

## PROHIBITING PARENTAL PHYSICAL DISCIPLINE OF CHILD IN SINGAPORE

It is challenging for the law to regulate parenting in an optimal manner. The relationships between the child and each of her parents are exceptionally delicate. The relationships last until death and are dynamic in their balance of power as the child grows while the parents age. Legal intervention should be thoughtful and judicious. This article traces the law in Singapore to reveal a remarkable comparative strength in its early embrace of the concept of parental responsibility. It proposes an incremental development in prohibiting parental physical discipline even as “correction” of a child. The discussion pits the universal tradition where moderate physical discipline is an acceptable part of parenting with the modern rejection of the infliction of violence by anyone, including a parent, upon a child even when it is moderate and whether intended as “correction”.

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### I. Introduction

1 This article traces the law in Singapore regulating parenting to reveal its comparative strength in having long embraced the moral principle of parental responsibility and suggests an incremental development in its detailed regulation. It discusses:

- (a) how the law developed from the common law to the enactment of the core principle of parental responsibility and then to the commitment to the United Nations Convention on the Rights of the Child (“UNCRC”);<sup>1</sup>
- (b) how well the law protects the child in her becoming an adult;

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1 20 November 1989; entry into force 2 September 1990.

- (c) how well the law protects the child as a person in her own right;
- (d) why parental physical discipline of the child should be prohibited; and
- (e) why achieving this by a softer style of legislative draftsmanship is recommended.

## II. From common law to Convention on the Rights of the Child

### A. Common law and principles of equity

2 Singapore received the common law regulating family relationships, including that between the parents and child, by way of the judicial interpretation of the directive in the Second Charter of Justice 1826. The Second Charter directed the Court of Judicature of Prince of Wales Island to “give and pass Judgment and Sentence according to Justice and Right”. This was judicially interpreted as “plainly a direction to decide according to the law of England”.<sup>2</sup>

3 The common law and, even, equity in its early formulation had little interest in regulating parenting.<sup>3</sup> United Kingdom statutory enactments building upon more egalitarian equitable principles that improved protection of the child were re-enacted in the Straits Settlements.<sup>4</sup> It was not until the Women’s Charter<sup>5</sup> was enacted as the

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2 See Maxwell R of the Court of Judicature of Prince of Wales’ Island in *R v Willans* (1827–1877) Straits LR 66 at 74. See also Andrew Phang Boon Leong, *From Foundation to Legacy: The Second Charter of Justice* (Singapore: Singapore Academy of Law, 2006) at pp 3–18 and Leong Wai Kum, *Principles of Family Law in Singapore* (Singapore: Butterworths Asia, 1997) at pp 1–61. The Second Charter had extended the court to include jurisdiction over Singapore as well as Malacca.

3 See, eg, Cotton LJ equate the child’s interest with her father’s in *Re Agar-Ellis* (1883) 24 Ch D 317 at 334 thus:

This Court holds this principle – that when, by birth, a child is subject to a father, it is for the general interest of families, and for the interest of children, and really for the interest of the particular infant, that the Court should not, except in very extreme cases, interfere with the discretion of the father, but leave to him the responsibility of exercising that power which nature has given him by the birth of the child.

4 Singapore was “founded” for the British Crown in 1819, was administered as one of the three Straits Settlements (“SS”) from 1825 through to 1946 when she became a Crown Colony, achieved self-government in internal matters in 1959 when it became the State of Singapore, joined in the federation of Malaysia in 1963 and left to become the Republic of Singapore from 9 August 1965. Some SS ordinances include the Summary Criminal Jurisdiction Ordinance (No XIII of 1872) (on maintenance), the Children Ordinance (No 17 of 1927) (offering public care), Guardianship of Infants Ordinance (No 11 of 1934) (allowing court orders), Legitimacy Ordinance (No 20 of 1934) (conferring legitimacy in selected

*(cont’d on the next page)*

State of Singapore Ordinance,<sup>6</sup> however, that a quantum leap was made.

### **B. Women's Charter embraces "parental responsibility"**

4 The Women's Charter has, since its enactment, contained the provision that is now s 46(1):<sup>7</sup>

Upon the solemnization of marriage, the husband and the wife shall be mutually bound to co-operate with each other ... in caring and providing for the children.

The author describes this provision as incorporating the principle of "parental responsibility" to the core of legal regulation of parenting.<sup>8</sup> "Parental responsibility" is a "powerful expression of moral commitment".<sup>9</sup> It provides a moral basis that unifies legal regulation of parenting. The principle exhorts all parents<sup>10</sup> to view their relationship with their child from the perspective of themselves owing their child the full range of responsibilities in caring and providing for her. While the provision does not provide for direct enforcement of "parental responsibility", this does not detract from its value. Selected facets of parental responsibility, such as providing reasonable maintenance<sup>11</sup> and devising the living arrangements of the child,<sup>12</sup> are directly enforceable while other facets must remain as a general principle to cajole parents towards ideal parenting.

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circumstances) and Adoption of Children Ordinance (No 18 of 1939) (allowing legal adoption).

5 The main family law statute in Singapore of which the current version is Cap 353, 2009 Rev Ed with amendments, largely inconsequential to this discussion, in 2010, 2011 and 2012.

6 No 18 of 1961.

7 This is one half of s 46(1) of the Women's Charter (Cap 353, 2009 Rev Ed) providing the core principle within regulation of parenting, while the other half provides the core principle within regulation of the marital relationship. See also paras 53–55 below.

8 See Leong Wai Kum, "Restatement of the Law of Guardianship and Custody in Singapore" [1999] Sing JLS 432 at 481–483.

9 Leong Wai Kum, "Restatement of the Law of Guardianship and Custody in Singapore" [1999] Sing JLS 432 at 482.

10 Although s 46(1) of the Women's Charter (Cap 353, 2009 Rev Ed), read literally, is limited to married parents, the Court of Appeal in Singapore in *Lim Chin Huat Francis v Lim Kok Chye Ivan* [1999] 2 SLR(R) 392 at [91] may have extended the exhortation to unmarried parents, separated or divorced parents and, even, persons who are only hoping to be appointed adoptive parents. For this suggestion, see Leong Wai Kum "Restatement of the Law of Guardianship and Custody in Singapore" [1999] Sing JLS 432 at 481–483.

