part of the women (wives) and total innocence on the part of the men (husbands). After all, a man can also be *Nashiz* (disloyal) (*Qur'an* 4: 128). For this reason, the first step is to admonish them so that they could through this step, determine whether there is a sound reason for their behaviour or whether they are prepared to reform themselves. It becomes him in both cases to withdraw his admonition and act with respect towards her (Husni 1347 AH: II / 42). Secondly, the symbolic “beating” is not allowed to result in injury to the persons in any way. According to Hazrat Ibn ‘Abbas (*r.a*), the beating is not permitted with anything greater than a toothbrush. If the beating does result in injury to their person then they would have the right to sue their husbands in a court of law despite the fact that they might have initially behaved immorally. The husbands would obviously be considered the bigger scoundrels in this case. Thirdly, according to Hazrat Abu Zahrah (*r.a*), there is a school of thought which holds that in the case of a *Nashiz* husband the lady would be entitled to take him to court and get the court to mete out

exactly the same punishment against him according to the steps depicted in the above verse (‘Abd al-‘Ati 1977: 159). Fourthly, the preferred position, despite the *Qur’anic* verse, is not to beat even though the “beating” amounts to little more than a symbolic measure. It is narrated that Hazrat ‘Ata Ibn Abi Rabah (*r.a*) said: **“A husband should not beat his wife even after he has commanded or prohibited her from doing something and she refuses to heed him. Let him rather express his anger at her refusal for the Prophet (s.a.w) said that the best of you are those who do not resort to beating.”** (Sabuni 1990: I / 447). Fifthly – and in keeping with our obligations to perpetually having to strive towards realizing the spirit of *Ma’ruf* (goodness) and *Ihsan* (excellence) in our lives – it would do us well to remember Hazrat Bibi A’isha’s (*r.a*) statement that the Holy Prophet *Muhammad* (*s.a.w*) never lifted his hand on anything or anyone except when he fought in the way of *Allah*. (Khan 2001: 226 and Hendricks 1998: 2).

Imam al-Ghazali (*r.a*) has said in *Ihya’ Ulum al-Din* that besides providing maintenance for her, one should, keeping in mind her weaker constitution, weakness and natural crudity, treat woman kindly and bear her whims and airs with patience and share her troubles, as *Allah* says (*Qur’an* 65: 2): **“And live with women in all goodness,”** and also (*Qur’an* 2: 228): **“And they (women) have similar rights to those (of men) over them.”** (Hendricks 1998: 3 and Shirbini n.d. III / 260).

Allah has glorified them by saying (*Qur’an* 4: 21): **“And they (women) have taken from you a firm pledge”** and (*Qur’an* 4: 19): **“And treat them with virtuous goodness.”**

Thus as can be noticed, women and men are meant to live together in peace and harmony. This above verse shows clearly that both husband and wife have equal rights over each other. Women have their say in their marriages and their divorces.

When they are satisfied with any proposal, then they are allowed to conduct the marriages but if this is not the case, then no marriage will be celebrated. Women have all their rights in each and every respect of their lives from birth till death passing through their steps as adolescents, women, wives and motherhood. It was in the light of these God-given rights that *Imam al-Ghazali (r.a)*, for example, asserted the right of a woman to unconditionally separate from an abusive husband – whether the abuse is physical or psychological. In this case the services of a third party – a *Thiqa* or trustworthy person as *Imam al-Ghazali (r.a)* calls him or her – may be enlisted to monitor the behaviour of the husband. The final decision with regard to reconciliation however remains with the wife (Hendricks 1998: 3 and Shirbini n.d. III / 260). No abuse must be inflicted upon women and children. Rights and responsibilities are established and given to both men and women, husbands and wives, parents and children, relatives and neighbours, everyone in the society.

According to the teachings of Islam, both men and women have their respective roles to play in the society and mainly in family life. As such, this does not mean that the tasks specified to women are only done by women but never by men. If we have a look at history, through the Traditions of the Holy Prophet *Muhammad (s.a.w)*, we will find that the Messenger of *Allah (s.a.w)* often discharged the tasks of his wives like house cleaning and rearing the children. It can also be seen that the Holy Prophet (s.a.w) used to engage in sport like jogging with Hazrat Bibi A'isha (r.a). Therefore, the husband should spend some time for amusement and enjoyment with his wife. This strengthens the nuptial knot.

2.2.2 *Khul'*

In Islam, the wife is fully entitled to initiate or pronounce divorce though the procedure is different from that of her husband. If the husband is missing for a certain period of time or an indefinite time, or if he suffers a fatal incurable disease, or if he is sexually impotent or in some other cases, the wife is given every right to initiate divorce. Moreover, if she suffers unhappiness, misery or incompatibility with her husband, then also she can do it with the intervention of a court. There is another system of dissolution of marriage by the woman that is called *Khul'* through which the wife can get separation from husband by returning the marital gift (the Dowry) or part of it. It is not necessary that she should have a definite ground for pursuing *Khul'*. Thus we see that both the husband and the wife can initiate divorce in Islam though the procedure is different.

Siddiqi (1998: 67) gives the following details: “The most famous case is that of Thabit bin Qais whose two wives sought divorce from him. One of them, Jamilah bint Abi Salul, disliked his features. She came to the Prophet of God and complained against him, saying: **‘O Prophet, nothing can bring him together with me. I lifted my face-covering to see him coming along with a few other men and I noticed that he is the blackest, the most short-statured and the ugliest of them.’**

Siddiqi (1998: 67) says: “Another report says: She said, **‘By God, I do not dislike his morals or behaviour, but I cannot stand his ugliness.’**

Siddiqi (1998: 67) says: “According to Ibn Majah, she is reported to have said: **‘By God, if fear of God did not stand in my way, I would have spat on his face.’**”

Siddiqi (1998: 67) says: “According to the author of Fath al-Bari, Jamilah said: **‘You see, O Prophet, how beautiful I am, but Thabit is an ugly person.’**”

Siddiqi (1998: 67) says: “Bukhari reports that she said to the Holy Prophet: **‘I do not blame him for his morals or religion, but I am afraid Islam will lose its hold upon me if I am compelled to live with him.’**”

Siddiqi (1998: 67) again says: “After hearing her complaint, the Holy Prophet said to her: **‘Will you give him back the orchard he gave you?’** She replied: **‘Yes, and also more, if he wants.’** The Holy Prophet asked her not to give more and ordered Thabit to accept the orchard and divorce her.”

Siddiqi (1998: 67) says: “Another wife of Thabit bin Qais, Habibah bint Sahil, according to a report from *Imam* Malik and Abu Dawud, came to the Prophet early one morning. When the Prophet came out, he saw her standing before the door. On the Prophet’s inquiring how she happened to be there, she replied: **‘I and Thabit cannot live together.’** When Thabit came, the Prophet said to him: **‘This is what your wife says about you, so leave her.’**”

Siddiqi (1998: 67) says: “According to Ibn Majah, Habibah complained to the Prophet that Thabit had beaten her so badly as to break her bone. In any case, the Prophet, on hearing both sides of the matter, ordered the dissolution of the marriage.”

