CONCILIATION PROCEDURES IN DIVORCE PROCEEDINGS

In its Report the Royal Commission on Marriage and Divorce in the United Kingdom said:—

> Starting from the conviction that the nation's well-being depends largely upon the quality of married life among its members, we were naturally led to consider the means by which harmony and union, once threatened, could be maintained and restored. Thus the various efforts that are being made to give guidance and promote reconciliation came under review, together with the influence upon them of the divorce law and its administration. Successful marriage and the maintenance of the unity of family life are so important that, where husband and wife have become estranged, an attempt should be made wherever possible to bring them together again. A matter so intimately affected by human personalities must present great variety and complexity. There are cases no doubt where a comparatively trivial fault has been magnified beyond all recognition; there are others in which the surface strains and stresses are symptoms of a graver and more deep-seated disharmony. The first task of marriage guidance must be to bring to light the causes of failure, actual or threatened. If these prove to be largely external (housing shortage, unwise relatives and the like) or largely personal (petty selfishness, lack of understanding, sexual maladjustment, failure to have children), there is reasonable chance that wise and skilled counsel may bear fruit. But marriage guidance has obviously far less chance of success when the malaise is really due to the acceptance of false standards of value and of behaviour in marriage.[1]

There is no statutory provision for marriage counselling or marriage guidance in the law of the United Kingdom and the tendency has been to leave the work of marriage counselling to voluntary organizations, among which are the National Marriage Guidance Council, the Family Welfare Association and the Catholic Marriage Advisory Council. The Royal Commission, in its Report, recommended that increased State support should be given to these existing agencies and in particular that the Probation Service be extended to cover marriage counselling and marriage guidance.[2]

Facilities for reconciliation have recently been provided by the Matrimonial Causes Act, 1963,[3] which makes it possible for spouses to continue or resume cohabitation for the purpose of effecting a reconciliation, without a presumption of condonation arising. It is provided that adultery or cruelty shall not be deemed to have been condoned by reason only of a continuation or resumption of cohabitation between the parties for one period not exceeding three months or of anything done during such cohabitation, if it is proved that cohabitation was continued or resumed, as the case may be, with a view to effecting a reconciliation.

1. Report of the Royal Commission on Marriage and Divorce, 1951-1955, at p. 93f.
2. *Ibid.*
3. Eliz. 2, c. 45.

Similarly, a resumption of cohabitation for any period not exceeding three months will not, if done for the purpose of effecting a reconciliation, break the period of three continuous years necessary for a decree in cases of desertion.[4] It is provided that in calculating the period for which the respondent has deserted the petitioner without cause and in considering whether such desertion has been continuous, no account shall be taken of any one period (not exceeding three months) during which the parties resumed cohabitation with a view to a reconciliation. It has been held that these provisions do not apply in cases where a continuation or resumption of cohabitation is in consequence of a reconciliation between the parties, but only where it is *with a view* to a reconciliation. A wronged spouse who has been fully reconciled with the wrongdoer (in the sense of a resumption of cohabitation with a fixed and settled intention of forgiving a known offence) cannot go back on that decision and the trial period of three months referred to in the Matrimonial Causes Act, 1964, does not apply in such a case.[5]

Although the law of divorce in England is primarily based on the fault principle, there has been a recent trend towards recognition of the break down principle and consideration of the family as a social unit. Where both parties are at fault the court has a discretion to grant a divorce even if it finds that the petitioner has during the marriage been guilty of adultery. Viscount Simon L.C., in the House of Lords, has laid down as guides for the exercise of the discretion (a) the position and interest of the children; (b) the interest of the party with whom the petitioner has committed adultery, with special regard to their marriage; (c) the prospects of reconciliation; (d) the interests of the petitioner, particularly his prospects of re-marriage; and (e) the interests of the community at large to be judged by maintaining a true balance between respect for the binding sanctity of marriage and the social considerations which make it contrary to the public policy to insist on the maintenance of a union which has utterly broken down.[6] The underlying policy of the courts, as Lord Romer pointed out, does not exist "for the purpose of preventing the dissolution of marriages, but for the purpose of discharging the painful duty of dissolving them when all reasonable hope of reconciliation between the parties has come to an end."[7]

It is proposed in this article to examine the provisions of reconciliation in some of the Commonwealth countries and in the United States of America and then to consider how far facilities for conciliation are provided in the law of Singapore.

