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LATEST IMPROVEMENTS TO THE WOMEN'S CHARTER

Women's Charter (Amendment) Act 1996

IN the course of this year, important alterations have been made to the non-Muslim[1] family law of Singapore. The first change was one of form. Family proceedings hitherto heard only by the High Court were transferred to the Family Court by the Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) Order 1996.[2] By this, the Family Court became the unified centre for resolution of all family disputes. The second change was substantive in nature, brought about by the Women's Charter (Amendment) Act 1996.[3]

The original Women's Charter (Amendment) Bill[4] involved changes to four main areas: marriage for persons who have undergone a sex re-assignment procedure; protection of family members from violence; maintenance of wife and children and the enforcement of maintenance orders; and division of matrimonial assets on termination of marriage. The Bill was committed to a Select Committee and it, on suggestions received, recommended that other aspects of the law be changed as well. These recommendations were accepted by Parliament and the Women's Charter (Amendment) Act 1996 was passed on 27 August 1996.[5] At the time of writing, its provisions have not been brought into operation yet. The object of this article is to describe these changes and evaluate their impact.[6]

1 The Muslim family law system is outside the scope of this article, but references to it in instances of overlap are made, see Part I B Overlap with Muslim Family Law, *infra*.

2 S 110/96, made under s 28A Supreme Court of Judicature Act (Cap 322, 1985 Rev Ed). See also Subordinate Courts Practice Direction No 1 of 1996.

3 Act No 30 of 1996.

4 Bill No 5/96.

5 The Women's Charter (Amendment) Act 1996 received the President's assent on 27 September 1996.

6 Amendments made to Part X of the Women's Charter (Cap 353, 1985 Rev Ed) ("Offences Against Women and Girls") are not included in this article as they do not directly relate to family law.

I. Grounds on Which Marriage is Void

A. *Marriage of Person Who Has Undergone Sex Reassignment*

In *Lim Ying* v *Hiok Kian Ming Eric*,[7] the petitioner married the respondent at the Singapore Marriage Registry under the provisions of the Women's Charter.[8] The petitioner later discovered that the respondent was born a female and had undergone a "sex-change" operation. The petitioner prayed for a declaration that there had never been a marriage between the parties because the respondent was a female, and alternatively, for an annulment of the marriage on the basis that it was not consummated owing to the incapacity of the respondent.

In a landmark decision, three important points were decided. First, that marriages under the Women's Charter between parties of the same sex are not permitted; secondly, following the English case of *Corbett* v *Corbett*,[9] that the determination of sex was to be by use of biological criteria (chromosomal, gonadal, and genital tests), ignoring any operative intervention; and thirdly, that breach of this requirement renders the marriage void *ab initio* even though it is not one of the grounds listed in the former section 99 of the Women's Charter. Criticisms of the reasoning in each of these points have been expressed elsewhere.[10]

The Women's Charter (Amendment) Act 1996 overrules the first two points. The change is retrospective in nature. All marriages between a person who has undergone a sex reassignment procedure and any person of the opposite sex, assuming other capacity rules are satisfied, is now valid. However, marriages declared null and void by the High Court on the ground that the parties were of the same sex before the commencement of the amendment are expressly excluded.[11] Ever mindful of the moral and religious overtones, this move was explained in Parliament as a practical and humane response to the problems faced by transsexuals and to revert to the practice before the decision.[12] The amendment, however, affects not just transsexuals

7 [1992] 1 SLR 184.

8 Cap 353, 1985 Rev Ed.

9 [1971] P 83.

10 See Tan Cheng Han, "Transsexuals and the Law of Marriage in Singapore" [1991] SJLS 509; Leong Wai Kum, "Reform of the Law of Nullity in the Women's Charter" [1992] SJLS 1 at 2-21; Leong Wai Kum, "Recent Developments in the Law of Marriage and Divorce" (1993) 5 SAcLJ 290 at 292-297.

11 S 11A(2), (4). All sections referred to herein are to sections of the Women's Charter (Cap 353, 1985 Rev Ed) as amended by the Women's Charter (Amendment) Act 1996 unless otherwise stated.

12 *Parliamentary Debates, Official Report,* 2 May 1996, col 64.

but also hermaphrodites who have gonadal and genital attributes of both sexes. For hermaphrodites, the application of the *Corbett* v *Corbett* biological criteria resulted in a conclusion that the person is neither of the male nor female sex and consequently incapable of marrying.[13]

The requirement that the parties to a marriage must be respectively male and female is now explicitly stated in a new section 11A(1) of the Women's Charter. Hence, it is not necessary in future to refer to section 2 of the Interpretation Act[14] ("monogamous marriage") or to implicit references in the Women's Charter[15] for this proposition. At the same time, it reinforces society's refusal to recognise homosexual unions. A breach of section 11A is included in section 99(a) as a ground on which the marriage is void.

By the new section 11A(3)(a), the notation of sex in the Identity Card[16] is to be prima facie evidence of a person's sex for the purposes of capacity to marry. Hence, some legal effect, in terms of capacity to marry, is given to the medical intervention which has taken place.[17] Whether or not this will encourage the courts to give sex reassignment the same recognition in other areas of the law, particularly gender-specific criminal offences[18] and liability to caning,[19] remains to be seen.[20] In the original proposal, the notation of sex was to have been "conclusive" evidence, but this was rejected by the Select Committee for being too rigid and problematic.[21] Even though

13 As in the Australian case of *Re C and D* (1979) 28 ALR 524 at 528 where the hermaphrodite husband was held to be "neither man nor woman but a combination of both". Ormrod J in *Corbett* v *Corbett, supra,* note 9, at 106, deliberately left this question open but indicated that he was inclined to give greater weight to the appearance of the genital organs.

14 Cap 1, 1985 Rev Ed. See *Lim Ying* v *Hiok Kian Ming Eric, supra,* note 7, at 194.

15 As proposed by Leong Wai Kum, *Family Law in Singapore* (1990), at 70-73.

16 Issued under the National Registration Act (Cap 201, 1992 Ed). See also the suggestion of Leong Wai Kum, "Reform of the Law of Nullity in the Women's Charter", *supra*, note 10, at 18-19.

17 *Cf* Sexual Reassignment Act 1988 in South Australia where a "recognition certificate" issued under the Act conclusively identifies for all purposes the person as being the sex to which the person has been reassigned.

18 *Eg,* ss 375 (rape), 377A (outrages on decency), 509 (word or gesture intended to insult the modesty of a woman) Penal Code (Cap 224, 1985 Rev Ed).

19 Women may not be punished with caning, s 231 Criminal Procedure Code (Cap 68, 1985 Rev Ed).

20 In England, the same approach (albeit using the *Corbett* v *Corbett* biological criteria) applies for the determination of sex in the capacity to marry and for criminal offences, *R* v *Tan* [1983] QB 1053. *Cf* Australia where the biological criteria are used for determination of sex in capacity to marry but not in criminal cases, *R* v *Cogley* [1989] VR 799; *Harris and McGuiness* (1988) 35 A Crim R 146.

21 *Report of the Select Committee on the Women's Charter (Amendment) Bill [Bill No 5/96]* (1996) (hereinafter *Report of the Select Committee* (1996)), at ii. See also representations of Leong Wai Kum (Paper 19) and Law Reform Committee, Singapore Academy of Law

it is possible to go behind the notation of sex as *prima facie* evidence, it is submitted that such challenges may only be allowed in the most exceptional cases, such as fraud in obtaining a change in the notation of sex.