According to the Holy Prophet *Muhammad (s.a.w)*, one who hurts any member of his family by his evil manners, *Allah* will never accept his repentance and his good acts. And again he had said: **“O believers! Do not beat the serving women of**

Allah nor abuse them,” and “Do not beat or abuse female servants of Allah.”(Abu Dawud 1990: 2141)

If the woman complains of beating, the judge will issue a stern warning or even punish him on being convicted. It is also very unjust to annoy her by imposing restrictions at every step, to break her heart or to be abusive. For example, a companion of the Prophet (s.a.w) complained that his wife did not restrain her hand from him. Thereupon, the Holy prophet (s.a.w) advised him to admonish her. The man said that he was tired of admonishing her. The Holy Prophet *Muhammad* (s.a.w) then said: **“Then beat her and restrain her, but do not beat her as you beat maid servants.”** The man said that he was tired of beating also. The Holy Prophet *Muhammad* (s.a.w) said: **“Then divorce her.”** The man said that she had children and they had a long association. The Holy Prophet *Muhammad* (s.a.w) then said: **“Then bear it with patience.”** (Abu Dawud 1990: 142)

The husband seems to be given the right to practice divorce arbitrarily, but this is not really so. In pursuing divorce the husband encounters financial disadvantages as he marries his wife by giving her *Mahr* (marital gift). He is bound to give it to his wife at the time of dissolution of marriage if it is unpaid yet. Moreover, he will have to pay dowry for the second time if he wants to get married again. Although both husband and wife suffer as a result of a divorce (psychologically, for instance), a man has the additional burden of a heavy responsibility. He loses the entire marriage gift. The wife is entitled to maintenance whilst in the waiting period (which can be as little as three months or as much as nine months). She is entitled to child maintenance if young children are in her custody. According to some jurists she would also be entitled to a consolation maintenance for a year and so on. The fact that a husband who has so much to lose financially if he divorces his

wife acts as a natural deterrent from abusing his right of divorce. If Muslim women had such a right, however, there would be no such check on them because they do not have any financial responsibilities towards their husbands. But it does not mean that Islam does not give the wife the right to break the marital bond when she wants so. It only checks the abusing of such right.

A woman has all the rights to property, exclusive rights to her wealth, the right to equal pay for equal work, the right to the *Muta'* (or compensation) in divorce, the right to social equality and educational opportunities, the right to military service, the right to resist a forced marriage, the right to terminate a marriage of an abusive husband and so on. And all these rights emanate from the example set by our Holy Prophet *Muhammad* (s.a.w) whose nature and character according to Hazrat Bibi A'isha (r.a) was indeed the *Qur'an* (Noor Muhammad 1992: 27, 202). She has all her right to accept a proposal and to ask for a divorce. Islam has given her that right.

We now concentrate on marriage and divorce in Mauritius.

Chapter 3

MARRIAGE AND DIVORCE IN MAURITIUS

This chapter analyses marriage and divorce in Mauritius. In Mauritius, where Muslims are mainly from India since slaves were brought on this small island in the Indian Ocean to work on the various plantations of the French, there is diversity of Islamic beliefs, customs and traditions. The early Muslims also brought along with them their knowledge and practice of Indian culture. So it is inevitable that the institutions of marriage and divorce are influenced by this culture though they have external conformity to Islamic laws and principles.

The passage of time has witnessed the preaching by various reformers, thinkers, philosophers from various parts of the world, Arab and otherwise, on the soil of Mauritius with their doctrines. Their aim has been to entrench their version of Islam upon the people.

In the process, they have also created major unanswered questions and maintained till today a state of doubt in the mind of their followers. This has affected the people's understanding of marriage and divorce, resulting in many of them unwittingly taking a route opposed to that of the *Shari'ah*.

Consequently, it is noticed that many atrocities are being inflicted on wives especially in respect to their rights and duties for the simple fact that they do not have understanding of the

Islamic laws or rather they are voluntarily deprived of receiving their rights.

This situation is aggravated to a certain degree by the *'Ulama*, that is, the religious scholars, because they have totally failed to clarify the basic rights and duties of wives. This also applies to husbands.

In this chapter I intend explaining how marriage is celebrated, among whom it may take place, how much expenses are incurred, and how divorce is granted and on which basis it is acceptable. Together with this, an insight may be gained about the extent of deviations from the true path outlined by the *Shari'ah*. Some cases of deep atrocities done to women and children shall also be high-lighted.

We have seen that there are many terms and conditions mentioned in the previous chapter for both marriage and divorce but all of them are not abided by all Mauritian Muslims. The latter do not have an appropriate education concerning both institutions which should be practiced as the Holy Prophet *Muhammad (s.a.w)* has taught us. Moderation is the Islamic concept in all aspects of a Muslim's life.

Allah says (*Qur'an* 65: 7): **“Let the rich man spend according to his means; and the man whose resources are restricted, let him spend according to what *Allah* has given him. *Allah* puts no burden on any person beyond what He has given him.”**

It is true that, in most cases, both rural and urban wives are deprived of the right in marriage and divorce (and also of many other social, political and religious rights). It is partly because of the failure of the Mauritian Government, but mainly of Muslim associations and the religious leaders to educate them and inform them of their rights. The guardians or parents and the leaders of the Muslim *Ummah* should deem it their

religious and moral responsibility to launch a social movement in order to establish the proper rights and dignity of womenfolk. *Allah* has enjoined it on us to strive for the cause of the oppressed men, women and the children.

Allah says (*Qur'an* 4: 75): **“How should ye not fight for the cause of *Allah* and of the feeble among men and of the women and the children who are crying: Our Lord! Bring us forth from out this town of which the people are oppressors! Oh, give us from Thy presence some protecting friend! Oh, give us from Thy presence some defender!”**

One should bear in mind that before the 2nd World War, many Western countries had influenced the legislations of Muslim Countries and they had reformed, or rather distorted, the Islamic Law. After the 2nd World War, when many countries wanted to return to the true *Shari'ah*, two persons in the name of Dr Abdul Razzaq al-Sanhuri and Professor Anderson, were appointed to help the Muslim Countries in implementing and formulating their laws. In this way, many changes again occurred in Islamic Law. According to Western countries, Islam is a static religion and it needs some changes due to modernization.

Due to these kinds of influences and attitudes many groups set foot on Mauritian soil. We noticed the emergence and implantation of the Sunni, the Shia, the Tabligh Jamaat and the Hizbullah as the main bodies forming the Mauritian Muslim community. And according to their provisions and principles, marriage is celebrated and divorce granted. Marriage is conducted by Muslims in Mauritius in a manner that is very far from the principles of Islam and the process of adhering to a divorce case is deeply lamentable and questionable. This is due to the lack of knowledge and instructions made available to us

from our own religious leaders and also our craze for apeing western values.

3.1 Marriage

We have groups like Sunnat Jamaat, the Tabligh Jamaat, the Hizbullah and the Shia. Each one of them has its own founder with its own doctrines on how marriage can be celebrated, whether marriage is an obligatory act or not, when marriage can be considered, how marriage can lead mankind to success or failure, the wisdom behind marriage and with whom marriage can be conducted. We will mainly examine how these questions are answered by the *‘Ulama* of these different sects. It needs to be emphasized that their impact is limited.

3.1.1 Betrothal

Before the marriage comes the betrothal. But according to Doi (1984: 122), there is no courtship in Islam. It is a Western culture and there are un-Islamic practices related to it.

Marriage is certainly to a certain extent not considered a religious institution and *Sunna* of the Holy Prophet (s.a.w) but rather as a monumental feast where un-Islamic practices are observed. With few exceptions, gross misunderstandings about its status and legality abound. For most Mauritian Muslims, *Nikah* only serves as the foundation of a family. It serves as an occasion to air vanity and pompousness. It is conducted in a Western manner merging with Asian cultures and Islamic beliefs.

3.1.2 Mawlood

A few days before the *Nikah* takes place, a *Mawlood* (also known as the *Khatam* is referred to as a religious observance) is organized and this is mainly done in order to have the blessings of *Allah* in the couple's forthcoming life and family. This act includes the recitation of the Holy *Qur'an* and the invocation of prayers (the *Du'as*). A meal is prepared and the closest members of the family are invited to the "feast".

3.1.3 Mehendi

On the eve of the *Nikah*, at night or day time, the *Mehendi* (it is that day when the bride and the bridegroom will apply the henna on their hands and to the bride's feet) is celebrated. In this context, it is the duty of both families to exchange gifts and in this kind of meeting there is the free intermingling of sexes together with frivolous "music", thereby enhancing the carnival atmosphere.