One of the earliest statutory provisions in the Commonwealth for reconciliation before divorce is contained in the Indian Hindu Marriage Act, 1955, where it is provided that before proceeding to grant any relief under the Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and

4. Matrimonial Causes Act, 1963, s. 2.

5. *Brown* v. *Brown* [1964] 2 All E.R. 828.

6. *Blunt* v. *Blunt* [1943] A.C. 317 at p. 525.

7. *Cohen* v. *Cohen* [1940] A.C. 631 at p. 645.

circumstances of the case, to make every endeavour to bring about a reconciliation between the parties.[8]

In the Commonwealth of Australia statutory provision has been made for reconciliation as part of the procedure in suits for the dissolution of marriage. It is provided that it shall be duty of the court in which a matrimonial cause has been instituted to give consideration from time to time to the possibility of a reconciliation of the spouses unless the proceedings are of such a nature that it would not be appropriate to do so. If at any time it appears to the court, either from the nature of the case, the evidence in the proceedings or the attitude of the parties or either of them or of counsel, that there is a reasonable possibility of such a reconciliation the court may either adjourn the proceedings to afford the parties an opportunity of becoming reconciled; or with the consent of the parties, interview them in Chambers, with or without counsel, as the Judge thinks proper, with a view to effecting a reconciliation; or nominate an approved marriage guidance organization or a person with experience or training in marriage conciliation to endeavour with the consent of the parties to effect a reconciliation.[9] Similar provision for reconciliation before divorce has also been made in New Zealand.[10]

In the United States the idea is steadily gaining ground that divorce and separation are not just another form of litigation, but one aspect of a vital and complex social institution, the family, and that they have to be dealt with as a social and therapeutic problem rather than in terms of the success or failure of a legal claim. This approach has led to the increasing recognition of the preventive or curative method, as an alternative to divorce. Marriage counselling is becoming increasingly recognised and organized both by the Government and by voluntary organizations as a way of ensuring that marriage and divorce are approached with a proper appreciation of the problems and responsibilities connected with them. Reconciliation systems have been incorporated in court procedure in a number of States, *e.g.* in New Jersey where reconciliation efforts are mandatory wherever there are minor children of the parties. They take the form of a pre-trial conference before a reconciliation Master designed to make every effort at reconciliation. In some States in the United States family courts and children's courts have been set up to deal with the many sided aspects of family disruption by non-adversary procedures. It has been suggested that there should be a change from the exclusive consideration of the husband-wife relation and of divorce in particular as a bi-lateral relation, to a consideration of the family as a social unit, and that as much consideration should be given to the interests of the children and of the State as to that of the parties. As a corollary to this, it has been further suggested that there should be a shift from the adversary to the inquisitorial function of the public authority dealing with divorce — be this an ordinary court, a special family or domestic relations court or an administrative board wihch would take the place

8. Indian Hindu Marriage Act, 1955, s. 23(2).

9. Commonwealth of Australian Matrimonial Causes Act, 1959.

10. New Zealand Matrimonial Proceedings Act, 1963, s. 4.

of the litigation procedure altogether.[11]

In Malaysia there are no statutory provisions for conciliation in the States of Malaya, Sabah or Sarawak in non-Muslim cases, but in Singapore there is a limited recognition of conciliation procedures. Provision is made for the appointment of public officers as conciliation officers and it is provided that where there are differences between the parties to a marriage the parties or either of them may refer the differences to a conciliation officer for his advice and assistance. It is also provided that where an application for divorce is made during the first three years of the marriage the court may, before allowing the petition to be presented, refer the differences between the parties to a conciliation officer so that a reconciliation between the parties might be effected. The Social Welfare Department has a counselling and advice section and the Assistant Director has been made a Conciliation Officer under the Women's Charter, 1961. But, while the section tries to deal with the resolution of matrimonial disputes, there would as yet appear to be no organized attempt at marriage counselling or guidance.[12]

It is in connection with administration of the Muslim law and divorce that we find the system of conciliation developed in Malaysia and Singapore. The settlement of marital disputes by arbitration and conciliation is recommended in the Holy Quran which says: [13]

> And if you fear a breach between husband and wife appoint a *hakam* (arbitrator) from his family and a *hakam* from her family; if they desire a reconciliation God will cause them to agree.