There is little risk of uncertainty in the determination of sex from the rejection of the *Corbett* v *Corbett* biological criteria. Only those who actually go through sex reassignment can take advantage of the amendment. However, there is a danger in that no legal controls are imposed on the medical decision on who should be eligible for sex reassignment, the technique to be used, or the persons authorised to carry it out. Implicit faith is placed in the medical profession to develop adequate regulations on their own. It is hoped that the legislature will prescribe minimal qualifications for medical practitioners providing such treatment, approve certain hospitals with adequate surgical and counselling facilities for such treatment, and to require that proper records of such treatment be kept.[22] In the case of adult transsexuals, the following minimal requirements should be imposed before reassignment procedure is allowed: the person should be at least 21 years of age; has adopted the lifestyle of the sex to which the person is to be reassigned; and has received proper counselling in relation to the consequences of the reassignment.

How the recognition of marriage of a transsexual will interact with the law's traditional emphasis on heterosexual relations has yet to be worked out. In *Corbett* v *Corbett*, the respondent was registered at birth as a male and had undergone an operation for the removal of the testicles, most of the scrotum and the construction of an artificial vagina. An alternative ground for granting the petitioner the decree of nullity prayed for is that sexual intercourse with an artificially constructed vagina was not consummation which requires ordinary or natural intercourse.[23] In *Lim Ying* v *Hiok Kian Ming Eric*, it was also the petitioner's case that the respondent's penis was artificial and erection for sexual intercourse not possible,[24] but no finding was made by the learned judge on this point.

Although section 100(a) of the Women's Charter provides that a marriage is voidable if it has not been consummated owing to the incapacity of either party, it would be inconsistent to recognise the validity of sex reassignment for capacity to marry and yet allow the same parties to obtain a decree

(Paper 26) to the Select Committee on the Women's Charter (Amendment) Bill, *Report of the Select Committee* (1996), at B23-B24 and B77 respectively.

22 *Cf* Termination of Pregnancy Act (Cap 324, 1985 Rev Ed).

23 *Supra,* note 9, at 107. S 12(a) Matrimonial Causes Act 1973 is *in pari materia* with s 100(a) Women's Charter.

24 *Supra,* note 7, at 186.

of nullity on non-consummation. A simple solution is to hold that a decree of nullity cannot be granted if the petitioner knew, prior to the marriage, of the sex reassignment operation undergone by the respondent. It could be said that either the petitioner conducted himself, by proceeding with the marriage, as to lead the respondent to believe that he would not seek a decree of nullity or that it would be unjust to the respondent to grant the decree.[25] It is recognised that this proposal is inconsistent with *Corbett* v *Corbett* where a decree of nullity was granted alternatively on the ground of non-consummation owing to incapacity even though the petitioner knew that the respondent had undergone a sex reassignment operation. It is submitted that with the rejection of the biological criteria for the determination of sex in capacity to marry, this aspect of *Corbett* v *Corbett* should be rejected as well.[26]

B. *Overlap with Muslim Family Law*

1. *Marriage of Two Muslims under the Women's Charter*

Although section 3(3) of the Women's Charter states that "[n]o marriage both of the parties to which are Muslims shall be solemnised or registered under this Act", it was not apparent whether a civil marriage which does take place in spite of this prohibition can be declared void by the grant of a decree of nullity because the former section 99(a), which contains the grounds making a marriage void, did not include breach of section 3(3).[27]

[25] S 101. *Cf Subramaniam* v *Kanagar Valli* Divorce No 2879 of 1991 where the learned judge refused to grant a decree of nullity where the petitioner knew of the respondent's reassignment operation before the marriage on the basis that the court will not assist a fraud on the Registry. For criticisms, see Tan Cheng Han, *Matrimonial Law in Singapore & Malaysia* (1994), at 53-54.

[26] *Cf* the solution proposed by the Council of the Law Society of Singapore (Paper 25) to the Select Committee on the Women's Charter (Amendment) Bill to create another ground on which a transsexual marriage is voidable, *Report of the Select Committee* (1996), at B68-B69; and *Lim Ying* v *Hiok Kian Ming Eric, supra,* note 7, at 196, where the learned judge held that the marriage is void for lack of consent. Leong Wai Kum, "Recent Developments in the Law of Marriage and Divorce", *supra*, note 10, at 303, however, suggests that the concept of voidable marriages may be outmoded.

[27] A declaration that a Women's Charter marriage solemnised between two Muslims was null and void was granted in *In the Matter of the Women's Charter and Valberg Kevin Christopher and Heran binte Abdul Rahman* Originating Summons No 1273 of 1990. See also Leong Wai Kum, "The High Court's Inherent Jurisdiction to Grant Declarations of Marital Status" [1991] SJLS 13 at 53; Leong Wai Kum, "Reform of the Law of Nullity in the Women's Charter", *supra*, note 10, at 23. If such a case were to arise in the future, the proper remedy prayed for is a decree of nullity under s 98.

The Select Committee was persuaded to add this requirement to section 99(a),[28] hence clarifying that it is an issue of capacity of the parties. With the amendment, all the grounds on which a marriage may be declared void are found expressly in section 99.

2. *Transsexual Marriages and Muslim Law*

Another problem caused by section 3(3) of the Women's Charter is that it clearly allows a marriage under the Women's Charter so long as only one party is Muslim. It is unclear if the intent of this provision is to allow civil marriages between all Muslims and non-Muslims in general, or only those who, according to Muslim law, have capacity to marry.[29] Assuming it is the former,[30] an interpersonal conflict is created by the present amendment to allow persons who had undergone a sex reassignment procedure to marry in their new sex under the Women's Charter. Islam prohibits sex reassignment and it refuses to recognise marriages where one party had undergone sex reassignment.[31] Hence, the status of a transsexual marriage which takes place under the provisions of the Women's Charter where one of the parties is Muslim is in considerable doubt. A review of the overlap of two co-existing family laws may be needed in the near future.[32]

C. *Marriage Between Parties Within Prohibited Degrees*

The amendments to section 10(2) of the Women's Charter clarify the circumstances in which the Minister may use his discretionary powers to

[28] This amendment was not proposed in the original version of the Women's Charter (Amendment) Bill.

[29] Ahmad Ibrahim, "Marriages of Muslims with non-Muslims" [1965] 1 MLJ xvi.

[30] This is the view favoured by academics, see Leong Wai Kum, *supra,* note 15, at 62-64; Tan Cheng Han, *supra,* note 25, at 56.

[31] *Supra,* note 12, col 65.

[32] It was suggested to the 1979 Select Committee on the Women's Charter (Amendment) Bill that the Women's Charter revert to governing marriages between parties who are both non-Muslims and a similar suggestion was made again to the present Select Committee, see the representation of (a) Muslim Missionary Society, Singapore, (b) Peripensis, (c) Muhammadiyah, (d) Pegas, (e) Islamic Theological Association, Singapore (Pertapis) (Paper 12), *Report of the Select Committee on the Women's Charter (Amendment) Bill [Bill No 23/79]* (1980) (hereinafter *Report of the Select Committee* (1980)), at A34 and the representation of the Singapore National Front (Paper 23), *Report of the Select Committee* (1996), at B57. See also the recommendation of the Law Reform Committee, Singapore Academy of Law (Paper 26) in relation to the ancillary powers of the court to divide matrimonial property and order maintenance and custody of children, *Report of the Select Committee* (1996), at B83-B84.

allow a marriage between parties notwithstanding the kindred or affinity of the parties.