The following day is the *Nikah*. Thereafter the man (the husband) proceeds to a gathering to meet his bride where the same atmosphere as found in the *Mehendi* prevails for about two to three hours. After the *Nikah*, there is either the *Walimah* without the marriage being consummated or the *Chawtari* (an Asian practice whereby relatives of the couples get together the day following the *Nikah*), where all the closest members consume a light meal and then later on the same day or much later, the *Walimah*. All these sessions are characterized by ostentation and un-Islamic practices.

Let us see how deviations from Islam exist in marriage. Right from the start, those getting engaged often violate Islamic

principles. The betrothal is an opportunity given to both parties, man and woman, to know each other in a better way and to anticipate a future life based on mutual understanding. It certainly has its advantages but only if it is observed correctly. However, nowadays, many of those getting engaged, due to evil attitudes and influences, are unable to avoid mistakes and sins during this phase. I know cases of pregnancy during this period, that is, well before the *Nikah*. In doing so, they are contravening Divine Laws.

Marriage should be conducted only when both parties agree. But in Mauritius, principally in villages, with old and pre-historic concepts, there are cases of arranged and also forced marriages leading to miseries and problems in the family circle, both for the couple and the children.

The *Mawlood*, though not advocated by all the schools of thought in Mauritius, is tolerated as long as the Holy *Qur'an* is recited and the blessings of *Allah* are invoked for the couple. Moreover, there should be no food wastage. But concerning the *Mehendi*, nowhere in Islamic history and the Prophet's (s.a.w) life, is it even mentioned. It is an Asian practice where gifts are exchanged between both parties. Giving gifts is not prohibited in Islam but the way it is done here is unacceptable since it is accompanied by free intermingling of sexes, obscene music and extravagant meals.

3.1.4 Mahr

For *Nikah* to take place there should be the *Mahr*, that is, the dower. Dower (dowry) is the gift from the groom to the bride. It is her due and it is incumbent upon the groom to discharge this duty. Its amount should be in accordance with the actual economic trends taking into account its use in life which should

be agreed upon by both parties. However, in many cases, the man fixes the amount and its amount and value is useless in present times. Since the time our ancestors set foot in Mauritius, many Muslims still have the tendency and custom of giving an amount similar to Rs 27.50 (around Rand 7) or any amount including that figure like Rs 1027.50, Rs 3027.50 and so on. This amount is clearly insufficient to meet even basic needs.

After the *Nikah* is conducted, there is a party held in a hall or a theatre where sexes intermingle in an un-Islamic way. The next day, there is the *Chawtari* in the morning and the lunch or dinner, organized in the same immoral way.

3.1.5 Walimah

Concerning the *Walimah*, according to Islamic principles, it is observed only after the *Nikah* or marriage has already been consummated. But here, there are many instances where the *Walimah* is either observed before the couple's nuptial night soon after the *Nikah* or one day or several days before the *Nikah* itself. And in order to meet all the expenses of these few days, a minimum amount of approximately Rs 350000 to Rs 500000 is needed. This is an extremely costly exercise.

3.2 Divorce

Turning to divorce, all its procedures are forgotten or ignored by many Muslims. In Mauritius, due to a lack of mainly Islamic knowledge and also the prejudices on the part of women, they are rather badly treated when it comes to divorce. After research concerning the views of some *'Ulama*, it has been

sadly noted that for them divorce can only be pronounced by the husband who has the sole right upon marriage dissolution.

Husbands, in such cases, will exert such pressure on their wives that the latter will be demoralized to the extent that they will not dare to ask for divorce and will continue enduring their misery. This situation will deprive wives of their abilities to dissolve the marriage. This is further worsened if they meet those *'Ulama* who advocate that divorce can only be pronounced by the husband. This creates a situation where whole family units are destroyed, leaving the wife with the impression that Islam does not make provisions for persecuted women who are in dire need of divorce.

In these instances, the wife will have to refer the case to an Islamic judge (a *Qadi*) to dissolve the marriage through *Khul'*. However, Mauritius is not an Islamic State, but nevertheless we have the Muslim Family Council (MFC) which is an organization controlled by Muslims for the betterment of married couples, their children and family. Its function is mainly advisory but it also helps those wives wanting divorce whose husbands refuse to set them free. According to that body, the case of *Khul'* is presented to a *Qadi* and the couple is given a period of six months to one year to reconsider their decision and if after that period they abide by their position and if there is no objection from any party, the *Talaq* is pronounced through the institution of *Khul'*. If at the same time, the case is referred to the Tribunal Court of Justice of Mauritius (Common Laws), *Talaq* will generally be pronounced when the tribunal dissolves the marriage. That is, *Talaq* (Islamic Court) and divorce (Judicial Court) will be granted if possible at the same time. This also means that as long as the Judicial Court has not yet pronounced on the case, there is a great possibility that *Talaq* will not be granted. But in this case, the wife will be on the

defensive by being persecuted and may end up like those cases that you will read about in the Appendix, "Cases of abuse and injustice in Mauritius". But the MFC is well aware of those husbands refusing to give divorce and as such, in many cases, the association does not wait for the final pronouncement of the Judicial Court. It does its utmost to avoid such a situation.

The maintenance period is totally ignored. The wife is left on her own with no support. Otherwise she turns to her parents and families if she is accepted by them. If the wife has a child, her husband will not conclude all the arrangements for maintenance of the child through mutual consent. The child will be left aside just like the mother. And when it will come to the question of who will be responsible for the child, in many cases, the father will just disappear leaving the fate of his child to the mother who is, in many instances, deprived of the basic necessities for their survival.

This section will attempt to explore the much more fundamental causes that underlie the appalling status of women and men in our society. At the same time, we must keep in mind that we are speaking about a small island, Mauritius. The impact of colonialism, stemming from the days of the renaissance, cannot be ignored or even underestimated. The most disturbing feature of all of this was the fact that by now all the elements for a community infected with a high potential for internal structural violence were in place. Two important but mutually interconnected questions emerge, namely, the questions of power and authority. Men conventionally are said to be more robust and powerful than women.

While we are aware that these elements are open to abuse in any society, they are nevertheless more so in-vulnerable conditions of social and economic deprivation. Men, in their state of withdrawal and retreat tend not only to seek out the

security of the domestic environment but also an authority and a power through which to redeem their shattered self-esteem. The authority that is imagined and constructed under these conditions is one accompanied by a sense of privilege. The burden of having to bear authority with a sense of duty and responsibility is far too great for a fragile and insecure ego. And where the notion of privilege dominates there is a far greater potential for the abuse of power. The factors nevertheless, which lead to the abuse of power at the domestic level are precisely those same factors leading to abuse in the homes of the oppressed masses. The family, as we can imagine, is the unfortunate victim. The members of an oppressed family are abused, physically and emotionally, in the name of a supposedly divine conception of privileged authority. And none suffers more than the wives at the hands of despotic husbands. The consequences of power abuse are many:

- (1)** Women are now expected to unconditionally obey their husbands.
- (2)** *Nafaqa* (or material support) is a favour delivered by the husbands and not a duty.
- (3)** The voices of women are considered *awrah*, that is, prohibited from being heard.
- (4)** Women have to cook.
- (5)** They have to be fatalistically patient with physical and psychological abuse.
- (6)** Women cannot work outside their homes.
- (7)** Women are not only half the worth of men but they are in fact half human.
- (8)** Unconditional sexual labour is a permanent duty.