Under the Muslim law where there are differences between the husband and wife and where there is disobedience by the wife to the marital authority of the husband, the husband is required first to exhort and advise the wife. Where husband and wife accuse each other and the matter goes to the *kathi* or the court, the court may ascertain or appoint some reliable person to ascertain the facts, and thereafter take whatever measures are necessary in order that the party in the wrong may in the future perform his or her duty towards the injured party. In case of very grave discord the court should appoint two arbitrators, one from the husband's family and one from the wife's, who should then arrange the matter as if they were the agents of the parties. This is the dominant view of the *Shafii* and the *Hanafi* schools of law. According to this view, the parties must approve the nomination of the arbitrators and the arbitrator for the husband must be authorized by him to pronounce repudiation *(talak)* or to accept compensation for a divorce by *kholo';* while the arbitrator for the wife should be authorised by her to offer compensation for a divorce or to accept repudiation. According to the *Maliki* school of law and a minority view in the *Shafii* school, the arbitrators derive their authority from nomination by the Ruler or by the court. The consent of the parties is therefore not a condition for

11. W. Friedmann, *Law in a Changing Society,* (London, 1959), p. 205; M. Rheinstein. "The Law of Divorce and the Problem of Marriage Stability," (1956) *Vanderbilt L.R.* at p. 633f.

12. Singapore Women's Charter, 1961, ss. 46, 83(3).

13. *The Holy Quran* (translation by A. Yusuf Ali), Surah 4 Verse 35.

their appointment and they may give what judgment they consider beneficial, whether it be that the marriage should be continued or dissolved.[14]

The tendency in the past appears to have been to use the device of appointing *hakam* to assist the wife to obtain a divorce from the husband. Where, for example, the parties find it difficult to live with each other but the husband is unwilling to divorce the wife and the wife is unable to substantiate the grounds which will entitle her to a judicial divorce, the appointment of *hakam* enables her to obtain a divorce. But the primary purpose of the appointment of the *hakam* is to enable them to do what they can to effect a reconciliation between the parties.

Where arbitrators are appointed but are unable to effect a reconciliation between the parties, the dominant view of the *Hanafi* and the *Shafii* schools is that the powers of the arbitrators cease and they may arrange a divorce or *kholo'* only where they have been specifically empowered to do so, as authorized agents, by the husband in the first case and by both spouses in the second. In the dominant view of the *Maliki* school, on the other hand, the arbitrators have the right to decide that nothing but divorce or *kholo'* (depending as to whether the husband or wife is primarily at fault or the blame must be apportioned between them) will meet the case, and this decision will be upheld and enforced by the court. There is a minority *Shafii* opinion which follows the *Maliki* view. Al Sharbini states: [15]

> In one view they [the two arbitrators] are two judges *(hakiman)* appointed by the Ruler or by the Judge. This view has been preferred by many on the ground that the Qur'an has named them 'arbitrators' *(hakiman)* and an agent is not a arbitrator ... So the consent of the two parties is not a condition of their appointment and they may give what judgment they consider beneficial, whether it be that the marriage should be continued or dissolved.

Ibn Hajar said:[16]

> And they are two agents who may act only by consent of the parties. But on another view they are the two judges *(hakiman)* appointed by the Ruler.

In the normal case of a divorce under the Muslim law, the divorce will only take effect after the period of approximately three months, called the *eddah,* during which in effect the marriage is still in existence and during which the husband is allowed to revoke the divorce by the process known in the Muslim law as *rojok.* The waiting period is imposed partly in the interests of the certainty of paternity of any child that may be born to the wife, and partly also to enable the parties to think over the matter and to go back to each other if they are able to forget their differences and to agree to live together again. A husband who has repudiated his wife in a revocable manner has the right to take her back so long as she is still in the period of her *eddah,* unless in the meantime the marriage has become illicit for any other reason. Therefore, even after the divorce has been pronounced, efforts can be made

14. Nawawi, *Minhaj-et-Talibin,* (translated by E. C. Howard, London, 1914), at pp. 318-319.

15. J. N. D. Anderson, *Islamic Law in Africa,* (London, 1954), at pp. 334-335.

16. *Ibid.*

to help the parties to be reconciled with each other; and where the husband wishes to revoke the divorce but the wife does not agree to go back, *hakam* or abitrators can be appointed to settle the differences between the parties.