Under the former provision, it was not clear if the Minister's discretion is based on the validity of the marriage under the law, religion, custom or usage applicable to the parties before the enactment of the Women's Charter or not. Furthermore, the phrase "deemed to be valid" has been pointed out to be infelicitous considering that "the 'deeming' device is used only where it is impossible for the marriage to be actually valid", which is not the case for such marriages.[33] The uncertainty has been clarified and the language improved.

II. Protection Against Family Violence

The incidence of family violence is small but significant. In 1995, 3639 police reports involving violence occurring in the home were made: 508 reports were in respect of verbal threats in the home, 3107 were cases of voluntarily causing hurt and 24 cases involved the more serious voluntarily causing grievous hurt.[34] These figures, however, only give part of the picture since it depends on the victim or some other person making a police report. More telling is the number of persons who may suffer injuries severe enough to seek medical treatment. A total of 446 cases of spousal abuse, 152 cases of child abuse and 119 cases of elderly abuse were treated at public hospitals in 1995.[35] It is a sign of the maturity of our society that public concern about spousal, child and elderly abuse has increased markedly in recent years.[36] This is due in no small part to the efforts of various activist groups and nominated Member of Parliament, Dr Kanwaljit Soin.

Sections 68 to 70 have been deleted with the addition of a new Part VIA ("Protection of the Family") to the Women's Charter which greatly enhances the protection given to family members from violence by other family members. Some of these provisions owe their origin to the Family

[33] Leong Wai Kum, *supra,* note 15, at 59.

[34] *Supra,* note 12, cols 121-122.

[35] *Ibid*, col 123. The corresponding figures for 1994 were: 624 cases of spousal abuse, 203 cases of child abuse and 136 cases of elderly abuse, see *Singapore Parliamentary Debates, Official Report,* 7 August 1995, cols 1495-1498. Between January 1993 and June 1996, there were 5 documented cases of children who died and 45 cases of children who suffered serious injuries from abuse or neglect, "Meritocracy and ethnicity more vital than gender" *The Straits Times*, 29 October 1996.

[36] A survey conducted of Singapore citizens showed support for police to take legal action against husbands who commit major wife assaults or repeat moderate assaults, see Alfred Choi, "Formal Protection of Women from Wife Assaults in Singapore" [1994] 3 MLJ xli. See also the survey conducted by The Body Shop and AWARE, *supra,* note 12, col 84.

Violence Bill[37] proposed by Dr Kanwaljit Soin. Although the Family Violence Bill was defeated at its second reading,[38] a unique opportunity is offered to compare the approaches of the two schemes.

A. *The Range of Persons Protected*

Whereas the former provisions only protected either the spouse or a child of the family,[39] the new provisions protect the spouse or former spouse; a child of the person, including an adopted child and a step-child; the father or mother of the person; the father-in-law or mother-in-law of the person; the brother or sister of the person; or any other relative of the person or an incapacitated person who in the opinion of the court should, in the circumstances, in either case be regarded as a member of the family.[40] Bringing cases of elderly abuse and abuse of other family members into the scheme enhances the protection offered by law.

Victims who are merely cohabiting with their abuser are still excluded. This may be compared with the Family Violence Bill which defines "family member" as including "any other person who in the opinion of the court should, in the circumstances, be regarded as a member of the family."[41] Considering the importance of the family unit, the Government would not wish to encourage cohabitation. However, it is submitted that it would be wrong in principle not to extend the same protection of the law to those who are in a *de facto* husband and wife relationship.[42] The solution proposed by the Family Violence Bill would allow the courts to flexibly grant such protection in appropriate circumstances.

B. *The Persons Who May Apply for a Protection Order*

The range of persons allowed to apply for a protection order has been expanded. An application for a protection order may be made by the family member concerned,[43] or in the case of a child below 21 years of age or an incapacitated person, it may also be made by a guardian, relative, person

[37] Bill No 36/95. The Family Violence Bill was in turn based on the (Malaysian) Domestic Violence Act 1994 (Act A521).

[38] *Singapore Parliamentary Debates, Official Report,* 2 November 1995, col 209.

[39] Former s 68(2), (3), (5).

[40] S 60A.

[41] Cl 2 Family Violence Bill. Under the Women's Charter amendments, such a person must be an "incapacitated person".

[42] See also Tan Cheng Han, *supra,* note 25, at 121.

[43] S 60B(2).

responsible for the care of the child or incapacitated person, or by any person appointed by the Minister.[44]

In cases of child abuse, it is unlikely that the family members will want to involve outsiders. Hence, it is advantageous to allow persons (for example mothers-in-law or social workers) who are most concerned for the well-being of a child to intervene. However, the principle may be extended to other family members who may not be aware of their legal remedies or be able to make use of them. Studies in America show that victims of wife abuse may be paralysed by a sense of helplessness and fail to extricate themselves from the abusive relationship.[45] In such cases, the proposal of the Family Violence Bill to allow any person who has reason to believe that family violence is being or has been committed, or has been threatened, or is likely to be committed, to give such information to an enforcement officer[46] who will then provide assistance and/or advice to the protected person to *inter alia* seek a protection order is one which may need to be considered in the future.[47]

In various Australian states, greater outside intervention is permitted by legislation which provides for the police to make an application for a protection order on behalf of certain aggrieved parties.[48] In the Law Commission's Working Paper on Domestic Violence and Occupation of the Family Home, it is thought that the police bringing proceedings brings home to the respondent the seriousness of the matter.[49]

[44] S 60B(10). The appointees envisaged are community leaders or officers of social service agencies, *Report of the Select Committee* (1996), at iii.

[45] See particularly Lenore Walker, *The Battered Woman* (1979). For criticisms, see Katherine O'Donovan, "Defences for Battered Women who Kill" (1991) 18 Journal of Law and Society 219 at 230-232; Donald Nicolson, Rohit Sanghvi, "Battered Women and Provocation: The Implications of *R* v *Ahluwalia*" [1993] Crim LR 728 at 733-736. The "Battered Woman Syndrome" has been recognised in England by the Court of Appeal, *R* v *Ahluwalia* [1992] 4 All ER 889.

[46] An enforcement officer is defined as a police officer or a welfare officer or any other designated officer appointed by the Minister to carry out certain duties, cl 2 Family Violence Bill.

[47] Cls 19, 20 Family Violence Bill. It is however part of the police procedures for the police to explain to the victim of family violence how to apply for a protection order and if necessary, request the help of a voluntary welfare organisation to accompany the victim to court to obtain the protection order, *supra,* note 12, cols 93-94. Free legal advice is also provided by volunteers twice a week at the Family Court and a referral service has been set up between the Family Court and eight hospitals, "Quick help for abuse victims with new court-hospital links" *The Sunday Times* 4 August 1996. These efforts however are not mandated by legislation.

[48] S 562C Crimes Act 1900 (New South Wales); s 99 Justices Act 1982 (South Australia); s 172 Justices Act 1982 (Western Australia).

[49] Law Commission, *Domestic Violence and Occupation of the Family Home* (1989), para 4.20.