We may summarise the problem with Muslim marriages and divorces as follows:

- (1) There are many forced marriages, some of which end in desertion or suicide.
- (2) Divorce decisions are often influenced by powerful members of society.
- (3) Many women are abused, physically and psychologically, but have no recourse to divorce since religious leaders are adamant that this is the husbands' prerogative.
- (4) Court intervention for annulling unhappy marriages is not considered.
- (5) Men are often domineering, believing that all powers are vested in them – Women's desires receive very little consideration. Some men prevent their wives from having social contact outside their homes. They are compelled to adorn the *Pardah* (the veil) with the panoply though the veil is only optional. This isolation has no Islamic basis. That this kind of seclusion for the part of husbands over wives and absolute sex segregation had no religious sanction behind it, is proved by the fact that Muslim women belonging to the lower and poorer classes of Muslims have never observed that kind of strict *Pardah* which characterizes the life of middle and upper classes of Muslims. Similarly, the poorer classes among the Muslims have not developed segregation of sexes to the same extent as the upper classes. It is true that Islam has laid down a few rules for regulating the movement, dress, speech, way of life, attitudes between men and women, but it nowhere expressly forbade women from taking

part in economic, social and political activities. At the same time Islam nowhere gave men the power of abusing women in all respects and aspects of human lives. As the economic conditions keep changing from time to time, Islam, in accordance with its character as a universal religion, did not lay down any rigid rules regarding the movement of women outside their homes and their joint participation with men in political, social and economic activities. There is no doubt that Islam desires to enforce certain standards of decency and respect towards each other in a family life, and also devises precautionary measures to check indiscriminate and un-necessary intermixture of men and women. The laws of *Allah* were set up to fit any society at any given period of time and all the *Qur'anic* injunctions are based on logical facts accompanied with human rights.

- (6)** Ignorance about rights and responsibilities on the part of spouses. Men assume that they have the sole right in granting divorce, for instance. They are (or choose to remain) unaware of the procedure allowing an Islamic court to annul a marriage (which is called *Faskh*). Here the judge also orders the provision of maintenance. In the absence of such an authority, three respectable and mutually acceptable arbiters can decide the case.

In this connection, one may have an idea of the gravity of the situation especially if one considers the fact that Mauritius is a small island. In the "Appendix" there is a list of seven cases relating to abuse and injustice inflicted to Muslim women and children in Mauritius. It is worthwhile to note it here that these cases are only the tip of the iceberg among all cases numerated

by the “Muslim Family Council”, let alone all those unregistered cases. From my study, the following points are the main reasons for breakdown of Muslim marriages:

- (1)** – Verbal and physical injuries inflicted on both mother and son – Bad conduct of husband.
- (2)** – Drug addiction – Immoral beliefs – Prostitution.
- (3)** – Drunkardness – Fighting – Alcoholic.
- (4)** – Behaviour as bachelor – Influences of friends.
- (5)** – Doubt on wife – Daughter terrorized by teacher.
- (6)** – Difficult childhood – Long traumatic life – Molested and abused by father.
- (7)** – Light slaps to violent blows.

From the above list, one can jump to the conclusion that in all cases studied and the reasons for divorce, there is a lack of Islamic education and practices on the part of a group of Muslims. If these husbands and wives being concerned in divorce procedures have taken the time to study what God and His Prophet Muhammad (s.a.w) have said concerning the institution of Marriage, abuses, injustice and divorce could have well been avoided.

We now scrutinise the role of local religious leaders. All of the main Islamic bodies (whether the Sunni, the Tabligh, the Shia or the Hizbullah) have their own provisions concerning both the institutions of *Nikah* and *Talaq*. They have their principles that should be taken into consideration when marriage is conducted and when divorce is sought and granted. Their injunctions are all based, according to them and their founders, on the Holy *Qur'an* and the *Sunna* of the Holy Prophet (s.a.w), as the primary sources of Islamic Law. However, with

the influence of some “mischief mongers” in Islam, all these laws are distorted and new provisions are set to the Muslims.

It is due to the religious leaders of Mauritius that people have the wrong notion of the concepts of “Marriage and Divorce”. They are so deeply entrenched in the field of politics and debating minor problems among themselves which often lead to enmity that they have forgotten their main calling, which is the spreading of the Divine Message of Islam to the world and the guiding of people according to the principles of the *Shari’ah* for the betterment of society. Often they align themselves with influential people in abetting wrong causes. Very few among them advise people even-handedly, without distinguishing between rich and poor. Often they serve the cause of those who can satisfy their selfish needs. Moreover, they are completely uncritical in their acceptance of their mentors’ pronouncements and judgements.

Many seminars and conferences are held on various subjects by the same *‘Ulama* but never have they in a precise form clarified the concepts of “Marriage and Divorce”. When confronted with conjugal problems, certain religious guides are themselves unaware of the Islamic Law. Actually, they either mislead the concerned parties or complicate their problems.

According to *Shari’ah*, no woman can marry during the period of *‘Iddah*. But, according to a Mauritian religious guide, this phase can be skipped. In terms of my information, he once conducted a marriage (the *Nikah*) before the period of *‘Iddah* had elapsed.

For certain *‘Ulama*, divorce can only be given by the husband who has the sole power of dissolving the marriage. Once, an *Imam* told me that as long as the husband does not grant his wife the *Talaq* the wife is bound to stay with him, whether she likes it or not. For many Mauritian *Imams*, a

request for divorce from the wife is not recommended. They maintain that the wife is bound to tolerate any kind of atrocities perpetrated by the husband and should, as far as possible, continue the marriage. Men have developed a sense of machismo by which they still think that women are their servants and slaves and that they are bound to be so forever. Men think that they can have the control over the lives of their wives. On the other hand, women have for centuries developed that deep sense of altruism and helplessness. They will see to it that their husbands are better off than themselves to the detriment of their own happiness. They are thus bound to accept everything they are told. And this malaise has been supplemented by the influential works of the *'Ulama*.

Most Religious guides are ill equipped to understand, let alone solve, the problems of marriage and divorce. This can also be due to the fact that most of them have studied at institutions in India and Pakistan. Their understanding is determined by the situation prevailing there. Women there have lived fairly subdued lives. Many have until recently quit primary education or have not completed secondary education.

Many of our leaders here forget that the condition of guardianship for a marriage is only optional. However, they impose it on couples whose parents do not agree with their marriage. Nevertheless, there are some *Imams* who have conducted *Nikah* in the presence of the bride and bridegroom and the two witnesses without taking the consent of their parents into consideration. Instead of elaborating on the principles and implications of a *Nikah* and advising couples on how to live a healthy and blessed married life, they are imposing harsh injunctions and frightening those would-be-husbands and wives.

Mauritian *'Ulama* see divorce as a taboo and if ever it is demanded by the wife, then, drastic measures will be taken to discourage her as if she is the one to be blamed. Most *'Ulama* side off with the husbands. If the husband divorces his wife on his accord, the decision is accepted and the whole society through the influence of the *'Ulama* deems it reasonable and justifiable. But if the wife divorces her husband, then through the influence and teachings of the *'Ulama*, the whole society is highly critical of this measure. For many of our *'Ulama*, it is better if she lives on with her husband.

It is high time ordinary Muslims do some research of their own, both for their benefit and that of their families.

Finally, we elaborate upon the views of Mauritian women.

Probably the most common obstacle in society is the stereotyping of women. Asian culture, with which most women have affinity, viewed females as an underclass. Education was not considered important for girls because of an ancient belief that they would get married as soon as they reached the age of puberty, so there was no point in investing in their education. Females were looked upon as a burden. In the old days only some girls from a rich background were educated and went on to pursue a career. For the poor, women's work lay in supporting the family and educating their children, especially if they were boys.

Gender stereotyping can happen from an early stage in their lives. Parents' attitudes to girls' education and training may restrict their choice of career and cause them to underestimate their full potential. This procedure is reinforced by the fact that there is a lack of women in key areas such as

engineering, science, technology and in Islamic Law, the *Shari'ah*.