The Ottoman Law of Family Rights provides that if quarrelling and discord develop between spouses and one of them refers the matter to the court, the court shall appoint an arbitrator from the family of each of the parties or, if there is none to be so appointed or none with suitable qualifications in the family of one or both, then it shall appoint someone suitable from outside. The family council so formed investigates the complaints and replies of each of the parties and does its best to reconcile them. If, however, this proves impossible, then, if the fault is the husband's, the court grants a divorce, while if the fault is the wife's it decrees dissolution *(khul')* on the basis of the return of her dower or part thereof. If, on the other hand, the arbitration council cannot agree, the court shall appoint another council of suitable arbitrators or shall appoint a third arbitrator unrelated to either of the parties. Moreover, the judgment of the two arbitrators is final and not subject to appeal. This follows closely the *Maliki* doctrine.[17]

In the United Arab Republic it is provided that, if a wife alleges that her husband ill-treats her in such a way as to make it impossible for people of their class to continue the marriage relationship, she may request the *kathi* to separate them, whereupon the *kathi* shall grant her a final divorce if the ill-treatment is proved and reconciliation seems impossible. If, however, he refuses her petition and she subsequently repeats her complaint but cannot prove the ill-treatment, the *kathi* shall appoint two arbitrators, where possible one from the family of each of the parties. The arbitrators shall try their best to reconcile the parties. If the arbitrators find reconciliation to be impossible and the fault to be that of the husband or of both sides or not clearly attributable to either, they shall decree a final divorce. The arbitrators have no authority to decree a *khul'* divorce or any dissolution of the marriage at all where the fault is clearly that of the wife. This provision is felt to be a defect in the Egyptian legislation but is based among others on the view of Ibn Rushd that there should be no dissolution of marriage where the wife is chiefly to blame, but that her husband should be allowed to punish her suitably.[18]

In the Sudan there is provision for judicial divorce for proved cruelty of the husband and for the reference of matrimonial disputes to a council of two arbitrators, preferably one from each family. The arbitrators should be learned or else specially instructed in the legal provisions respecting wifely disobedience. The arbitrators must try their best to effect a reconciliation and, if they find this impossible, they may decree a judicial divorce, *i.e.* they find the fault to be that of the husband or of both parties, or a decree of *khul'* if it appears that the wife is the chief offender.[19]

17. Ottoman, Law of Family Rights, 1917, art. 130.

18. Egyptian Law of 1929, arts. 6-9.

19. Sudan Judicial Circular No. 17 of 1916, ss. 14-15.

In Syria and Jordan it is provided that where a wife repeats an allegation of ill-treatment which she cannot substantiate the court shall appoint two arbitrators preferably one from each family; and where reconciliation proves impossible, power is given to dissolve the marriage on the recommendation of the arbitrators either by a single *talaq,* or, where the wife appears primarily to blame, on the basis of some financial consideration which she must provide.[20]

In Tunisia there is provision for the appointment of arbitrators where one spouse alleges ill-treatment but without proof. The arbitrators have no power to decree divorce with or without financial compensation, but must refer their decision to the court.[21]

In Morocco there is provision for the appointment of arbitrators to resolve disputes between the spouses, following the principles of the Muslim law.[22]

In Pakistan provision is made for the reference of all cases and applications for repudiation, second marriage and maintenance to the Arbitration Council which consists of the Chairman being the Chairman of the Union Council or Town or Union Committee, or a Chairman appointed by the Central Government and a representative of each of the parties to the matter. It is provided that any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of *talaq,* give the Chairman of the Arbitration Council notice in writing of his having done so. Within thirty days of the receipt of such notice, the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties and the Arbitration Council is required to take all steps necessary to bring about such reconciliation. The *talaq* unless revoked earlier, shall not be effective until the expiration of ninety days from the date on which the notice is given; but if the wife is pregnant at the time the *talaq* is pronounced, the *talaq* shall not be effective until the period of ninety days or the pregnancy, whichever is the later, ends.[23]

In Indonesia it is provided by administrative regulations that if one of the parties to a marriage applies for the divorce, the registry office or office dealing with religious affairs is required to summon both parties before it and to try to bring about a reconciliation. If at the first interview no settlement is reached, the couple must be sent away to think things over carefully and may not appear again at the office in charge until seven days have elapsed. If the husband persists in his demand for a divorce and, if the efforts at reconciliation fail, he is allowed to divorce his wife. There has been a commendable effort to set up consultation bureaus and marriage councils to cope with the high rate of divorce in Indonesia. In 1954 the Head of the Office of Religious