11 See ss 68, 69(2) and 127 of the Women's Charter (Cap 353, 2009 Rev Ed).

12 See ss 123–126 of the Women's Charter (Cap 353, 2009 Rev Ed) and the Guardianship of Infants Act (Cap 122, 1985 Rev Ed) with amendments, inconsequential to this discussion, in 1993, 2011 and 2014.

5 The author further observes that the exhortation to parents by s 46(1) of the Women's Charter gains practical power<sup>13</sup> by s 3 of the Guardianship of Infants Act:<sup>14</sup>

Where, in any proceedings ... the ... upbringing of an infant ... is in question, the court, in deciding the question, shall regard the welfare of the infant as the first and paramount consideration ...

This direction to a court, when deciding an issue relating to the upbringing of a child within any proceedings to consider the "welfare of the infant as the first and paramount consideration" is "ubiquitous".<sup>15</sup>

6 It is suggested that the effect of s 3 upon parenting is thus:<sup>16</sup>

This directive ... has the potential of subjecting every instance of parental conduct towards the child by this standard. An exertion of authority by the parent must necessarily be consonant with the parent's pursuit of the welfare of the child.

In combination, s 46(1) of the Women's Charter on the core principle of "parental responsibility" and s 3 of the Guardianship of Infants Act directing the court to achieve the welfare of the child as the first and paramount consideration each time it resolves an issue related to the upbringing of a child set the law in Singapore regulating parenting upon a sound moral foundation that can be enforced by the court.

### C. *Embracing "parental responsibility" in 1961 is admirably early lead*

7 The author has observed:<sup>17</sup>

From the 1960s, the law in Singapore expects married, unmarried, separated or divorced parents (a) to view their child as someone towards whom they owe responsibility, (b) the responsibility should be discharged co-operatively with the other parent and/or guardian and (c) for the purpose of achieving the welfare of the child. By an extended reading, there may be similar expectations of people hoping

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13 See Leong Wai Kum, *Elements of Family Law in Singapore* (Singapore: LexisNexis, 2nd Ed, 2013) at p 237.

14 Cap 122, 1985 Rev Ed. It is of note that s 3 was added to the Guardianship of Infants Act by Amendment Act 17 of 1965, *ie*, after the enactment of s 46(1) of the Women's Charter (Cap 353, 2009 Rev Ed) in 1961.

15 See Leong Wai Kum, "Restatement of the Law of Guardianship and Custody in Singapore" [1999] *Sing JLS* 432 at 470–474.

16 See Leong Wai Kum, *Elements of Family Law in Singapore* (Singapore: LexisNexis, 2nd Ed, 2013) at p 237.

17 Leong Wai Kum, "Parental Responsibility as the Core Principle in Legal Regulation of the Parent-child Relationship" in *Developments in Singapore Law between 2006 and 2010: Trends and Perspectives* (Yeo Tiong Min, Hans Tjio & Tang Hang Wu eds) (Singapore: Singapore Academy of Law, 2011) at p 246.

to become the child's adoptive parents or people voluntarily becoming guardians of a child.

8 On a comparative basis, the law in Singapore is distinguished in having embraced "parental responsibility" before most countries, including Western countries. Regulating parenting through the concept of parental responsibility towards the child was sponsored by the UNCRC<sup>18</sup> that was open for ratification only in 1989. It was observed that within Europe, it was the, then, West Germany that may have embraced "parental responsibility" first and this only in 1970 while, in the UK, the idea slowly crept into the law and was formally embraced only through its enactment of the English Children Act 1989.<sup>19</sup>

9 Singapore ratified the UNCRC on 4 November 1995 to commit to the slew of principles on ideal legal treatment of a child and regulation of parenting although her ratification was with some reservations. The success of the UNCRC changed the legal treatment of a child and the regulation of parenting across the globe from 1989 onwards. The rest of this article examines the extent to which the law in Singapore is consistent with the principles within the UNCRC and suggests one timely incremental change.

### III. Singapore protects a child adequately in her "becoming" an adult

#### A. Singapore law protects a child's basic interests

10 Given Singapore's head start in embracing parental responsibility, it comes as no surprise that the current law in Singapore is fairly well developed in protecting a child's interests.

11 This is true of protecting a child's basic interests.<sup>20</sup> Chapter XVI of the Penal Code<sup>21</sup> protects any person, including a child, from "[o]ffences affecting life",<sup>22</sup> within which chapter a mature foetus capable of living on its own without elaborate machine-based life

18 The United Nations Convention on the Rights of the Child (20 November 1989; entry into force 2 September 1990) is the most successful international document as to date every country on earth except three (the US, Somalia and South Sudan) has ratified it.

19 c 41. See Nigel V Lowe, "The Meaning and Allocation of Parental Responsibility – A Common Lawyer's Perspective" (1997) 11 IJLPF 192.

20 See the discussion in Leong Wai Kum, *Elements of Family Law in Singapore* (Singapore: LexisNexis, 2nd Ed, 2013) at pp 279–291.

21 Cap 224, 2008 Rev Ed, including amendments in 2010, 2012 and 2014.

22 It has been pointed out that the protections from "[o]ffences affecting life" extend only to a child who is born alive: see Terry Kaan, "At the Beginning of Life" (2010) 22 SAclJ 883 at 887–893, paras 12–31.

support is protected from offences of “[c]ausing miscarriage; injuries to unborn children; exposure of infants; and concealment of birth”. Sex with a young girl is prohibited by the offence of “rape” committed “with or without her consent, when she is under 14 years of age”<sup>23</sup> as supplemented by “[o]ffences against women and girls” within the Women’s Charter.<sup>24</sup>

12 The Children and Young Persons Act<sup>25</sup> punishes all manner of “ill-treatment” of a child or young person whether by parent or stranger. In a remarkably wide s 5, it defines “ill-treatment” as including:

... any act ... which causes or is likely to cause the child or young person –

- (i) any unnecessary physical pain, suffering or injury;
- (ii) any emotional injury; or
- (iii) any injury to his health or development ...