The level of education received by women also influences women's views on marriage and divorce. Education in Mauritius is remarkably well developed compared to other third world countries. As a matter of fact, in the early 1950s Mauritian peoples have received primary education but their level has remained stagnant. But unlike other countries, it has remained optimal and much improvement has been noticed in their syllabus of primary education. It is only since this year, 2003, that new reforms have been undertaken to improve the level of primary education by introducing new subjects. In May 1991, the Education Act was amended and primary education became compulsory, but not secondary education. Primary school leavers aged 11 - 12 are therefore left with the option of either to continue up to secondary education or to join the labour market in low paid trades. Secondary education that became free in 1977 continues to remain so. After 20 years since 1977 the country recorded a literacy rate of 85% in 1997. It is obvious that those leaving school at the age of 11 or 12 will have a lower standard of education compared to those completing their School Certificate (S.C) and Higher School Certificate (H.S.C) and a considerably lower level than those opting to continue higher education at universities.

Now in order to better understand women's views, we will have to separate women into two classes, those living in towns and those living in villages. Besides, we are confronted by two generations: the old and the new.

Now, there is a difference of attitudes and thoughts between those living in urban areas and those living in rural areas. In general those living in towns are exposed to more information. As a result, they are much more open-minded than

those living in villages. The same distinction can be made between the new and the old generation. Education available to Muslim women, therefore, differs from time to time and place to place.

Another aspect that has widened this gap of availability of education is the different living standards. Though education (Primary and Secondary) is free of charge, parents need to pay for learning materials and private tuition (the latter, to supplement learning at school). In poor homes, many children are forced to discontinue secondary schooling in search of jobs for supplementing family income. Boys are given preference especially in villages, for receiving higher education. Girls then lag behind. These girls with their Primary Education are not well prepared to grasp higher intellectual information, be it academic or religious. Due to their ignorance, they are misguided and wronged.

However, towns dwellers who enjoy a better standard of living compared to villages are aware of the importance of education both to their sons and daughters. They are thus exposed to various individuals with higher levels of education. In turn, they become increasingly aware of their legal and religious rights.

In Mauritius, now, there is a tendency for an increasing number of girls to opt for higher education up to university level. They are not only in touch with the Constitution of Human Rights, that is the Common Laws of Mauritius, but also with various sources of information through multimedia. This new generation, aged between fifteen and twenty, is upwardly mobile in social terms. Some enlightenment in their thinking is already discernible.

But for the older generation, there is a total misunderstanding of the real significance of both marriage and

divorce. For the older generation, marriage does not necessarily imply love and romance. For many of them, love is attained after marriage not before. Caught between the misinformation of religious leaders and the tyranny of self-centred husbands, they become fatalists. Their attitudes are totally different to that of the young generation. Women, nowadays, are much more exposed to the real Islam and are sailing on the new current to a better family and professional life.

In Mauritius, we have the “Ladies’ Wing” and the “Mauritius Family Council”. It would not be an impossible work for them to do some field work and educate wives and women. But the public does not know about their existence. Advertisement through multimedia could be one of the ways to gain publicity and serve the Muslim community.

Multimedia could be efficiently used to broadcast the necessary teachings of Islam at the outset.

Unless the champions of female liberty undertake an organised effort to make female education more widespread so as to bring its benefits within easy reach of women, there will exist cases of abuse and injustice in Muslim family lives. In Mauritius, we have to a certain extent commit ourselves to changing women’s conditions but there is no will on the part of our religious leaders and men. We need to make a great deal of study of the Holy *Qur’an* and *Sunna*. Lack of knowledge always results misunderstanding, misconceptions, chaos, and deprivation of human rights and deviation from the truth. Evidently it can even ruin one’s life and faith.

It has been decided recently, through parliamentary works, that twenty officers will be assigned to conduct a research on the conditions of women at work and their impact on their family lives. Despite all their responsibilities and problems at work, their husbands with the help of religious leaders are

forsaking them and thereby depriving them of their rights. This is very common in the Muslim families where women work. The fact that they have also become income generators for the family means that men and husbands use religion to suppress them. All those I have approached have told me that their lives after marriage were not theirs. I was once told that husbands advocate a *Hadith* in which the Holy Prophet (s.a.w) said that women (wives) are servants (slaves) of men (husbands).

To sum up, it is clear that the mentality, personality and views of Mauritian Muslim women are shaped and forged through their background, level of education, their aptitudes to grasp and interpret information, environment, family and neighbours, and to a greater extent the influences of their husbands and religious leaders. Women and wives in Mauritius in some regions still think of themselves as slaves of men and husbands. And sometimes this attitude extends beyond their husbands to their in-laws. They feel themselves indebted towards their parents before marriage and towards their husbands and in-laws after marriage. They abandon their dreams when they get married in favour of the dictates of their husbands and “new parents and families”. They sacrifice their own will and individualities to the consecration and betterment of their life partners. This attitude is mainly the result, as I said above, of their exposure to education, formal and informal education and customs and traditions. But all these are only possible through the handiwork of religious leaders. However, it should be fair to note that this situation is gradually changing to the benefit of women. It is a fact that women, through various sources of exposure, have realized the importance of education and the significance of free speech and of their own souls.

We discuss solutions to marriage problems in the next chapter.

Chapter 4

SOLUTIONS TO MARRIAGE PROBLEMS

In order to lead a peaceful married life, the best advice that one should take is from the Holy Prophet *Muhammad (s.a.w)*

himself. Based on his practical example, the following guidelines are meritorious:

- (a)** Both the couple should be conscious of their personal appearance and try to remain attractive to each other. Frequently women dress and wear make-up when they go out, but fail to do so when they are at home to please their husbands. In exchange, men should also look at their physical appearance so that they will be pleasing to their wives. Both of them live in a society in which there are too many temptations outside the home and, therefore, they should not give any chance to their partners to succumb to such temptations.
- (b)** Both of them should be companions to each other rather behave like boss and servant. So, they should be each other's friends more than being their bed partners.
- (c)** When they do commit mistakes or injustice to each other, they should confess and be forgiven. They should be gentle in criticism and generous in appreciation. Constant regurgitation of the past is destructive.
- (d)** They should mind their language. Sometimes people say things inadvertently that is hurtful to others. Words should be weighted before uttering.
- (e)** They should have a sense of humour.
- (f)** Both of them should share household duties. It is not fair that women are used as cooks, maids and babysitters while men enjoy all outdoor social

activities. The Prophet (s.a.w) always helped his wife in household work.

- (g) They should find occasions to give each other a gift, regardless of its nature or size. The Prophet *Muhammad* (s.a.w) has stressed that we should give gifts to each other because “giving gifts” increases mutual love. (Sarwar 1999: 199-200 and Malik 1993: 1685).
- (h) The wife should recognize the economic position of her husband and should not impose any demand on him that he cannot bear. If she does, he will either refuse or find wrong means to earn extra income to meet her demands. Both these responses will have harmful results.
- (i) They should be equally involved in community work and efforts at rearing children.
- (j) Both of them should be sexually compliant to their partners without imposing undue burdens. Thus, the Holy Prophet *Muhammad* (s.a.w) was very considerable by encouraging in foreplay. ‘Abdul Naeem says (2000: 14): **“In a Tradition, he said: ‘It is not appropriate that you fall upon your wives like a beast but you must send a message of love beforehand.’”** Each should respect the likes and dislikes of the other. They should respect each other’s privacy because each person needs moments of privacy.
- (k) Finally, they should have meals together and the occasions for meals should be happy occasions for the whole family and not a time for arguments. If they are going to argue, they should do so later on and not in

front of their children. Each argument should end with some expression of love. It is recommended that they should never go to bed angry at each other.

Islam had also done much to protect the wife's rights and save her from having to continue to live in an unhappy environment. Among beneficial measures are the following:

- (1) The wife can insert a clause in the marriage contract ensuring that
 - (a) Incompatibility of temperament,
 - (b) Maltreatment,
 - (c) Refusal of maintenance,
 - (d) Unannounced journeys,
 - (e) Taking of another wife without consultation,
 are so provided against that if any of the above five conditions is broken she can approach a lawyer to obtain a divorce for her through the courts.

- (2) The wife can compel her husband to divorce her by being intolerably refractory, vexatiously shrewish or deliberately incompatible in relationships whether familial, sexual or social.