C. *Type of Harm to be Prevented*

The type of harm from which the family member is protected is not limited to the use of, or threat to use, physical violence.[50] "Family violence" now encompasses the concepts of hurt, wrongful confinement or restraint, and "continual harassment with intent to cause or knowing that it is likely to cause anguish". The first three concepts are terms which are found in the Penal Code[51] and it can be expected that the courts will adopt the same meaning which has been given to these terms. "Hurt" is defined as bodily pain, disease or infirmity.[52] This has been interpreted to include the infliction of nervous shock or hysteria or terror.[53] Wrongful restraint involves voluntarily obstructing any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed;[54] and wrongful confinement is wrongfully restraining any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits.[55]

The "continual harassment" limb is potentially wide and judicial guidance on the prohibited behaviour is awaited.[56] In view of the protective function, the term ought to be given a broad meaning to encompass behaviour which is intended to cause or is known to be likely to cause anguish.[57] The degree of continuity may be shown so long as the behaviour, which need not be the same, occurs more than once and is directed at the same person.

Although force lawfully used in self-defence, or by way of correction towards a child below 21 years of age, is excluded from the definition of "family violence",[58] the use of force is still regulated by other laws, such as the Penal Code and the Children and Young Persons Act.[59]

50 *Horner* v *Horner* [1982] 2 WLR 914, interpreting the equivalent provision in England under the Domestic Proceedings and Magistrates' Courts Act 1978.

51 Cap 224, 1985 Rev Ed.

52 S 319 Penal Code (Cap 224, 1985 Rev Ed).

53 *Jashanmal Jhamatmal* v *Brahmanand Sarupanand* AIR 1944 Sind 19.

54 S 339 Penal Code (Cap 224, 1985 Rev Ed).

55 S 340 Penal Code (Cap 224, 1985 Rev Ed).

56 See concerns raised at the second reading of the Family Violence Bill, *Singapore Parliamentary Debates, Official Report*, 1 November 1995, col 128: Can the husband's refusal to talk to the wife be considered as harassment as it causes anguish to the wife? In the same token, does the wife's constant nagging constitute harassment?

57 *Cf* the wide meaning given to the term "molestation", *Vaughan* v *Vaughan* [1973] 1 WLR 1159.

58 *Supra*, note 40.

59 Cap 38, 1994 Ed.

The Select Committee resisted appeals of representors[60] to include unconsented sexual acts or conduct in family violence. It opined that sexual misconduct between a married couple is difficult to ascertain and where the couple wish to keep the marriage intact, counselling on a voluntary basis would be a more appropriate measure than a court order. Cases of forced sex between estranged couples or members of a family should be dealt with under the provisions of the Penal Code and the Children and Young Persons Act.[61] This may be compared with clause 3(1)(c) of the Family Violence Bill which would have prohibited "compelling a family member by force to engage in any sexual act or conduct".

The decision reached by the Select Committee is regrettable for four reasons. First, the Select Committee failed to seize on an opportunity to send a clear message to all family members, including married couples, that unwanted sexual conduct is not a private matter but a serious violation of bodily integrity. Secondly, a distinction should be made between empowerment and compulsion. Involvement of the court is not contrary to the wishes of the parties to keep a marriage intact since the protected person need not apply for a protection order if she[62] does not wish to do so. This is made clear where the Select Committee was (inconsistently) of the view that where the victim wishes to seek a protection order against sexual misconduct of an estranged spouse, this may come under the "continual harassment" limb of the definition of family violence.[63]

Thirdly, criminal remedies fail to adequately protect the victim. Invoking the criminal process takes time and there is no power under the criminal law to injunct a family member from inflicting future violence. Problems also arise from the adversarial nature of its proceedings where parties who live in close contact would have to give evidence against each other. It is for these reasons that the scheme of protection orders was introduced in 1980 in the first place.[64]

[60] See representations of Association of Women for Action and Research (Paper 18), Singapore Association of Women Lawyers (Paper 20) and Khoo Heng Keow (Paper 30) to the Select Committee on the Women's Charter (Amendment) Bill, *Report of the Select Committee* (1996), at B16, B48, B86 respectively.

[61] *Report of the Select Committee* (1996), at iii-iv.

[62] The victim of family violence is predominantly female. The gender breakdown of the number of police reports made by family members in 1995 is as follows: cases of verbal threats in the home (412 females, 96 males); cases of voluntarily causing hurt in the home (2813 females, 294 males); cases of voluntarily causing grievous hurt in the home (20 females, 4 males), *supra,* note 12, cols 121-122.

[63] *Report of the Select Committee* (1996), at iv.

[64] *Vide* Women's Charter (Amendment) Act 1980 (Act No 26 of 1980). See also the problems of a compulsory intervention strategy, Part II H Theory, *infra*.

Finally, the Select Committee seems to have ignored the fact that criminal remedies for non-consensual intercourse where the parties are legally married are limited. Section 375 of the Penal Code expressly provides that "[s]exual intercourse by a man with his own wife, the wife not being under 13 years of age, is not rape".[65] Leong Wai Kum has argued that the proper interpretation of the exception is that it does not apply where consortium of the parties has been suspended by, for example, a decree nisi of divorce, a decree of judicial separation, or an injunction forbidding the husband to interfere with his wife.[66] Legislative amendments were made in jurisdictions where the same Penal Code provisions exist, such as Malaysia and India, in order to obtain these results.[67]

D. *Forum for Application of Protection Order*

Application for the protection order may be made in the District Court or the Magistrate's Court.[68] With the creation of the Family Court, all applications for protection orders are best channelled there.

The removal of the High Court's jurisdiction in this matter means that all applications for the protection order will be by the criminal process, without the concurrent originating summons process in the High Court.[69]

E. *Standard of Proof*

Unlike the former section 68 of the Women's Charter where the standard of proof needed for the court to be "satisfied" that the applicant has been a victim of violence was not clear,[70] the standard of proof under the present

[65] Other Penal Code offences, such as ss 321 (voluntarily causing hurt), 350 (using criminal force) and 503 (criminal intimidation) are possible, but they attract a much lower punishment and stigma than rape.

[66] Leong Wai Kum, *supra,* note 15, at 167-168. *Cf* Tan Cheng Han, "Marital Rape – Removing the Husband's Legal Immunity" (1989) 31 Mal LR 112 where he argues for the complete abolition of the exception.

[67] Malaysia: Explanations 1 and 2 to s 375 Penal Code (FMS Cap 45) as introduced by the Penal Code (Amendment) Act 1989 (Act A727); India: s 376A Indian Penal Code (Act XLV of 1860) as introduced by the Criminal Law (Amendment) Act 1983 (Act 43 of 1983). See also the suggestion of Leong Wai Kum to amend the Penal Code by replacing the exception with a rebuttable presumption of consent, *Report of the Select Committee* (1996), at B38.

[68] *Supra*, note 40 (definition of "court").

[69] S 72 (as amended).

[70] Louis D'Souza, "Tears or Fears – A Look at Section 65A of the Women's Charter" [1987] 1 MLJ clxxiii.

amendments is clearly stated to be on a balance of probabilities for obtaining a protection order or other order.[71]

In amendments which aim to remedy the past defects of the Act, it is regretted that section 60C(1) still state that the court may make an expedited order where it is "satisfied", instead of stating that it is "satisfied on a balance of probabilities". In the interests of a consistent application of the law in protection orders and expedited orders, there is no doubt that the latter may be issued on satisfying the civil standard of proof.

F. *Range of Orders*

The new provision allows the court to make protection orders of various kinds in the sense of the demands the order makes of the respondent.