13 The breadth of public care of a child that follows judicious intervention into parenting has been well noted before.<sup>26</sup> There is a scheme of juvenile justice that places the “welfare and best interests of the child and young person” above other considerations.<sup>27</sup>

14 Despite this breadth of protection, however, a parent who inflicts moderate physical punishment upon her child as “correction” is not likely to fall foul of the law as such parental conduct is specifically excepted from the definition of “family violence”. Part VII of the Women’s Charter on “Protection of family” supplements the criminal law in allowing the courts to make a “protection order” where an act of “family violence” is committed and there is need for such protection order. In providing an appropriately broad definition of “family violence” its s 64, unfortunately, excepts parental physical discipline. It provides that family violence:

... means the commission of ... acts [including] causing hurt to a family member ... but does not include any force lawfully used ... by way of correction towards a child below 21 years of age.

This shields moderate parental physical discipline of a child from being “family violence” so that no protection order can be made.

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23 Penal Code (Cap 224, 2008 Rev Ed) s 375.

24 Women’s Charter (Cap 353, 2009 Rev Ed) Pt XI, in particular ss 140, 143 and 145.

25 Cap 38, 2001 Rev Ed, including amendments in 2005, 2007, 2010, 2011 and 2012.

26 See Debbie Ong Siew Ling, “The Quest for Optimal State Intervention in Parenting Children: Navigating within the Thick Grey Line” [2011] Sing JLS 61.

27 Children and Young Persons Act (Cap 38, 2001 Rev Ed) s 3A. See also Lim Hui Min, *Juvenile Justice – Where Rehabilitation takes Centre Stage* (Singapore: Academy Publishing, 2014).

15 The rational exposition of the law will attempt to read the remarkably wide definition of “ill-treatment” of a child or young person under the Children and Young Persons Act consistently with the exception of “any force lawfully used ... by way of correction towards a child below 21 years of age” from “family violence” under the Women’s Charter. An attempt at consistent reading may suggest that moderate parental physical discipline intended as “correction” of the child is not “ill-treatment”. Parental physical discipline is “ill-treatment” only when it either exceeds “moderate” or is not intended as “correction”. It must be conceded, however, that this attempt at rationalisation is somewhat strained. It is equally possible to regard moderate parental physical discipline as falling within “any act ... which causes or is likely to cause the child or young person ... emotional injury; or any injury to his health or development” so that, whether it is intended as “correction” of the child, it still constitutes “ill-treatment”. The courts have not been challenged with how to read these statutory provisions consistently. This article suggests below that there may be good reasons to forgo the current shield of parental physical discipline of a child so that the strained rationalisation of the statutory provisions is unnecessary.<sup>28</sup>

**B. *Singapore law and social services assure a child is nurtured to adulthood***

16 Singapore law does equally well in holding the parents to their responsibilities in nurturing the child to adulthood. Equal responsibility is placed on father and mother for the maintenance needs of a dependent child.<sup>29</sup> The Court of Appeal in *CX v CY (minor: custody and access)*<sup>30</sup> has endorsed academic suggestions<sup>31</sup> to rationalise the law of guardianship and custody so that courts make orders of guardianship or custody to support rather than undermine the salutary moral principle of parental responsibility.<sup>32</sup>

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28 See para 28 below.

29 Women’s Charter (Cap 353, 2009 Rev Ed) ss 68, 69(2) and 127.

30 [2011] 3 SLR 647. The operative statutory provisions include ss 123–126 of the Women’s Charter (Cap 353, 2009 Rev Ed).

31 See Leong Wai Kum, *Principles of Family Law in Singapore* (Singapore: Butterworths Asia, 1997) at pp 531–532 on which she elaborated in “Restatement of the Law of Guardianship and Custody in Singapore” [1999] Sing JLS 432 at 481–492 and Debbie Ong Siew Ling, “Parents and Custody Orders – A New Approach” [1999] Sing JLS 205 and elaborated in “Making No Custody Order: *Re G (Guardianship of an infant)*” [2003] Sing JLS 583.

32 It is of note that many common law countries continue to struggle with how to adapt their equivalent laws of guardianship and custody, whether they remain so called, with the modern imperative of holding parents to their responsibilities to their child. Although the English Children Act 1989 (c 41) had supposedly enacted their “modern” law where, instead of “custody” and “care and control”, the court should order “residence” and “contact”, this appears to be in need of review again. The *Family Justice Review Final Report 2011* set up by the Secretaries of State for  
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17 Parental responsibility to nurture their child should be appreciated as one part only of the whole scheme where society rightly expends tremendous resources on child health, education and private and public care services. Soon after achieving internal self-government, Singapore committed unhesitatingly to improving the lives of her people and educating them as highly as possible. This policy sits at the core of Singapore's social compact and is in no small way responsible for her remarkable leap into the First World within half a century or less. Every child in Singapore can look forward to being nurtured to adulthood with as few disadvantages as possible. Singapore, as any progressive country, recognises that this goal is in every person's (adult or child) interest.

#### IV. The law should also protect a child as a separate "being" with her own human rights

18 The UNCRC is an exceptionally successful document and every Asian country has committed to its principles.<sup>33</sup> These principles are implemented by the Committee on the Rights of the Child.<sup>34</sup>

19 The Committee identifies four among UNCRC's 54 Articles as "key". These are:

- (a) the best interests of the child as a primary consideration in all actions concerning children (Art 3);
- (b) non-discrimination (Art 2);

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Justice and Education and the Welsh Assembly Government Minister for Health and Social Services has, among its many recommendations, at p 149, recommended that the "Government should repeal the provision for residence and contact orders in the Children Act 1989". It is not clear what will be put in place. In Hong Kong Special Administrative Region ("HKSAR") its Law Commission had, in 2002, recommended they follow the English Children Act 1989. This recommendation has, perhaps fortunately given the likely abandonment of these ideas in the UK, not yet been implemented. It is not yet clear where the law in HKSAR is headed.