- (3) The wife can resort to the courts if the husband has been incapable or negligent in supplying her with maintenance or has put obstacles in the way of her obtaining it; or if either partner deprives the other of conjugal rights or fails in marital duties the Muslim *Qadi*, if the woman's plea is proved, can compel the husband to respect her right, to be reconciled, to disburse the proper sums, to confer her rights upon her in every form and if the husband proves

recalcitrant or refuses to obey the judge's orders, the judge can then compel him to divorce his wife.

- (4) The wife can enter a plea in the Islamic court and obtain an injunction if the husband accuses her of lewdness, un-chastity or unfaithfulness, or denies his own paternity of her child. If the husband cannot prove his case, the judge will order the husband to separate himself from his wife in accordance with the relevant legislation.
- (5) The wife may, in the case of intolerable revulsion or aversion, in a simple fashion bring about a discontinuance of their union by renouncing a large part of her marriage portion, while freeing her husband from his obligation to pay her alimony during the *'Iddah* breathing-space period.
- (6) The wife can, if the husband absents himself so that no news of him reaches her and she falls into financial or other difficulties, resort to the courts and request a divorce. The judge will then perform the necessary formalities to annul her marriage contract.

The husband should not hate his wife on account of any of her faults because there is no man and woman without any defect. The Holy Prophet *Muhammad* (s.a.w) said: **“Let no believer hate a female believer. If he hates one trait of her character, let him be pleased with her for another trait.”**
(Muslim 1991: 3469)

The husband should not be too strict on his wife in order to achieve his aims. The Holy Prophet *Muhammad (s.a.w)* said: **“Admonish women with good, for they have been created from the upper part of the ribs and the most crooked thing in a rib is its upper part. If you want to make it straight, it will break. If you leave it, it will remain crooked. So advice women accordingly.”** (Al-Bukhari 1984: VII / 114)

They should negotiate matters of common concern between themselves. Other points that should be taken into account are background and education. Both the husband and wife should consider their social, economic and educational background to ensure compatibility.

We now offer concluding remarks.

Chapter 5

CONCLUSION

We have dealt at length with the position of men and women in Islam and their attitudes towards both the institutions of Marriage and Divorce. It is clear from the foregoing pages that, as far as legal and property rights and facilities for marriage and divorce are concerned, Islam has given equal rights to the members of the female sex. However, many of the rights conferred on women by the Holy Prophet (s.a.w) of Islam have only partially and grudgingly been given to them in Mauritius.

In general women are unaware of the rights they have in dissolving a marriage. The main reasons behind that situation are:

- (1)** Many of them do not have a good level of education and as such they do not have access easily to good and necessary information.
- (2)** The religious leaders of Mauritius are not willing, voluntarily or not, to impart the true insight into marriage and divorce to the community, and mainly to women.
- (3)** The unwillingness of husbands to remedy the situation in case they lose their monopoly of knowledge and / or control over their wives.
- (4)** Due to our craze of following Western cultures, we are either forgetting our own cultures and traditions or we are simply ignoring them and choosing foreign ones as models of success. As such, women have no say concerning customs, traditions and principles of their own religion, that is, Islam.

This situation is changing gradually because women now have realised the importance of acquiring education and enforcing their rights. However, mostly in rural areas, their

rights are contravened. This condition generates cases of abuse and injustice where mainly wives and children suffer the most.

Marriage is not a frivolous exercise. It is a life long relationship. For that reason, any factor detrimental to the relationship should be avoided as much as possible. Highly educated males and females should seek partners of similar educational background. Cultural and family background consideration is very important. Common language is an essential way of communicating. Such things help the two partners to understand, communicate and relate to one another and are factors of stability and success, as are financial independence and the ability to provide a decent level of maintenance. Again, this is a way of insuring that outside influences do not spoil an otherwise happy life. All ways and means should be considered giving a solid basis for new human experience which is expected to provide a framework for a happy, successful and amicable life.

The question of common language, background, education is meant, in an ordinary stable context, to maximise the chances of success and stability in the institution of marriage. However, considering the particular position of the Muslim community living in minority situations, young Muslims, male and female, are exposed to all sorts of challenges be they cultural, linguistic, racial or social. The most fundamental question when choosing a partner is a religious one. As far as language, background, or social position are concerned, they are not significant enough that must be totally fulfilled before a marriage can take place. Indeed such considerations may not be relevant to Muslims of same nationality as they have common a language. If the prospective partner is of a good character, strong religious inclination and the two young people are happy

and feel compatible with one another other considerations are not of such importance.

Islamic education begins at a religious school, a *Madrasah*, under a teacher. The latter is responsible for teaching the Holy *Qur'an*, Islamic studies, Islamic cultures and many other facets. But here the problem lies in the fact that most of these teachers at elementary schools do not possess the necessary background and certificates to teach Islam. The new reform must begin right with these teachers. Islamic institutions with the help of the State should provide them with training sessions held by qualified tutors or lecturers.

At secondary school and college, students opting for Islamic studies at principal level are accustomed to topics like "Women in Islam". But many Mauritian college teachers do not emphasize this topic and fail to delve into it. A forum could be held to sensitise students on the importance of discharging the rights of women in Islam (mainly on marriage and divorce).

Islamic studies could be introduced at university level. To this day, the University of Mauritius does not offer such a course or degree. This is so because there is no Mauritian sufficiently qualified to lecture in the course. The immediate solution lies in taking the service of foreign university professors.

Another possibility to spread the true meaning of Islam is through seminars that could be held by those *'Ulama* not afraid to spread the truth and the real Islam to both men and women.

Marriage in Islam is a sanctified bond that should not be broken except for compelling reasons. Couples are instructed to pursue all possible remedies whenever their marriages are in danger. Divorce is not to be resorted to except when there is no better solution. Briefly, Islam recognizes divorce, yet it discourages it by all means. When both institutions are

conducted, they should be done according to the Islamic principles. *Imam Malik (r.a)* says (1993: 642): **“Yahya bin Sa’id has narrated (that) Sa’id bin al-Musayyab has said: ‘There are three topics for which it is prohibited to joke: marriage (*Nikah*), divorce (*Talaq*) and the emancipation of a slave (*itq*).”**

APPENDIX

CASES OF ABUSE AND INJUSTICE IN MAURITIUS

Throughout the world, Mauritius is known as a worldly paradise where the whole population, comprising of different religions, lives in perfect harmony. But when brought under close scrutiny the family life of Mauritian Muslims reveals a stunning picture. Many atrocities are being committed especially against wives and children.

In the following discussion, the names of those who have suffered or are still enduring agony have been omitted due to respect for their dignity.

The number of females in Mauritius will show an increase in future years. The projected female population will rise to 609,300 in 2003, 662,600 in 2013 and 707,900 in 2023 compared to the increase in male population of 605,000, 647,800 and 679,600 over the same period.