1. *Restrain from Violence*

A basic protection order restrains the respondent from using family violence against a family member.[72] The court may include a provision that the respondent not incite or assist any other person to commit family violence against the protected person.[73] An expedited order may be issued by the court where there is imminent danger of family violence being committed against the applicant. There is no change in the time when the expedited order takes effect and when it ceases to have effect.[74]

2. *Exclusive Occupation of Shared Residence*

Under the former section 68(3) of the Women's Charter, a domestic exclusion order may only be made on two conditions being satisfied. First, that the respondent has used violence against the applicant or child of the family; or that the respondent has threatened to use violence against the applicant or child of the family and has used violence against some other person; or that the respondent has breached a personal protection order by threatening to use violence against the applicant or child of the family. And secondly, the applicant or child must be in danger of being physically injured by the respondent.

[71] S 60B(1), (5).
[72] S 60B(1).
[73] S 60B(4). See also the former s 68(8).
[74] S 60C. See also the former s 68(5), (6).

With the amendments, a protection order can order the respondent to leave the home and allow exclusive occupation by the protected person, simply, when the court is satisfied on a balance of probabilities that it is necessary for the protection or personal safety of the applicant.[75] In other words, what used to be the first condition to obtaining a domestic exclusion order is no longer needed.

The order is actually an order by the court excluding the respondent from the "shared residence" or a specified part thereof.[76] A "shared residence" is defined as premises which the parties are, or have been, living together as members of the same household.[77] Hence, it is now clear that the respondent may be excluded even from premises which the parties are renting, or if they are living with the parents or parents-in-law, from those premises. The flexibility to order exclusion from a specified part of the shared residence may be of use in larger homes where separate entrances and exits are available.

3. *Counselling*

Where the court thinks fit having regard to all the circumstances of the case, the protection order may order that the respondent or the protected person or both or their children attend counselling provided by such body as the Minister may approve or as the court may direct.[78]

There is a danger that the court may be tempted to indiscriminately impose an order for counselling in the false belief that something effective is being done.[79] Many studies carried out in other countries report "success", but the evidence is far from crystal-clear.[80] Shortcomings exposed in these studies include lack of proof that counselling is more effective in preventing recurrence of violence than the normal penal consequences or protection orders; lack of a control group; difficulty in measuring success, for example, because the parties are no longer living together, or where physical abuse may have declined but threats of abuse continue or even escalate; and lack

75 S 60B(5)(a).

76 *Ibid.*

77 *Supra*, note 40.

78 S 60B(5)(b). In the original Women's Charter (Amendment) Bill, the court may order the respondent to attend counselling only. See also *Report of the Select Committee* (1996), at iii.

79 See also cl 9(2) Family Violence Bill which would have required the court to order the offender to undergo counselling treatment unless there are exceptional circumstances.

80 Jeffrey L Edleson, Roger J Grusznski, "Treating Men Who Batter: Four Years of Outcome Data from the Domestic Abuse Project" (1988) 12 Journal of Social Service Research 3.

of follow-up studies.[81] Counselling is most likely effective where care is taken to provide the appropriate intervention programme to matching groups of persons. It is hoped that the court will, before the discretion to order counselling is used, make an order for psychological assessment and seek the recommendation of professionals in the field. This is especially important where counselling may be imposed on the protected person or the children who may perceive it as unfair for such an order to be made against them. In contrast, clause 16 of the Family Violence Bill expressly provided that:

> When considering any question relating to the making of an order to refer a person for counselling treatment, the court shall, whenever it is practicable, take the advice of some person, who is trained or experienced in family welfare but shall not be bound to follow such advice.

4. *Other Orders*

It is noted that under the former section 68(4) of the Women's Charter, the court may, if it thinks fit, make a further order requiring the respondent to permit the applicant to enter and remain in the matrimonial home. This is not found in the new provisions on protection orders.

If the protected person has moved out and the respondent harasses her there or at her place of employment, school or other location, the court is not given express power to exclude him from the place. In the Family Violence Bill, the court has the power to prohibit the respondent from *inter alia* entering the applicant's "alternative residence" (defined as premises or accommodation which a person is or has been compelled to seek or move into as a result of family violence), or from entering the applicant's place of employment or school or other institution or from making or attempting to make personal contact with the applicant other than in the presence of an enforcement officer or such other person as may be specified or described in the order.[82]

In the interests of preventing any lacunae in the law, the power of the court to make these two orders in appropriate cases may arguably be found in the "catch-all" provision of section 60B(5)(c), "the giving of any such

[81] Rebecca Morley, Audrey Mullender, "Hype or Hope? The Importance of Pro-Arrest Policies and Batterers' Programmes from North America to Britain as Key Measures for Preventing Violence Against Women in the Home" (1992) 6 International Journal of Law and the Family 265.

[82] Cls 2, 6(1)(b) Family Violence Bill.

direction as is necessary for and incidental to the proper carrying into effect of any order made under this section."

G. *Contravention of Order*

Under the former provisions of the Women's Charter, whether a police officer may make an arrest without a warrant on breach of the personal protection order depended on whether a power of arrest is attached to the order.[83] Where no power of arrest is attached, the applicant had to apply for a warrant of arrest on oath and convince the court that the order has been breached.[84]

Under the new provisions, there is no need to specifically attach or to apply for a warrant of arrest. A wilful contravention of a protection order, expedited order or any other order made under section 60B(5) (except for a requirement to attend counselling) is deemed to be a seizable offence within the meaning of the Criminal Procedure Code.[85] Under section 119 of the Criminal Procedure Code,[86] the police is mandated to investigate and to arrest the offender in a seizable offence, unless it is a case not of a serious nature or where there appears no sufficient ground for proceeding in the matter. In either of these two situations, the reason for not investigating or making an arrest must be stated in the report to the Public Prosecutor. Hence, it is as if all protection orders and expedited orders had a power of arrest automatically attached.

Furthermore, the punishment for breach of a protection order, expedited order or any other order made under section 60B(5) (except for a requirement to attend counselling which is considered a contempt of court)[87] is a fine not exceeding $2,000 or imprisonment for a term not exceeding 6 months or to both. A second or subsequent conviction attracts a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.[88] Considering the severity of the punishment, there is danger of an overlap in the civil and criminal spheres. A person may be exposed to imprisonment

[83] Former s 70(2).
[84] Former s 70(3).
[85] S 60B(11).
[86] Cap 68, 1985 Rev Ed.
[87] S 60B(9). *Cf* cl 12 Family Violence Bill which would have imposed a fine not exceeding $2,000 or imprisonment for a term not exceeding 6 months or both for a wilful contravention of an order to undergo counselling treatment.
[88] S 60B(8). *Cf* cl 10 Family Violence Bill which would have imposed a mandatory minimum imprisonment term on those convicted of a second or subsequent offence of not less than 3 months and not more than 2 years.

even though the underlying conduct may not be liable to criminal sanction because the requisite standard of proof cannot be reached. This danger can be averted provided the courts restrict the level of punishment by carefully considering the act to be punished. Here, the criminal punishment is imposed, in substance, for contravention of the *order*, and not for the underlying act of family violence which brought about the order in the first place.

H. *Theory*

The basic strategies of legal control of family violence can be divided into: *privatisation, contingent intervention* and *compulsory intervention*.[89] Behaviour is privatised when the legal system refuses to attach consequences to the behaviour precisely because it occurred within the family context. Although the consequence is the same, the privatisation approach is different from the common law view that some behaviour towards women is less serious or reprehensible because of the lower status of women.[90] Legal solutions are not available in the privatisation approach because legislators believe that conflict is better resolved within the family itself or through mediation and counselling.