33 The United Nations Convention on the Rights of the Child (20 November 1989; entry into force 2 September 1990) is the most successful international document as to date every country on earth except three (the US, Somalia and South Sudan) has ratified it.

34 Each State that ratifies the United Nations Convention on the Rights of the Child (20 November 1989; entry into force 2 September 1990) is obliged to submit periodic reports to the Committee and, in turn, the Committee comments and advises the State on what further measures it should consider so that a child living in that State is assured of whatever the Convention holds out to her. See also paras 33–35 below.



- (c) the right to life, survival and development (Art 6) and
- (d) the right to express views freely (Art 12).<sup>35</sup>

These four principles reflect a holistic view of the child. She is someone who is “becoming” an adult and, at the same time, is a “being” in her own right and thus possessing her own human rights. The Committee advises countries to enact domestic laws that protect both sets of entitlements of every child.

20 The UNCRC has given rise to “childhood studies”, that is, a multi-disciplinary study of the relationship between a child, her parents and general society. The studies emphasise that, under the UNCRC, a child is both a person who is “becoming” an adult as well as a separate human “being” in her own right. The latter perspective generates fresh interest in ideas that used sporadically to be expounded by pioneer humanists. It is not possible here to pay tribute to all the pioneers of children’s rights. It need only be pointed out that, back in 1919, the Polish paediatrician Janusz Korczak had said that to truly love a child we must “see him or her as a separate being with an inalienable right to grow into the person he or she was meant to be”.<sup>36</sup>

21 Among law academics, it has been observed since 1992 that a child may be regarded to possess not only basic interests in her physical well-being and developmental interests in being nurtured to adulthood but also autonomy interests so that her rights as an individual are respected.<sup>37</sup> Another law academic has observed:<sup>38</sup>

A new sociology of childhood emerged in the 1970s and 1980s ... The result is a paradigm shift ... The [UNCRC] recognises the child as both a ‘becoming’ (see for example Article 3),<sup>[39]</sup> and a ‘being’. It

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35 See <[www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx](http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx)> (accessed 20 February 2014).

36 Taken from Michael Freeman, “Children’s Education: A Test Case for Best Interests and Autonomy” in *Listening to Children in Education* (R Davie & D Galloway eds) (London: David Fulton Publishers, 1996) at p 31 and also see Gabriel Eichsteller, “Janusz Korczak – His Legacy and its Relevance for Children’s Rights Today” (2009) 17 Int JCR 377 at 381.

37 See John Eekalaar, “The Importance of Thinking that Children Have Rights” (1992) 6 IJLPF 221 at 230–231.

38 “Introduction” in *Law and Childhood Studies* (Michael Freeman ed) (UK: Oxford University Press, 2012) at pp 2–4.

39 Article 3(2) of the United Nations Convention on the Rights of the Child (20 November 1989; entry into force 2 September 1990):

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

recognises the child as an agent, able to participate in decisions (see, in particular, Article 12).<sup>40</sup>

Where legal protection of the child from the perspective of her “becoming” an adult (*ie*, protecting her basic interests and nurturing her to adulthood) is instinctive, protecting the same child from the “new” perspective of her as a separate “being” possessing human rights is not nearly as instinctive. It is here, particularly in its details, that long held tradition may continue to do battle with this modern idea.

### A. *Legal systems struggle with details of how to protect a child’s autonomy*

22 The idea that a child is entitled to respect for her autonomy may be widely accepted in the common law world. While the UNCRC was still being drafted, the highest court in the UK lay down a decision that proffered a sophisticated view of the balance of power between the parents and their growing child. The House of Lords in *Gillick v West Norfolk and Wisbech Area Health Authority*<sup>41</sup> (“*Gillick*”) decided that the law required the mother of four girls, all under the age of majority in the UK for the purpose of giving valid consent to medical treatment to receive contraception,<sup>42</sup> to yield to her daughters’ autonomy when the girls individually gain the capacity to make this decision. A medical practitioner was, therefore, acting lawfully when he treated a minor without her parent’s consent as long as, in the medical practitioner’s careful professional judgment, the minor was capable of understanding what she was giving valid consent to. The capable minor’s consent was good to protect the medical practitioner from committing a tort for treating the minor.

23 The author suggests that this view of the balance of power between a growing child and her parents also represents the common law in Singapore:<sup>43</sup>

There has not been a decision in Singapore applying [*Gillick*] ... on the mature child’s autonomy. The decision is no doubt relevant in Singapore as reflecting the modern view of how power is balanced between the parents and the growing child ... As the child grows,

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40 Article 12(1) of the United Nations Convention on the Rights of the Child (20 November 1989; entry into force 2 September 1990):

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

41 [1986] AC 112.

42 This is 16 years by way of s 8(1) of the English Family Law Reform Act 1969 (c 46).

43 Leong Wai Kum, *Elements of Family Law in Singapore* (Singapore: LexisNexis, 2nd Ed, 2013) at p 296.

caring for the child includes yielding to the child's own choices when she becomes capable of choosing them ... when the child becomes capable of making her own choice with respect to one particular matter, the parents' authority should recede, but this does not terminate parental authority altogether. A wise caring parent regards the child's maturing process as progressing in steps and yields as is appropriate on each occasion the balance of power is necessarily raised.

24 *Gillick* settled the principle that the law should protect a child's interest in her autonomy. It leaves open the challenging question of what should be the detailed law that espouses this principle. Countries within the common law regime continue to struggle in this regard. The law in Singapore may be expected to develop details to protect a child's autonomy<sup>44</sup> but the experience of other common law countries suggests that the journey towards optimal protection of a child's autonomy may be rocky.