20. Jordanian Law of Family Rights, 1951, arts. 96-97; Syrian Law of Personal Status, 1953, art. 109.

21. Tunisian Law of Personal Status, 1956 s. 25.

22. Moroccan Law of Personal Status, 1957, Chap. VII.

23. Pakistan Muslim Family Laws Ordinance, 1961, s. 7.

Affairs in Djakarta introduced into his Department a consultation bureau called the *Seksi Penasehat Perkawinan dan Pertjeraian.* It was provided that, in cases of *talaq,* the officials of the Bureau should arrange a meeting between the husband and wife to find out the reasons for their disagreement and to do everything possible to bring about a reconciliation. Subsequently, the Government set up official marriage councils in Bandung in 1955 and in Djakarta in 1956. The marriage council in Bandung is called *Biro Penasehat Perkawinan Penjelesain Pertjerain* or BP 4 while the one in Djakarta is known as the *Panitya Penasehat Perkawinan dan Penjelesian Pertjerain* or the 5P's. These marriage councils have been commissioned to advise those who came to consult them on marriage problems either during marriage or after application for divorce. They attempt to explain to the persons concerned the sacred nature of marriage and in cases of impending divorce, act as arbitrators. One striking feature in Indonesia is the inclusion of Muslim women as members of the Religious Courts and of Marriage Councils.[24]

Provision for the appointment of *hakam* is made in the legislation in the States of Malaya.

In Kelantan and Trengganu it is provided that a husband may divorce his wife in accordance with Muslim Law and that a married woman may apply to a *kathi* for divorce in accordance with it. Where an application for divorce is made by a married woman, the *kathi* summons the husband and inquires whether he consents to a divorce by *talaq* or by redemption or *kholo'*. If the husband does not agree to the divorce, the *kathi* may appoint arbitrators to deal with the matter. Similarly, where after a divorce by the husband, the husband revokes the divorce but the wife does not agree to return to the husband, the *kathi* may require the husband to divorce her and, if he refuses, he will appoint arbitrators to deal with the dispute. The *kathi* will normally appoint arbitrators where he is satisfied that there are constant quarrels between the parties to the marriage. In such a case he will appoint two arbitrators or *hakam* in accordance with Muslim law to act for the husband and the wife respectively. In making such appointment the *kathi* should, where possible, give preference to close relatives of the parties, having knowledge of the circumstances of the case. The *kathi* may give directions to the *hakam* as to the conduct of the arbitration and they have to conduct it in acordance with such directions and according to Muslim law. If they are unable to agree or, if the *kathi* is not satisfied with the conduct of the arbitration, he may remove them and appoint other *hakam* in their place. The *hakam* should endeavour to obtain from their respective principals full authority and may, if their authority extends so far, decree a divorce and should, in such event, report this to the *kathi* for registration. If the *hakam* are of opinion that the parties should be divorced but are unable for any reason to decree a divorce, the *kathi* has the power to appoint other *hakam* and to confer on them authority to effect a divorce and, if they do so, to register the

24. Regulation No. 1 of 1955; Cora Vreede-de Stuers, *The Indonesian Women,* (The Hague, 1960), at pp. 131-136; R. F. Woodsmall, *Women and the New East,* (Washington, 1960), at up. 222-227.

divorce and issue certificates to the parties.[25]

In Pahang there is provision for the appointment of *hakam* where a married woman applies to a *kathi* for divorce. In such a case, if the application has been caused by disagreement of an extreme nature between the husband and the wife, the *kathi* appoints two arbitrators, representing the husband and the wife respectively, with sufficient powers given by both parties to enable the arbitrators to effect a peaceful reconciliation of the parties, to the extent of the arbitrator of the husband divorcing the wife and the arbitrator of the wife applying for a divorce by redemption. If both arbitrators decide for a divorce, whether by redemption or not, the arbitrator of the husband may divorce the wife, and the divorce is then registered.[26]