Notions of family privacy continue to play a significant role in efforts to reform the law relating to protection against family violence. The Family Violence Bill was largely rejected on concerns that imposing the criminal process and police intervention in family violence is inimical to resolution of the conflict.[91] Some comments made by Members of Parliament were:

> We agree that the police should be proactive in [cases of family violence] and look into the case. However, I feel that this can be covered under the police operating procedures and need not be included in the law. ...This is because interference from the police or a third

[89] Franklin E Zimring, "Legal Perspectives on Family Violence" (1987) 75 Calif L Rev 521 at 527. Much of the structure of the following discussion is derived from this article.

[90] This view is very much out of favour in modern times, see, *eg,* the English House of Lords decision in *R* v *R* [1992] 1 AC 599 where it was said:

> the status of women, and particularly married women, has changed out of all recognition in various ways ... one of the most important changes is that marriage is in modern times regarded as a partnership of equals, and no longer one in which the wife must be the subservient chattel of the husband.

However, the refusal of the Government and the Select Committee to amend the Women's Charter to provide that women have a corresponding duty to maintain their husbands may serve to continue the notion that women are economically dependent on men, *supra,* note 12, cols 94-95; *Report of the Select Committee* (1996), at v-vi.

[91] See generally, *supra,* note 56, cols 110-142; *supra,* note 38, cols 169-197.

> party may aggravate the conflict between the abuser and the victim and affect the family relationship as a whole.[92]
>
> We should not force families to go to the brink by encouraging them to go to the courts or the Police. Rather, we should get them to try other means of reconciliation.... In the end, family members must themselves try to resolve the problems without government intervention.[93]
>
> [T]he introduction of Police...at the onset of any family squabble is likely to make things worse...the family loses control of the situation and therefore making it difficult for any amicable settlement. This runs contrary to our principle of settling family problems through conciliation, counselling and promotion of family values.[94]

But family privacy considerations may be callous to the victims. Family privacy considerations must be balanced with public interests in suppressing and regulating violent behaviour. The following comments were also made at the second reading of the Family Violence Bill:

> [F]amily disputes occur in diverse situations and the needs of the family in each situation vary because of the relationships and emotions involved. For this reason, the parties involved should be handled with understanding and sensitivity, and not always with the cold and strong arm of the law. I prefer a more mediatory and conciliatory approach which gives the family in distress a better chance of resolving its problem, with the Police intervening only in the more serious situations, where there is a breach of court order or where the situation is assessed to likely lead to serious hurt.[95]
>
> We should stick to our principle of dealing with family problems through counselling, education and, most important of all, promotion of family values. Only in severe cases where hurt or grievous hurt is detected, then the culprit should be apprehended and prosecuted.[96]

In compulsory intervention, the legal strategy is to pursue full enforcement of the law. There are two methods of achieving this. The same penal laws can be extended to behaviour involving family violence, without modification

[92] *Supra,* note 56, col 113 (Mrs Yu-Foo Yee Shoon).
[93] *Supra,* note 56, cols 129-130 (Mr Bernard Chen).
[94] *Supra,* note 38, col 170 (Mr Kenneth Chen Koon Lap).
[95] *Supra,* note 56, col 125 (Mr Wong Kan Seng).
[96] *Supra,* note 94.

in substance, enforcement or the nature and severity of sanction. Another method is to create new and specific offences for dealing with family violence.

The present penal laws, however, fail to adequately cater to the interests of the victims of family violence. The decision to arrest, investigate and prosecute an abuser lies in the discretion of the police who may be reluctant because family violence is considered not serious enough.[97] Secondly, if the offence is non-seizable,[98] the police is not able to make an arrest without a warrant of arrest or to commence investigations without the order of the Public Prosecutor or Magistrate.[99] It is estimated that 95% of family violence cases involve bruising, lacerations, kicking, choking or black eyes which fall into the category of voluntarily causing simple hurt, a non-seizable offence.[100] The penal laws also fail to regulate behaviour which does not involve acts of violence or threats of violence. Hence, repeated telephone calls or repeatedly keeping a person under surveillance will not amount to offences under the present criminal law.[101] Thirdly, a successful conviction results in punishments which focus on the past rather than rehabilitation or deterrence. On payment of the fine, or in the more serious cases, completion of the term of imprisonment, the abuser is returned to the same environment as the victim.

The Family Violence Bill sought to remedy these and other defects by proposing the creation of a new offence of family violence and granting the police increased powers of arrest and investigation.[102] Where there is sufficient evidence to prosecute the offender, the Public Prosecutor is mandated to charge him with the offence.[103] A variation is that no prosecution of a first offender[104] results if he undergoes and completes counselling treatment

[97] For the police procedure, see *Singapore Parliamentary Debates, Official Report*, 27 September 1995, cols 1555-1556: the officer tries to defuse and cool the situation. If unsuccessful, the parties are brought to the Neighbourhood Police Post for investigation and to help cool the situation.

[98] According to Schedule A, Criminal Procedure Code (Cap 68, 1985 Rev Ed).

[99] S 116(2) Criminal Procedure Code (Cap 68, 1985 Rev Ed).

[100] *Supra,* note 56, col 98.

[101] Such acts would apparently also not amount to an actionable tort if there is no evidence of impairment of health, *Burnett* v *George* [1992] 1 FLR 525. But see *Burris* v *Azadani* [1995] 4 All ER 802.

[102] Cls 9(1), 13(1) Family Violence Bill.

[103] Cl 13(2) Family Violence Bill.

[104] The provision does not apply if the offender has or has had: (a) a previous conviction of an offence of family violence under [the Family Violence Bill]; (b) a previous conviction under any other Act involving violence against any person who is entitled to protection under [the Family Violence Bill]; (c) a Protection Order or its equivalent under the Women's Charter issued against him; (d) completed counselling treatment...in relation to a prior act of family violence, cl 14(3) Family Violence Bill.

and does not commit another act of family violence while undergoing counselling treatment.[105]

As pointed out above, the Family Violence Bill was rejected owing to fears that official intervention would aggravate the domestic situation and that the new offence may be too imprecise in its definition and carry punishments which are too severe.[106]

In contingent intervention strategies, the legal response is only available if initiative is taken by the victim. In Malaysia, the court is only empowered to make a non-molestation order under the Law Reform (Marriage and Divorce) Act 1976 if the petitioner files for dissolution of marriage, or gives an undertaking to do so within a time frame set by the court.[107] The present protection orders in Singapore which place the onus on the victim to apply to the court for such an order is also of this strategy. Similarly, the refusal of the police and/or public prosecutor to press charges unless they can be certain the victim will see the action through is consistent with the contingent intervention strategy.