25 New Zealand was the first among the English-speaking jurisdictions<sup>45</sup> to enact protection of a child's autonomy by mandating that the child be heard in a custody application between her parents.<sup>46</sup> Academic commentary suggested, however, that New Zealand judges may be falling short of what the law requires.<sup>47</sup>

26 The academic suggested that, for a child's autonomy in this regard to be fully protected, judges in New Zealand will need to embrace the view of the child as a separate human "being" in her own right.<sup>48</sup>

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44 See, eg, prediction of "further protection of children" in Leong Wai Kum, "The Next Fifty Years of the Women's Charter – Ripples of Change" [2011] Sing JLS 152 at 156–169.

45 *Ie*, compared with the UK, the US, Canada and Australia.

46 By way of s 6 of the New Zealand Care of Children Act 2004 (2004 No 90) which provides that "a child must be given reasonable opportunities to express views ... and any [such] views ... must be taken into account". There is no equivalent right in Singapore where the Family Court has only taken a "baby step" in allowing, within contentious custody suits, a lawyer to be appointed to advocate what the lawyer assesses to be in the best interests of the child. It is noteworthy, however, that Sundaresh Menon CJ in addressing the first Family Justice Practice Forum, jointly organised by the Ministry of Social and Family Development, the (then-called) Subordinate Courts and the Law Society of Singapore on 18 October 2013, spoke of a "new design" of family litigation within "an environment in which we will hear clearly the voice of the child so that the child's best interests are appropriately addressed". Development towards giving a child a voice in Singapore court proceedings may, hopefully, be expected in the near future.

47 See Mark Henaghan, "Why Judges Need to Know and Understand Childhood Studies" in *Law and Childhood Studies* (Michael Freeman ed) (UK: Oxford University Press, 2012) at p 39.

48 Mark Henaghan, "Why Judges Need to Know and Understand Childhood Studies" in *Law and Childhood Studies* (Michael Freeman ed) (UK: Oxford University Press, 2012) at p 52.

The fundamental starting point has to be for a judge to understand why it is important to listen to children and ascertain what is happening in their world. The judge must then take account of the children's views in their judgment. The dispute is about the child, yet it is very easy for judges to see the dispute as one between the parents, and the judge's obligation as being merely to make a decision for parents when the parents cannot agree amongst themselves. If children are listened to, children's views become part of the evidence that assists the court in making its decision. This is better than judges looking merely to see if the children's views are deemed relevant to the particular decision they have to make.

27 The commentary affirms that protecting the child from this "new" perspective is not nearly as instinctive as protecting her in "becoming" an adult. The same struggle is discernible with whether to prohibit parental physical discipline of the child. Such prohibition may be regarded as upholding the child's basic interest in avoiding physical punishment as well as her autonomy interest (or human right) to respect for her dignity.

## V. Law should now prohibit parental physical discipline of a child

28 The law in Singapore as to parental physical discipline is similar to that of many other countries. It protects the child from all manner of "ill-treatment" whether emanating from a parent or otherwise.<sup>49</sup> The law, however, stops short of prohibiting parental physical discipline of a child.<sup>50</sup> It is suggested that the law should so prohibit.

### A. Parental physical discipline is a global tradition

29 Parental physical discipline of a child, as a tradition, is a global phenomenon. As Asian countries review their legal positions in this regard, it is critical to remember that we are not alone. It is safe to say that practically every parent living today would have experienced some parental physical discipline in her childhood. She is the exception if without such experience.

30 Yet, we also need to recognise that what was universally accepted parental behaviour has ceased to be so accepted today. Social science and the consideration of the child as a human being separate from her parents have taught that parental physical discipline of a child is not acceptable.

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49 See paras 11–13 above.

50 See paras 14 and 15 above.

## **B. *Parental physical discipline does more harm than good***

31 There is unassailable scientific agreement that parental physical discipline of a child does more harm than good. A fairly comprehensive survey finds “a large and consistent body of research from countries around the world that leads to two clear conclusions”:<sup>51</sup>

First, corporal punishment is no better than other methods of discipline at gaining immediate or long-term child compliance. Second, corporal punishment is not predictive of any intended positive outcomes for children and, in contrast, is significantly predictive of a range of negative, unintended consequences, with the demonstrated risk for physical injury being the most concerning. On balance, the risk of harm far outweighs any short-term good.

32 Any infliction of physical violence outside of self-defence should be strictly controlled by law. It cannot be good for a parent to employ physical discipline of her child. The child will only learn that the parent can get away with inflicting pain where a non-parent would not. This is, surely, less than completely appropriate parental behaviour. Every parent needs to learn to teach her child with means other than the infliction of physical violence. Every home should be a sanctuary where any infliction of violence is unacceptable.

## **C. *Parental physical discipline inconsistent with UNCRC***

33 The Committee on the Rights of the Child has repeatedly stated that legal and social acceptance of physical punishment of a child, in the home or in public institutions, is not compatible with the UNCRC. Since 1993, the Committee has firmly recommended prohibition of physical punishment in the family and in institutions so that child-rearing and education are positive and non-violent. The Committee is particularly critical of legislative condonation of parental physical discipline of a child by way of such ideas as “reasonable chastisement” or “moderate correction”. To the Committee, any such parental behaviour can neither be “reasonable” nor “moderate”.

34 In September 2000 the Committee held the first of two General Discussion days on violence against children concluding in the following detailed recommendations:<sup>52</sup>

The Committee recommends that States Parties review all relevant legislation to ensure that all forms of violence against children,

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51 Elizabeth Gershoff, “More Harm Than Good: A Summary of Scientific Research on the Intended and Unintended Effects of Corporal Punishment on Children” (2010) 73 *Law and Contemporary Problems* 31 at 55.

52 See <[www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx](http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx)> (accessed 20 February 2014).

however light, are prohibited, including the use of torture, or cruel, inhuman or degrading treatment (such as flogging, corporal punishment or other violent measures) for punishment or disciplining within the child justice system, or in any other context. ...