According to the Ministry of Women in Mauritius, there were more than 2133 cases of child abuse, 106 concerned sexual abuse and 20 of child prostitution in 2002. The Ministry said: **“Because of their gender, they often suffer culture bound violations and are abused, denied opportunities more readily available to adolescent boys.”**

In Mauritius, the *“Ministère des Droits de la femme, du développement de l’Enfant et du Bien-être de la famille”* in association with *“SOS Femmes”* has launched a new programme to *“Responsabiliser les hommes pour contrer la violence domestique”* said the Week-End Newspaper (dated 24/11/02). It is a new action plan in the sense that letters were sent to 33000 married men of both Mauritius and Rodrigues to sensitise them

to domestic violence and for one week clips focussing on the social problems were broadcast. The Chairman of “SOS Femmes”, Rada Gungaloo said: **“All began in 1989, in a way or another, with the complaint of a woman, mother of ten children, who came to see us with her breast mutilated, burnt by her husband while asleep alongside her last five years old child,”** and she also added: **“The aim was to inform people about and denounce the conjugal violence. Break the silence of the taboos and make it a public matter.”** Helping all these women out is one of the important aims and actions of the *“Centre d’Hébergement de SOS Femmes”* at Moka. Since its creation in 1995, this centre has received a total of 1827 women, aged between 18 and 67, as well as 1939 children. That was and still is a way to safeguard their lives and those of their children also. Rada Gungaloo added: **“After all these years, it is noticed that women, more and more, have the guts to speak and to search for help. The most important thing is that we know we have a place where to go and dwell for a certain period of time in total security. It is no more a private matter, but a public one. Each and every one knows something about conjugal violence. It is seen as the most serious and painful problem faced by women. But there is always a “but” on men’s part saying they have their good reasons for their acts or ‘there is also violence towards men’.”**

In this trend, there has been the setting up of a new centre for the victims at Belle-Village. The theme chosen by the *“Ministère des Droits de la Femmes”* was *“Aret fer dimal! Fer to lantouraz ene lantouraz sans violans”*. It has been noted that from January 2002 to September 2002, 984 victims of conjugal violence were registered. The ministry with the help of all associations involved in helping women victims of abuse, will

concentrate their campaign much more on cases of rape and incest. The lawyer and Chairperson, Rada Gungaloo has said: **“We wanted to sensitise men of this country concerning the gravity of the problem, that is to say that they have the responsibility and task to create, with women, a culture which says “No” to violence against women.”**

The “*Peer And Anti-Violence Club*” also known as “*Pavers*” has put forward a plan to help all those victims of conjugal violence and new departments like the “*Stress Management*”, “*Health Women Centre*”, “*Violence Club*”, “*Young Girls*”, “*Child Development Unit*” and also the “*Self-Help Workshop*” are in operation since November 2002, working for the betterment of victims of abuses. Only two weeks after their creation, the above-mentioned organizations had registered 120 cases.

“With the new services available to each and every one, all the victims will find themselves in a less formal environment. They will not have to wait in any room for the officers in service to take care of them,” said the Head Office at the Ministry. We will find in the following pages a list of women who have willingly agreed to reveal their bitter experience and the unfair and unfortunate living conditions they were or still are. We respect them. May *Allah* help them out of their problems. (Ameen).

Case Study No. 1

The following paragraphs are about the miseries of a mother alongside her son over a period of 10 years. The situation was so critical that it affected both of them completely and gave a different twist to their lives.

S...of Coromendel.

Being an adolescent from a respected family, S...lived a life full of hope in terms of a good education, both academic and religious. She successfully completed her higher studies and was the very symbol and image of honour and dignity in her family. She had her views on marriage and hoped that one day her charming prince would take her far for a marvelous love life until the next world. The first six months of her life with her would-be-husband were all perfect, but it was then that all changed for the worst. Yet what followed is in fact the sad fate of many Mauritian girls. Well before the marriage took place, her state had deteriorated so much that she lost weight and became anaemic. But she had found the love of her heart and she was confident that when she would be married all would change for the better. **“But I was wrong and that was the mistake of my whole life,”** S...said. She married a “so-called educated man” who did not even complete his secondary education, leaving college well before S.C (School Certificate) and joining his father in his jewellery shop. But S...had never realised the importance and role of proper education for both partners in family life. All

the time she was by his side, she knew and heard constant criticism whether in public or in private. When he was among his in-laws, he would behave like a good husband. He would do his utmost to hide the slightest sign showing his bad conduct towards his wife. But when he was alone with his wife he was totally different. This situation continued until S... suffered from cancer. She did not tell her parents what was going on and what her state was for she had, nevertheless, a hope of living a love life. When the situation became unbearable one day, she fainted and fell. But like a devil rising from the darkest side of hell, her husband revived her and continued the fight with her. She could not remember how long she had fainted. He had that selfish character that could destroy anyone.

The situation became bitter when S...was expecting a child. A child is a blessing for a family and a child cements the ties between husband and wife. But here, we have a rare specimen of a human being. Her husband became more and more unsupportive. Each and every cry of the baby boy, which is normal for a baby at this age, was seen as negligence on the mother's part and as such much fighting and abuses took place to the detriment not only of the mother but also of the child. S...added: **“Is it for the mistake of my life, getting married to him, that the life of my son, my little baby, will be such? Will it be because of my mistake that my son will have to suffer and not lead a normal life as every one of his age?”** This unfair situation worsened until S...decided to leave the house of her husband and return to her parents' home. Due to a “last chance” option, S...returned to her husband's place. After one month, she returned to her parents' home again after deep altercations. She fainted that same night and was admitted to hospital where she stayed for a day. Later on, S...gave her husband a final chance to prove that he had changed as he

pretended and returned to him. Her next stay at the hospital was for three days with the risk of falling into deep coma. She was the talk of the hospital. Her condition was critical. This time, all was over. She nearly lost her mind while losing the notion of her whereabouts and actions and even knowledge of her son, during those horrible days. To this present day, that phase of her life is blotted out from her memory. S...and her son had to undergo treatment with a psychologist and now she is asking for a divorce. Her life has changed. She has decided to live a lonely life and work hard for ensuring a bright future for her son. The attitude of the father towards his mother has changed the child's outlook to the world. Despite his early age, he thinks and acts with love much more than adults can imagine.

I personally know the case where trying to get out of her miseries, S...was interrogated and blamed for her situation by the same religious leader, M...who advised her not to leave her husband at any cost. Had the victim been his elder daughter, with 10 years of misery, anaemia, cancer and related problems, would he have blamed her and advised her never to leave her husband at any cost? Her brother-in-law, F. M... who took her to that *Imam*, insulting and blaming her for her state, always displayed male domination.

Case Study No. 2

The following lines will give us a clear idea how much a husband's thirst for money can result into his wife's miseries and eventual murder.

S...of Port Louis.

S..., a thirty year-old lady, married to a mischief-monger and drug addict, was subjected to harsh beatings during her lifetime. The basis of their family structure was based on immoral beliefs. The man from the beginning used his wife to obtain illicit money. They were engaged in prostitution and sometimes though the woman was reluctant to be involved in this kind of "business", she was forced to comply under the "supervision" of her husband. Hard times were reflected by beating that led to bloodshed. The man was often jailed for his crime. But this seemed to have no effect on him. To what extent she was voluntarily involved in these activities, we really do not know. Ultimately, she sought refuge with neighbours and the Police. However, when her husband was again released, the same conditions prevailed. This situation continued until the time her neighbours, upon smelling the stench emanating from her house, inquired of her state. But it was too late. She had already been murdered. Her body had been in a state of decay

for three days. Her husband was nowhere to be found. Much later he was arrested for murdering his wife.

Case Study No. 3

The story related below is that of a woman who has sacrificed her own betterment and has been a victim of violence alongside her son. This situation has resulted in the death of the husband.

M...of Piton.

M...is a thirty-five-year-old mother. She is the daughter of a rich and respected family and a sister of a renowned doctor. When she fell in love with F...she was prepared to sacrifice all her dreams and luxuries and live with F.... But the life she experienced was not what she had expected. Her husband was a drunkard and fought with her every day which was a form of entertainment for F.... Often, she was sent to sleep the whole night outside the house under a tree. She was beaten until she bled and fainted. Atrocities were also committed upon her son. The latter had to stop schooling at an early age and go to work. His income would be spent in buying alcoholic drinks for the father. One day, when the husband was trying to hit his wife and stab her, their son tried to pacify him. The latter was injured in the process. When the knife fell to the ground, the wife grabbed it and stabbed her husband to death. She was arrested but later released due to testimonials from

neighbouring witnesses attesting to the ill treatment endured by the wife and her son.

Case Study No. 4

The following story is that of an ill-treated woman who is confident that her husband will change and her life will improve.

P...of Moka.