The motives for pragmatism in family violence intervention vary. One reason to limit public intervention is that the victims of family violence may not want such intervention themselves. Statistics show that between January 1989 to October 1993, there were 43 reported cases of domestic violence where the wife was the victim of an offence of voluntarily causing hurt by a dangerous weapon or voluntarily causing grievous hurt. Of the 43 cases, 18 resulted in prosecution. Of the 25 cases without prosecution, the victim in some of the cases refused to co-operate with the police to go for medical examination, and in others, complainants made police reports to buttress their case for divorce.[108] Further, in a pilot project which ran for 6 months from April to October 1995 allowing police to refer cases of wife abuse to counsellors, it was reported that in 28 out of 68 cases, any intervention was refused.[109]

However, a co-ordinated and professional response to the problems of family violence, involving the police and other agencies, is not impossible under our contingent intervention strategy. A network of the police and voluntary welfare organisations is being developed,[110] procedures to guide police officers in handling family violence cases have been designed, and

[105] Cl 14 Family Violence Bill.
[106] *Supra,* note 56, cols 122-123, 128, 132; *supra,* note 38, cols 184-187.
[107] S 103 Law Reform (Marriage and Divorce) Act 1976 (Act 164).
[108] *Singapore Parliamentary Debates, Official Report*, 3 December 1993, col 1271.
[109] *Supra,* note 56, cols 122-122, 151-154.
[110] *Supra,* note 12, col 92.

training to enhance the skills of the police and social workers conducted.[111] In particular, the following protocol is followed in dealing with cases of family violence:[112]

> [After a victim of family violence is identified], the duty officer in the [Neighbourhood Police Post] and the [voluntary welfare organisation ("VWO")] keep in touch with the victim.... The VWO will monitor the case and will assess whether the case is high risk, moderate risk or low risk and follow up accordingly. The VWO will keep in constant touch with the police on the condition of the victim, in case the victim comes again to report and see what follow-up action could be taken. There is always constant discussion between the VWO and the police on the case, even after the case has been handled and the victim goes home.

The different responses to the problem of family violence have their own strengths and weaknesses. It has been said that:[113]

> Life's greatest moments occur behind closed doors. So too do some of modern life's most outrageous exploitations. A jurisprudence of family violence needs to confront the question of what aspects of private life are properly public. A coherent policy toward family violence depends on balancing the public value of privacy in family life against the social costs of exploitation and violence in unregulated family relations ... this task is difficult and complicated.

It is a truism that time will show whether Parliament has chosen wisely in our response. In a future assessment of the adequacy of the protection scheme, it is proposed that two yardsticks be used: whether the victim's safety and welfare is sufficiently protected; and whether the families able to resolve their problems are supported to do so.

[111] *Ibid*, cols 67, 92-93.

[112] *Ibid*, col 94. *Cf* cl 18 Family Violence Bill which would require the registrar of the court to forward a copy of any Protection Order issued, varied or revoked to the neighbourhood police post having charge of the area where the applicant resides.

[113] Franklin E Zimring, *supra,* note 89.

III. Maintenance of Wife and Children

A. *Relevant Considerations*

The amendments add factors which the court should take into consideration when ordering maintenance. It remains to be seen what impact, if any, this increase will bring to the amount of maintenance awarded. Under the former provisions as well as after the amendments, the court is to have regard to all the circumstances of the case, including the enumerated factors.

The requirement to consider the conduct of each of the parties to the marriage is one that exists in section 108(2) of the Women's Charter which deals with maintenance of a wife or ex-wife during matrimonial proceedings or when granting or subsequent to a grant of a decree of divorce, judicial separation or nullity of marriage. Repeating this factor in the new section 61A(4)(h) may send the wrong message that a punitive element exists in the award of maintenance, such that only good wives will be rewarded.[114] Husbands have a duty to maintain their wives, and it should be awarded on the basis of need, on the principle of financial preservation.[115] It is hoped that this factor will not figure prominently in the court's assessment of maintenance. In any case, it is only considered "if the conduct is such that it would in the opinion of the court be inequitable to disregard it".

The existing power to order maintenance of children is now amalgamated in one set of provisions. Previously, the provisions were found in Part VII of the Women's Charter ("Maintenance of Wife and Children") and duplicated in Part IX of the Women's Charter ("Divorce").[116] Any suggestion that the parent's duty to provide for the child's financial needs is different, depending on the state of the parents' marriage, is removed.[117] The previous guidance offered by section 123(2) "to place the child in the financial position as if the marriage had not broken down" is oddly not retained in the list of factors in section 61A(4).

[114] It was for this reason that the Select Committee did not include the conduct of the child as a factor to be taken into consideration, *Report of the Select Committee* (1996), at vii. See also "Reasons for breakup not relevant for maintenance" *The Straits Times*, 24 May 1996.

[115] *Quek Lee Tiam (mw)* v *Ho Kim Swee @ Ho Kian Guan* Divorce Petition 2928/1992, 26 January 1995 *per* Justice Lai Kew Chai in relation to maintenance for an ex-wife under s 108.

[116] The deficiency of so separating the provisions has been criticised before, see Leong Wai Kum, "The Duty to Maintain Spouse and Children During Marriage" (1987) 29 Mal LR 56 at 56.

[117] In *Sengol* v *De Witt* [1987] 1 MLJ 201, Judicial Commissioner Chan Sek Keong, as he then was, accepted that the principles to be applied for maintenance under s 107 were the same as those under s 61.

B. *Termination of Maintenance*

Under the amended section 111 of the Women's Charter, a maintenance order made in favour of the wife terminates on her remarriage. This amendment was not proposed in the original Women's Charter (Amendment) Bill but was suggested by a representor to the Select Committee.[118] Curiously, such a limitation to the maintenance order was proposed in the 1980 amendments to the Women's Charter (in addition to the order ceasing on her living in adultery),[119] but it was not included in the final version of amended Act.

In *PQR* v *STR*,[120] it was held that the legal duty to provide maintenance ceases upon the child attaining 21 years. The amendments allow a child over 21 years to claim maintenance in certain situations. Although once a person is over 21 years of age, he or she presumably can, or should, look after himself or herself, this may not be true in Singapore. National service for males delays tertiary education for them and therefore, their financial independence. The proposal for extending maintenance of children beyond the age of majority had been made as long ago as 1979,[121] but the then Select Committee seemed to have been inordinately preoccupied with the concern that this would benefit "professional students".[122] Under the new section 61A(5)(c), the court may order maintenance for a child who has attained 21 years of age if it is satisfied that the provision of maintenance is necessary because "the child is or will be ... receiving instruction at an educational establishment".

Under the former section 125(b) of the Women's Charter, the obligation to provide maintenance ceases upon the child obtaining "gainful employment". This has been interpreted to exclude persons in National Service[123] or trainee nurses.[124] The importance of supporting these persons

[118] Representation of the Law Reform Committee, Singapore Academy of Law (Paper 26) to the Select Committee on the Women's Charter (Amendment) Bill, *Report of the Select Committee* (1996), at B 81.

[119] Cl 17 Women's Charter (Amendment) Bill [Bill No 23/79].

[120] [1993] 1 SLR 574. However the father willingly agreed to provide maintenance for his daughter until she finished her university education. See also Leong Wai Kum, "Maintenance of Wife and Children" (1993) 5 SAcLJ 349.

[121] See representations of Leong Wai Kum (Paper 5); (a) YWCA, (b) Singapore Women's Association, (c) Cosmopolitan Women's Club, (d) Singapore Business and Professional Women's Association, (e) Singapore Association of Personal and Executive Secretaries, (f) Singapore Association of Women Lawyers (Paper 7); Lawyers' Christian Fellowship (Paper 10) and National Council of Churches, Singapore (Paper 13) to the Select Committee on the Women's Charter (Amendment) Bill, *Report of the Select Committee* (1980), at A13-14, A18, A29, A37 respectively.

[122] *Report of the Select Committee* (1980), at C12-C14.

[123] *PQR* v *STR, supra*, note 120.