The Committee urges the launching of public information campaigns to raise awareness and sensitise the public about the severity of human rights violations in this domain and their harmful impact on children, and to address cultural acceptance of violence against children promoting instead 'zero-tolerance' of violence.

35 In September 2001 the Committee held its second General Discussion day and proposed that states parties should:<sup>53</sup>

... enact or repeal, as a matter of urgency, their legislation in order to prohibit all forms of violence, however light, within the family and in schools, including as a form of discipline, as required by the provisions of the Convention ... .

The Committee released a General Comment No 8 (2006)<sup>54</sup> encouraging the elimination of all violence against children.<sup>55</sup>

36 In support of the Committee's recommendations, a global initiative was begun online in 2001 to end all forms of corporal punishment of children.<sup>56</sup> Very few countries have responded to this call to prohibit parental physical discipline of a child.

#### ***D. New Zealand was the first common law jurisdiction to prohibit parental physical discipline***

37 A study reveals that New Zealand "became the first English speaking country to prohibit all physical punishment of children when the Crimes (Substituted Section 59) Amendment Act 2007 took effect

53 See <[www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx](http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx)> (accessed 20 February 2014).

54 CRC/C/GC/8 of 2 March 2007.

55 In the Committee on the Rights of the Child's *Consideration of Reports submitted by States Parties under Article 44 of the Convention – Concluding Observations: Singapore* (CRC/C/SGP/CO/2-3) dated 2 May 2011 it "welcomes a number of positive developments" in Singapore but did recommend that the authorities in Singapore:

Continue to sensitize and educate parents, guardians and professionals working with and for children on the harmful effects of corporal punishment with a view to changing the general attitude towards this practice, and promote positive, non-violent, participatory forms of child-rearing and discipline as an alternative to corporal punishment.

56 *Global Initiative to End All Corporal Punishment of Children*, online at <[www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)> (accessed 17 February 2014).

on June 21, 2007”.<sup>57</sup> The UK, Canada and Australia continue to struggle with whether this long tolerated parental behaviour should now be prohibited.

38 Sweden was, historically, the first country to abolish “reasonable chastisement” as a defence of parental physical discipline of a child. This was achieved by way of an amendment to their Penal Code in 1957, to Sweden’s credit, before the promulgation of the UNCRC. For a long time Sweden stood alone. In 2000 Germany joined Sweden by way of an amendment to its Civil Code entitled “An Act Outlawing Violence in Education” which created the child’s right to a non-violent upbringing.

39 No Asian country has legislated to prohibit parental physical discipline of children. The global picture in this respect is, thus, fairly dismal.

40 The author respectfully suggests that Singapore should take the lead in Asia. She embraced the modern concept of “parental responsibility” before many other countries and prohibiting parental physical discipline is completely in line with this moral principle. The proposal is that Singapore should build upon its leadership position in this regard.

41 In 1996, Singapore created the National Family Violence Networking System to link the police, hospitals, social service agencies, courts and the Ministry of Social and Family Development so that multiple access points are available to offer help. Since 2003, regional Family Violence Working Groups in all areas on the island spearhead publicity efforts and training and assistance schemes. A parent is advised continually not to allow child discipline to descend into child abuse thus:<sup>58</sup>

You may, without meaning to, react to misbehaviour and cause harm to [your children.] Discipline is teaching children in a responsible and loving manner, while abuse causes unnecessary pain and suffering to a child.

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57 Nicola Taylor, Beth Wood & Anne B Smith, “New Zealand: The Achievements and Challenges of Prohibition” in *Global Pathways to Abolishing Physical Punishment* (Joan E Durant & Anne B Smith eds) (New York: Routledge, 2011) at pp 182 and 183. The New Zealand prohibition is discussed more fully at paras 49–52 below.

58 A two-page leaflet entitled “Family Violence Destroys Lives: Seek Help Early”, freely available at <[www.stopfamilyviolence.sg](http://www.stopfamilyviolence.sg)> (accessed 17 February 2014) on behalf of the National Family Violence Networking System, Ministry of Social and Family Development, the police, Promoting Alternatives to Violence, TRANS Safe Centre and the Care Corner Project START.

This is noteworthy in emphasising that parents should aim to teach their children in a responsible and loving manner. While none of these efforts targeted parental physical discipline, it is fair to say that there is considerable community vigilance in Singapore as to harmful treatment of children. There is no reason to think that parental discipline of children in Singapore always involves physical discipline or that parental physical discipline occurs more often in Singapore than elsewhere. Specific statistics or empirical evidence of the incidence of parental physical discipline is not available.<sup>59</sup> The author's proposal aims only to improve the law so that statutory provisions read more consistently and the law better serves its pedagogical role of guiding parents towards even more admirable behaviour towards their children. The proposal does not suggest that there is evidence to be concerned over the current state of parental treatment of children generally.

***E. Recommend prohibition of parental physical discipline without direct sanction for breach***

42 Section 64 of the Women's Charter, in excepting parental physical discipline of the child,<sup>60</sup> is the more modern expression of the established common law defence of "reasonable chastisement".<sup>61</sup> Singapore received this common law defence as part of its law regulating parenting. It is time to abandon it.

43 Section 46(1) of the Women's Charter exhorts parents to co-operate in caring for their child. The author suggests that it is consistent with this exhortation to add a subsection that the infliction of physical violence by the parent, even as correction of the child, is in breach of parental responsibility. The new subsection, *ie*, s 46(5), may possibly read thus:<sup>62</sup>

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59 The statistical evidence released by the Ministry of Social and Family Development shows no increase in child abuse reports and investigations since a small peak in 2010 and does not specify whether the perpetrator was a parent. See <<http://app.msf.gov.sg/ResearchRoom/ResearchStatistics/ChildAbuseInvestigations.aspx>> (accessed 22 April 2014).