P...is a young woman of about twenty-five years. She was met on her way to the Court of Moka for a *“Protection Order”*. For one week prior to that she was staying at the site of the organisation where she had found refuge after severe and persistent ill treatment from her husband. Her first and only love she met when she was fifteen years old, to whom she got married at the age of nineteen after leaving the parental roof. Her parents wanted her to pursue further studies but she was in love. She has two girls, aged one and two years. Her husband, P..., behaved like a bachelor and became more and more addicted to alcoholic drinks with his friends. She finally came to take refuge at the centre after much persecution from her husband. Her stay at the centre has proved to be very beneficial and enlightening: **“Since I am in this centre, things really changed. There is a perfect understanding here, we are better off. But much more, I feel much more**

independent since I am here. I feel I am a real woman. I feel I have personal and social status.” This realisation has given her much determination in shaping her life with her husband, who, she is convinced, will change and together they will ensure the future of their children.

Case Study No. 5

We will learn of a mother who is forced to a paternity test due to persistent remarks and allegations from her husband.

M...of Belle-Village.

M...went to the new centre at Belle-Village one week after its opening. She went there to have a paternity test. M..., pregnant with her third baby, revealed: **“My husband has always reproached me for the physical difference between my daughter and my son. He pretends that one of my kids is not his. Discussions and disputes occurred so often that they were followed with blows and bruises. I have really had enough of all these situations. I have heard of the paternity test and I would like to prove to him the truth and at the same time deter him from torturing me.”** It is the *“Child Development Unit”* which is in charge of M.... It is also the psychologist of this unit who is assisting her daughter, N..., ten years old, who was beaten by her teacher. Her mother said: **“My daughter could never sleep because she was slapped by her teacher and the resulting trauma.”** N...is in the 5th class of a

primary governmental school. On the 7th of November 2002, the teacher learnt of the drawings N...made of him and he was extremely unhappy. So he slapped her in the face and N...was asked to kneel at the back of the class. Her mother said: **“I have submitted a complaint as I want to move further with that case. N...is obliged to have therapy and take pills in order to have a good night’s sleep.”**

Case Study No. 6

The following report is about a wife whose marriage is on the verge of collapse due to her past experiences.

L...of Port Louis.

L..., a woman of twenty-two years old, had a difficult childhood as well as a long traumatic life with her husband. When she was twelve years old, she was molested and abused by her father often. Though she told her mother about her father’s attitudes, the mother did not believe her and made as if nothing happened. At the age of twenty, she met M...and they got married. For the following two years, life for the couple did not work out as perfectly as it should be. Due to her past experiences, she had problems with her husband when he made love to her. Each and every time they made love, she would remember the times she was molested and abused by her father. The couple’s love life disintegrated. But the husband was not aware of his wife’s past. Being ignorant of that fact, the husband began to notice that something was wrong and he did

not understand at all what was going on. She kept on refusing having sexual relationships and even when the act was done, there was no passionate participation on the wife's part. As a matter of fact, his attitudes began to change drastically towards his wife. Subconsciously, this was harming the couple and in particular the wife who in turn, was ashamed to reveal her past to her husband. She was apprehensive of his response to her revelation. Seeing that the situation was worsening the wife decided to narrate to her husband her childhood in order to save her marriage. It was at that time that the situation changed for the best and a case was filed against her father.

Case Study No. 7

The passage below deals with a drunkard terrorising his family, relatives and neighbours.

N...of Savannah.

N...and her two children are living in a refuge centre since March 2003 due to atrocities committed by her husband and their father respectively. When Z...was narrating the life of her daughter, N..., she was in tears when describing the events and scenes of her life with her husband, B.... The latter is a drunkard and beats anyone standing in his way. Both his wife and children are targets of his abuse. In order to protect N...from all these problems for as long as possible, a friend of Z..., S..., takes care of her and N... often goes to live with S.... But one day, when S...could no longer tolerate how these kids and their mother were suffering, said: **“N...stayed with me for two months. Her husband came very often to my place. Once I was beaten by her husband and he told me to stop**

sheltering N.... I will not be able to keep her any more. I told her families to come and take her away to a more secure place.” It was at that time that N...and her two kids were taken under the care of an officer of the “*Domestic Violence Unit*”. She said that her life with B...is nothing but hell. And now her situation will be worsened because she will soon have to leave the centre. She does not have any place to take shelter with her children. Z...can well take care of her daughter but it is risky for her and the other eleven members of her family as she narrated: **“When N...was not at home, her husband, B...came and broke many things at home, burnt our clothes and also wanted to put our house on fire, but he was stopped by the police force. And now, what if he comes back and what about the security of my family?”**

It was at the age of seventeen that N...fell in love with B...and her whole neighbourhood advised her not to marry B...as they know his real character. But N...got pregnant and they married. At first, everything went well. Then she noticed changes in her husband’s behaviour which worsened from light slaps to violent blows. N...kept silent for she was ashamed and she was told not to accept B...but she did not listen to anyone and now it was difficult for her to disclose matters about B... to her parents. Her children were not spared by her husband. Her first child, D..., received his first blow at the age of three which swelled his eye. B...would inflict verbal and physical injuries on his mother-in-law and sister-in-law also. According to the neighbours, N...is also a drunkard but according to her mother, she was forced by B...to be like that.

BIBLIOGRAPHY

- *Al-Qur'an al-Karim*.
- 'Abd al-'Ati, H. 1977. *The Family Structure in Islam*. Indianapolis: American Trust Publications.
- Abu Dawud, A al-T. 1990. *Sunan Abu Dawud*. New Delhi: Kitab Bhavan.
- Al-Bukhari, M bin I. 1984. *Sahih al-Bukhari*. New Delhi: Kitab Bhavan.
- Al-Ghazali, A H. 1982. *Ihya Ulum al-Din* (4 Vols). New Delhi: Kitab Bhavan.
- Al-Hasan, M. 1998. *History Of Islam* (2 Vols). New Delhi: Adam Publishers & Distributors.
- Al-Jilani, S A Q. 1995. *Sufficient Provision For Seekers Of The Part Of Truth* (5 Vols). Florida: Al-Baz Publishing.
- Al-Qushairi, M bin H. 1991. *Sahih Muslim*. New Delhi: Kitab Bhavan.
- Al-Shirbini, M. al-Khatib (ND) *Mughni al-Muhtaj* (4 Vols). Beirut: Dar al-Fikr.

- Al-Tirmidhi, A al-'Ula M. 1995. *Jami' al-Tirmidhi*. Beirut: Dar al-Fikr.
- Doi, A R I. 1984. *Shari'ah: The Islamic Law*. London: Ta Ha Publishers.
- Ebrahim, M. 2001. *The Gift Of Nikah*. New Delhi: Islamic Book Service.
- Ghani, A. 1998. *Rights Of Husband And Wife In Islam*. New Delhi: Islamic Book Service.
- Ghulam, S. 1999. *Islam: Beliefs And Teachings*. New Delhi: Markazi Maktaba Islami Publishers.
- Hendricks, S (Sheikh). 1998. *A study In The Understanding Of Authority And The Abuse Of Power In Muslim Marriages*. Washington DC: Women's Conference Of The 2nd International Islamic Unity Conference. Washington DC.
- Khan, M A. 2001. *Muhammad: The Final Messenger*. New Delhi: Islamic Book Service.
- Mahdi, H. 1992. *Guide To Muslim Personal Law*. Beau-Bassin: 5-Plus/T-Printers Co. Ltd.
- Malik, A bin. 1993. *Al-Muwatta' (2 Vols)*. Beirut: Dar al-Fikr.
- Muhammad, F N. 1992. *Islamiat For Students*. Lahore: Ferozsons (Pvt.) Ltd.
- Naeem, A. 2000. *Sexual Etiquettes In Islam*. New Delhi: Islamic Book Service.
- Shah, S N. 1996. *The 'Alim For Windows Release 4.5*. ISL Software Corporation.
- Siddiqi, M M. 1998. *Women In Islam*. New Delhi: Islamic Book Service.