In Penang and Kedah it is provided that, where the Court of the *Chief Kathi* or of a *Kathi* is satisfied that there is serious disagreement between the parties to a marriage, it may appoint in accordance with Muslim law two arbitrators or *hakam* to act for the husband and wife respectively. In making such appointment the Court is required, where possible, to give preference to close relatives of the parties having knowledge of the circumstances of the case. The Court may give directions to the *hakam* as to the conduct of the arbitration and they shall conduct it in accordance with such directions and according to Muslim law. If they are unable to agree, or if the Court is not satisfied with the conduct of the arbitration, it may remove them and appoint other *hakam* in their place. The *hakam* must endeavour to obtain from their respective principals full authority and may, if their authority extends so far, decree a divorce and shall in such event report the divorce to the Court for registration.[27]

In Perlis it is provided that whenever any misunderstanding arises from any decision of the court, as for example, where the husband is asked to divorce his wife but refuses to do so, the *kathi* has power to order both parties to appoint their representatives to find ways of solving the misunderstanding. The representatives have power on behalf of the husband to receive the compensation and on behalf of the wife to receive the divorce. If the two representatives are incompetent and without ability to effect a settlement, the *kathi* has the power to appoint two arbitrators *(hakam),* one to act on behalf of the husband and the other to act on behalf of the wife, in order to find ways of solving the misunderstanding. The arbitrator representing the husband has power to declare a divorce. If the two arbitrators are unable to solve the misunderstanding between the husband and the wife, the *kathi* shall refer the

25. Kelantan Council of Religious and Malay Customs and Kathis' Courts Enactment, 1953, ss. 145, 146 150 and 151; Trengganu Administration of Islamic Law Enactment, 1955, ss. 103, 104, 108 and 109.

26. Pahang Administration of the Law of the Religion of Islam Enactment, 1956, s. 127.

27. Penang Administration of Muslim Law Enactment,, 1959, s. 126; Kedah Administration of Muslim Law Enactment, 1962, s. 127.

matter to the *Majlis* for decision and the decision of the *Majlis* is final. On satisfactory proof being given that the wife is without property and that she still refuses to return to her husband, the arbitrators have power to decree a divorce without compensation, if it appears to them that to compel her to return to her husband will cause hardship and that a divorce is in the interests of both parties. If a divorce with compensation is decreed and the wife is possessed of property, such property is liable to be attached for the recovery of such compensation. If no reconciliation is possible, the party applying for divorce fills up a prescribed form. The rights of each party are agreed to in the presence of the Registrar. The husband deposits a sum of not less than one month's maintenance for the wife with the *kathi* unless, under the divorce, the husband is not required to pay any maintenance to the wife. Each party to the divorce has to return to the other the property to which he or she is entitled. The husband is required to report the divorce to the Registrar within seven days of the divorce.[28]

In Singapore it is provided that before making an order or decree for *talaq, fasah, cherai ta'alik, khula* or *nusus* the Shariah Court may appoint, in accordance with Muslim law, two arbitrators, or *hakam,* to act for the husband and wife respectively. In making such appointment the Court should, where possible, give preference to close relatives of the parties having knowledge of the circumstances of the case. The Court may give directions to the *hakam* as to the conduct of the arbitration and they must conduct it in accordance with such directions and according to Muslim law. If they are unable to agree, or if the Court is not satisfied with their conduct of the arbitration, it may remove them and appoint other *hakam* in their place. The *hakam* must endeavour to effect a reconciliation between the parties and shall report the result of their arbitration to the Court.[29]

Marriage conciliation has been effected in the Shariah Court in Singapore since 1960. In practice the President of the Shariah Court refers every application for divorce to the Social Case Worker or the *kathis* of the Shariah Court for investigation and conciliation. Often the mere fact that the parties are given time to reflect and think about the matter and to talk about their differences to someone who is prepared to advise them, causes them to change their minds about a divorce. In other cases the officers of the Shariah Court endeavour by persuasion and advice to help the parties to ease or remove the causes of friction. Where, however, the husband is determined to end the marriage, the application has to be heard by the Shariah Court. The President of the Shariah Court will still endeavour before or during the hearing to resolve the differences between the parties and either dismiss the application or persuade the husband to revoke his repudiation of the wife, if he has already pronounced a divorce. Through its conciliation work the Shariah Court has been able to check the high rate of divorce among the Muslims in Singapore. This is shown by the steady decrease in the divorce rate, that is the rate relating the number of divorces granted during each year to the number of marriages taking place during the