60 See para 14 above.

61 See *R v Hopley* (1860) ER 1204 where Lord Cockburn CJ decided "a parent ... may for the purpose of correcting what is evil in the child inflict moderate and reasonable corporal punishment, always, however, with this condition, that it is moderate and reasonable". While the law in the UK may have improved a tad it still retains the idea that the infliction of physical punishment by a parent upon her child, provided it is moderate and for "correction" of the child, is lawful.

62 It is also possible for the new subsection to be preceded by reference to Singapore's commitments to the United Nations Convention on the Rights of the Child (20 November 1989; entry into force 2 September 1990). Where this is the chosen form, there will be two new subsections to s 46 of the Women's Charter (Cap 353, 2009 Rev Ed) thus:

*(cont'd on the next page)*



No parent should inflict violence upon a child whether as correction or otherwise.

44 This new subsection will necessarily require the deletion of the exception of “force lawfully used by way of correction” from the definition of “family violence” within s 64.<sup>63</sup> Even moderate parental physical discipline will no longer be shielded. This opens up the possibility of a protection order being made against the parent for having committed “family violence” were the other requirements of s 64 of the Women’s Charter<sup>64</sup> fulfilled. For parental physical discipline that exceeds the moderate, the existing provisions in the Children and Young Persons Act that punish “ill treatment” of a child or young person continue to apply, as they always have.

45 No additional sanction need be created. The new subsection need not be directly backed by punishment of a parent for breach of the prohibition. An occurrence of parental physical discipline of a child, provided it is moderate, will not be punished as breach of the prohibition.<sup>65</sup> The prohibition is, thus, enacted through a softer style of legislative draftsmanship. The author suggests that, rather than being “limp” in lacking punishment for breach, a more gently worded prohibition of parental physical discipline of a child may well be the ideal formulation of the law.

#### ***F. Soft law may be ideal regulation of family relationships***

46 The author welcomes the use of gently worded statutory provisions, including those that may be regarded as merely “aspirational”,<sup>66</sup> within the family law. Compared with other areas of the law, family law faces the unique challenge of how optimally to regulate relationships that are delicate, deeply emotional and, hopefully, long-lasting. A gently worded statutory provision, not only in its expression

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(5) The parents’ responsibility to care and provide for their children should be understood consistently with Singapore’s commitments to the United Nations Convention on the Rights of the Child.

(6) No parent should inflict violence upon a child whether as correction or otherwise.

63 See para 14 above.

64 See para 14 above.

65 Breaches beyond moderate inflictions will, of course, attract punishment as “ill-treatment” under the Children and Young Persons Act (Cap 38, 2001 Rev Ed).

66 See her discussion of the value of s 46(1) of the Women’s Charter (Cap 353, 2009 Rev Ed) exhorting spouses to “co-operate with each other in safeguarding the interests of the union” in Leong Wai Kum, *Principles of Family Law in Singapore* (Singapore: Butterworths Asia, 1997) at pp 356–357, as elaborated in her “Fifty Years and More of the Women’s Charter of Singapore” [2008] Sing JLS 1 at 16–22.

but also in not having any direct sanction for breach, may well be the ideal form of the law.

47 Prohibiting parental physical discipline of a child does not only serve to protect the child; the prohibition plays an equally, if not more, important role of educating parents that what used to be tradition is no longer acceptable. The author advocates the “pedagogical function” of the family law as its “equally important role to teach us how to be moral people”:<sup>67</sup>

There are matters over which there may not, or not yet, be enforceable rights but which are just as essential to harmonious living. Indeed, family law, comprising rules on the two most intimate relationships of any person’s life, *viz* his or her relationship with a spouse and with a child, can benefit more than most other branches of law from expressing expectations. The judicious use of these expressions of expectations encourages proper behaviour and teaches as well, if not better, as the provision of legally enforceable rights.

48 The author has pointed out before that s 46(1) of the Women’s Charter was modelled upon a provision in the Swiss Civil Code.<sup>68</sup> She further traced the drafting of that provision by its Swiss draftsman to reveal that he had intended by it “to convey the moral perspective ... to buttress what were the more technical provisions from the Swiss cantonal and the German family laws”.<sup>69</sup>

49 The Parliament of New Zealand may be regarded as having embraced a similar style of legislative draftsmanship in their prohibition of parental physical discipline of a child. The significance of its adopting this style is appreciated when one notes that New Zealand did not follow the same path that led Singapore to enact s 46(1) of the Women’s Charter. New Zealand prohibits parental discipline of a child by way of its Crimes (Substituted Section 59) Amendment Act 2007.<sup>70</sup>

50 Two sections of this relatively short New Zealand statute which contains only seven sections are worth quoting in full:

4 Purpose

The purpose of this Act is to amend the principal [Crimes] Act to make better provision for children to live in a safe and secure

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67 See Leong Wai Kum, *Principles of Family Law in Singapore* (Singapore: Butterworths Asia, 1997) at pp 356–357.

68 See Leong Wai Kum, “Fifty Years and More of the Women’s Charter of Singapore” [2008] Sing JLS 1 at 11–14.

69 Leong Wai Kum, “Fifty Years and More of the Women’s Charter of Singapore” [2008] Sing JLS 1 at 13.

70 2007 No 18.

environment free from violence by abolishing the use of parental force for the purpose of correction.

5 New section 59 substituted

Section 59 is repealed and the following section substituted:

‘59 Parental control

(1) Every parent of a child and every person in the place of a parent of the child is justified in using force if the force used is reasonable in the circumstances and is for the purpose of –

(a) preventing or minimising harm to the child or another person; or

(b) preventing the child from engaging or continuing to engage in conduct that amounts to a criminal offence; or

(c) preventing the child from engaging or continuing to engage in offensive or disruptive behaviour; or

(d) performing the normal daily tasks that are incidental to good care and parenting.

(2) Nothing in subsection (1) or in any rule of common law justifies the use of force for the purpose of correction.

(3) Subsection (2) prevails over subsection (1).

(4) To avoid doubt, it is affirmed that the Police have the discretion not to prosecute complaints against a parent of a child or person in the place of a parent of a child in relation to an offence involving the use of force against a child, where the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution.’

51 The author suggests that a similar effect could be achieved in Singapore by simply adding a new subsection to s 46(1) of the Women’s Charter without adding any direct sanction for its breach.

52 Two Australian academics have praised the gently worded New Zealand statutory expression and suggested that their own legislature should consider following suit.<sup>71</sup> They commend the legislative aim “initially [of] the least intrusive level of intervention needed to achieve

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71 Bronwyn Naylor & Bernadette J Saunders, “Parental Discipline, Criminal Laws and Responsive Regulation” in *Law and Childhood Studies* (Michael Freeman ed) (UK: Oxford University Press, 2012) at p 506.

the desired outcome”<sup>72</sup> for their country’s consideration when Australia is ready to similarly prohibit parental physical discipline of the child. It appears that legislatures can learn from the style of legislative draftsmanship that Singapore has been fortunate to adopt judiciously in regulating the marital relationship and the parental relationship with the child.

## VI. Section 46(1) of the Women’s Charter offers a ready model of softer legislative draftsmanship

53 When the law in Singapore prohibits parental physical discipline of a child even if moderate and as “correction”, this will be no more than an incremental development within law that is already sound. This incremental change will build neatly upon the existing subsidiary legislation that controls or even prohibits the infliction of physical punishment of children by their carers, other than parents, *ie*, in government homes for children and young persons,<sup>73</sup> child care centres<sup>74</sup> and in schools.<sup>75</sup> It will also neatly build upon the 2001 extensions of the offence of “ill-treatment” committed against a child or young person that now includes “emotional abuse”.<sup>76</sup> The controls over the infliction of physical punishment by carers other than parents and the current definition of “ill-treatment” render s 64 of the Women’s Charter’s sanction of parental physical discipline somewhat out of place. Removing the sanction and thereby prohibiting parental physical discipline of a child is more consistent with related law. All carers of children, whether parent or non-parent, must learn to desist from inflicting physical punishment. We should all teach in ways that are more loving. Every child’s environment, whether in the home or outside, should be free of violence. Discipline through teaching that is more gently conveyed rather than through a smack is, in the long run, more effective.

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72 Bronwyn Naylor & Bernadette J Saunders, “Parental Discipline, Criminal Laws and Responsive Regulation” in *Law and Childhood Studies* (Michael Freeman ed) (UK: Oxford University Press, 2012) at p 525.

73 Regulations 24 and 25 of the Children and Young Persons (Government Homes) Regulations 2011 (S 415/2011) control the infliction of corporal punishment on children staying in such government homes and prohibits its unauthorised forms.

74 See reg 17(1) of the Child Care Centres Regulations (Cap 37A, Rg 1, 2012 Rev Ed): “Every licensee shall cause to ensure that the staff shall not administer ... any form of corporal punishment [and] harsh, humiliating, belittling or degrading responses of any kind, including verbal, emotional and physical ...” that has been in place since 1990.

75 See reg 88 of the Education (Schools) Regulations (Cap 87, Rg 1, 2013 Rev Ed) which prohibits the infliction of corporal punishment on female pupils and controls its infliction even on male pupils.

76 Children and Young Persons Act (Cap 38, 2001 Rev Ed) s 5. See para 12 above. See also Debbie Ong Siew Ling, “The Quest for Optimal State Intervention in Parenting Children: Navigating within the Thick Grey Line” [2011] Sing JLS 61.

54 The Women’s Charter provides a ready model of how optimally to achieve such incremental change. Its s 46(1) that exhorts ideal parenting conforms with the softer style of legislative draftsmanship.<sup>77</sup> Although a full discussion of this point is beyond this article, it may be observed that supporters of this style of legislative draftsmanship would not fret over the inability to provide a comprehensive definition of the moral principle of “parental responsibility”.<sup>78</sup>

55 Supporters of “soft” family law provisions value the law’s embrace of the moral principle of “parental responsibility” whether or not it can be comprehensively defined. The principle colours legal regulation of the relationship between parents and child with salutary moral tones.<sup>79</sup> Supporters would be content with the fact that those facets of the principle that can be concretised into enforceable provisions are so concretised. Within parental responsibility the obligation of a parent to provide reasonable maintenance to a dependent child<sup>80</sup> and the responsibility of devising the best available living arrangements for the child<sup>81</sup> are legally enforceable. The other facets of parental responsibility must, for the moment, remain as legal expectations that, although not directly enforceable, can provide sound support for decisions made by the court.<sup>82</sup> This state of the law in Singapore regulating parenting is hardly defective. It may well be optimal.

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77 Ideal parenting is conveyed through the concept of “parental responsibility” while the ideal marital relationship is conveyed through the concept of marriage as an “equal co-operative partnership of different efforts for mutual benefit”. Of the latter, see Leong Wai Kum, *Elements of Family Law in Singapore* (Singapore: LexisNexis, 2nd Ed, 2013) at pp 86–91.

78 See, *contra*, *Responsible Parents and Parental Responsibility* (R Probert, S Gilmore & J Herring eds) (UK: Hart Publishing, 2009) despair over the lack of definition of parental responsibility.

79 See Leong Wai Kum, *Principles of Family Law in Singapore* (Singapore: Butterworths Asia, 1997) at pp 356–357 and Leong Wai Kum, *Elements of Family Law in Singapore* (Singapore: LexisNexis, 2nd Ed, 2013) at pp 236–245.

80 See ss 68, 69(2) and 127 of the Women’s Charter (Cap 353, 2009 Rev Ed).

81 See ss 123–126 of the Women’s Charter (Cap 353, 2009 Rev Ed) and the Guardianship of Infants Act (Cap 122, 1985 Rev Ed).

82 See Leong Wai Kum, *Principles of Family Law in Singapore* (Singapore: Butterworths Asia, 1997) at pp 356–357 and Leong Wai Kum, *Elements of Family Law in Singapore* (Singapore: LexisNexis, 2nd Ed, 2013) at pp 236–245.