28. Perlis Administration of Muslim Law Enactment, 1963, s. 90A.

29. Singapore Muslims Ordinance, 1957, s. 86.

same year, as shown in the table below:—

	Divorce Rate
1957	51.7%
1958	49.2%
1959	36.8%
1960	26.0%
1961	21.8%
1962	26.8%
1963	21.9%
1964	17.5%

The number of cases dealt with and successfully reconciled was 462 in 1961, 560 in 1962, 450 in 1963 and 371 in 1964.[30]

The administrative arrangements for conciliation in Singapore has been followed recently in Selangor, Negri Sembilan and Perlis. In Selangor it has been provided by administrative rules that no divorce may take place except before a *kathi.* The parties are required to make application on a prescribed form and it is provided that no divorce or pronouncement of *talaq* will be effective unless the wife agrees to the divorce and the *kathi* has approved to it. Before approving the divorce the *kathi* is required to do what he can to effect a reconciliation between the parties.[31] In Negri Sembilan under the Malay Customary Law which is followed it is laid down that before a divorce takes place there should be due deliberation on the reasons for the intended dissolution. Custom demands that a husband who contemplates a divorce from his wife must go through an arbitration called *'bersuarang'* or settlement. A small feast is held by the husband to which he invites the relatives of the wife as well as his own. The husband will then state his grievances, so that they may be considered by the parties present. Often the presence of the elders has a beneficial effect in resolving of what may prove to be a hasty decision or a petty quarrel. The rules relating to Muslim marriage and divorce in Negri Sembilan require the person who wishes to obtain a divorce to apply in the prescribed form to the court of the *kathi.* The *kathi* will then call both parties and inquire into matter; and only after inquiry will the divorce be effected and registered.[32] In Perlis it is provided that on an application by a husband for permission to divorce

30. M. Siraj, "The Shariah Court of Singapore and its Control of the Divorce Rate", (1963) 5 *Malaya L.R.* 148; M. Siraj, "The Shariah Court, Singapore", *World Muslim League Magazine,* November, 1963, at p. 31. Report of the Registry of Muslim Marriages and the Shariah Court for 1960, 1961, 1962, 1963 and 1964.

31. Selangor Rules relating to marriage, divorce and revocation of divorce, 1962.

32. Negri Sembilan Rules relating to marriage, divorce and reconciliation, 1963; Haji Mohamed Din bin AH "Two Forces in Malay Society", *Intisari,* (Singapore), Vol. 1, No. 3, at p. 26.

his wife the *kathi* shall for the purpose of effecting a peaceful reconciliation make such inquiries as he thinks fit and he shall not grant permission for the divorce unless he is convinced that no reconciliation is practicable.[33] The administrative arrangements in Selangor and Negri Sembilan were introduced in 1963 and has been effective in reducing the the divorce rate from 33.3% in 1959 to 25.8% in 1963 in Selangor and from 46.2% in 1959 to 30.3% in 1963 in Negri Sembilan. In Perlis the administrative arrangements have only been in effect from 1964.

The use of conciliation procedures has undoubtedly helped to increase the stability of the family where it has been used in the States of Malaya and Singapore but there is clearly room for further development. The technique of conciliation requires skill, patience and dedication and in order to make it work effectively we will need not only more and more skilled and competent social workers but an increasing acceptance by the courts and the community of its importance and the significant part it can play in ensuring stability and happiness in family life.[34]

The Shariah Court in Singapore has shown the value of conciliation work for the settlement of marital disputes and it is hoped that more facilities for conciliation will be provided not only in Singapore but also in Malaysia. In considering what further measures can which advantage be adopted, it is useful to draw from the experience of other countries and it is hoped that this comparative study of conciliation procedures in various countries will assist in the formulation of such measures so that the value of conciliation work will be better understood and more widely accepted.

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33. Perlis Administration of Muslim Law Enactment, 1963, ss. 90, 90A 92 and 93.

34. As Dr. Friedmann said "The main difficulties are not of principle, but of organization. An integrated family court, marriage counselling and conciliation procedures demand far more well-trained staff than is at present available and legislators are generally willing to provide for. They also require intensive collaboration between lawyers, social workers, psychiatrists and others. But the need for such collaboration is one of the challenges put to law and the legal profession in contemporary society. And the provision of the necessary public and private finance is a question of education: of the understanding that the cost of such services is infinitesmal as compared with the material and moral cost to society of juvenile delinquency, broken marriages and uprooted children" — *Law in a Changing Society,* (London, 1959) at p. 228.

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