[124] *Quek Soo Wah* v *Loke Sing Hin* [1990] 1 MLJ xxii.

where necessary is recognised and continued under the present section 61A(5). Hence, maintenance may be ordered if necessary because "the child is or will be serving full-time national service" or "the child is or will be ... undergoing training for a trade, profession or vocation, *whether or not while in gainful employment*" (emphasis added).[125] In addition, any "special circumstances" which would justify an order of maintenance for a child beyond 21 years may be considered.[126] These amendments provide flexibility to the court to extend an order of maintenance of a child in appropriate cases, while at the same time limiting such discretion to cases of merit (where maintenance is "necessary"). It also alleviates the need to refer to non-family law statutes such as the Employment Act[127] for an understanding of gainful employment and recognises our peculiar local needs.

C. *Persons Who May Apply for Child*

The persons who may apply for an order of maintenance on behalf of the child is widened. In addition to the guardian or the person with actual custody of the child, they are: the child himself if he has attained 21 years; where the child is under 21 years, any of his siblings who has attained 21 years; or any person appointed by the Minister.[128] This change meets the concern that a child under 21 years may not have someone to act on his behalf if the other parent or guardian is unwilling or unable to do so on his behalf.[129]

IV. Enforcement of Maintenance Orders

The amendments lessen the hardship and expense caused to the wife and children in trying to enforce a maintenance order where the husband defaults in making his payments. They provide that, where a person does not comply with the order to make maintenance payments, a sentence of imprisonment ordered does not affect or diminish the obligation of the person to make the maintenance payments, but the court has a discretion to reduce the amount of such payments in its discretion.[130] This recognises that where the object of deterrence fails, imprisoning the husband for non-payment of maintenance does not adequately provide for the financial needs of the dependent wife and children.

[125] S 61A(5)(b) and (c) respectively.
[126] S 61A(5)(d).
[127] Cap 91, 1996 Ed.
[128] S 62(3).
[129] *Report of the Select Committee* (1996), at vi.
[130] S 63(1A).

The court may also make a garnishee order in order to claim the amount of maintenance due in addition to the powers of directing the amount due to be levied in the manner provided by law for levying fines, imposing an imprisonment term not exceeding one month for each month's allowance remaining unpaid,[131] or making an attachment of earnings order.[132] Further, an attachment of earnings order may be made at any time whereas the former section 74 allowed it only after the husband has failed to comply with the maintenance order so that the attachment of earnings order applied to a specific breach of the maintenance order. The penalty for failure by the employer or the defendant to notify any changes in employment and earnings after an attachment of earnings order has been made is now doubled from $1,000 to $2,000.[133] The definition of "earnings" is amended to include payments received from self-employment.[134]

Under the former section 115(3), the recovery of arrears of unsecured maintenance is not possible if it accrued more than 3 years before the institution of the suit. The amendments allow the court, under special circumstances, to do otherwise. No express guidance is given as to what amounts to "special circumstances" but no doubt the following factors expressed in *Gomez nee David* v *Gomez*[135] remain valid:

(a) the fact that the sums ordered are for maintenance and do not constitute property to be hoarded;

(b) the situation and conduct of the parties;

(c) the nature and causes of the applicant's inaction or acquiescence;

(d) the question of hardship on the respondent;

(e) the large sum that may have accrued when the respondent believed that there was no liability to pay;

(f) that it is always preferable to have in force an order for such a sum as the respondent will pay rather than go to prison.

V. Division of Matrimonial Assets

The former section 106 of the Women's Charter has been said to mark Singapore's transition from the common law "separation of property" regime

[131] S 63(1).
[132] S 74.
[133] S 83 (as amended).
[134] S 73 (as amended).
[135] [1985] 1 MLJ 27 at 29.

to the "deferred community" regime for division of matrimonial assets on dissolution of marriage.[136] In exercise of its power to make such division, attention was given to whether the assets were acquired through the sole or joint efforts of the parties, with certain factors singled out for the court's consideration in either case.[137] Where the assets were acquired by joint efforts, the court was to incline towards equality of division; and where the assets were acquired by the sole effort of one party, the party by whose effort the assets were acquired was to receive a greater proportion. That scheme is now abolished and replaced by a new scheme.

A. *Joint Effort and Sole Effort*

The new scheme removes the dichotomy between matrimonial assets[138] acquired by joint and sole efforts. The Minister for Community Development, in moving the Women's Charter (Amendment) Bill, pointed out the inconsistency of considering the homemaking efforts of the other party in the case of dividing the matrimonial assets acquired by the sole effort of one party, but not if the matrimonial assets were acquired by joint efforts of the parties.[139]

The conceptual and practical difficulties in making a distinction between joint and sole efforts have been pointed out before.[140] A literal application of the distinction would require a court to enquire into the conduct and efforts of each spouse since "the smallest relevant contribution would require a categorisation as jointly acquired property."[141] In *Ong Chin Ngoh* v *Lam Chih Kian*,[142] this distinction was whittled down to one without a difference when Justice Chan Sek Keong, as he then was, pointed out that

[136] Leong Wai Kum, "Division of Matrimonial Assets: Recent Cases and Thoughts for Reform" [1993] SJLS 351 at 354-355. As was noted, in a "deferred community" regime, the spouses continue to hold property according to their rights under traditional property law principles during marriage, but on dissolution of marriage, the property is pooled together and a fair division of the assets made.

[137] Former s 106(2), (4).

[138] The term "matrimonial asset" is now introduced into our legislation, *cf Neo Heok Kay* v *Seah Suan Chock* [1993] 1 SLR 230 at 233.

[139] *Supra,* note 12, col 68.

[140] BC Crown, "Property Division on Dissolution of Marriage" (1988) 30 Mal LR 34; Leong Wai Kum, "Division of Matrimonial Property upon Termination of Marriage" [1989] 1 MLJ xiii. See also the remarks of Judicial Commissioner Michael Hwang, as he then was, that "the wording of [s 106] is so infelicitous that it has created many difficulties for lawyers and judges alike" in *Wang Shi Huah Karen* v *Wong King Cheung Kevin* [1992] 2 SLR 1025 at 1029.

[141] Leong Wai Kum, *supra,* note 136, at 360.

[142] [1992] 2 SLR 414 at 418.

the court may award up to 49% of the matrimonial assets acquired by the sole effort of the other party, as compared to 50% each for jointly acquired assets where the court was to incline towards equality. Despite this narrowing of any differences between assets acquired through joint or sole efforts, the courts have, in some cases, found themselves stymied by the legislative command to differentiate these two types of assets.[143]

The statement of the Minister for Community Development, however, is not entirely correct. Through a purposive reading of section 106, the courts had arrived at the same result earlier. The strong statement of principle given by Justice of Appeal LP Thean in *Ng Hwee Keng* v *Chia Soon Hin William* deserves to be quoted in full:[144]

> [A] spouse's contribution to the welfare of the family is also relevant in determining the division of a matrimonial asset which has been acquired by the joint efforts of both the spouses.... The factors stated in [section 106(2) and (4)] are not mutually exclusive. The purpose of section 106 is to provide a just and equitable division of the matrimonial assets between the spouses. Giving section 106 a purposive construction, it could not have been the intention of the legislature that in determining the division of matrimonial assets [acquired by joint efforts], only the contributions made by the spouses as specified in [section 106(2)] are to be taken into account and that the contribution by one or both of them to the welfare of the family is to be ignored or disregarded. To reject such a consideration is to 'inject an irrational construction to [section 106(2) and (4)] which could lead to some unjust results. In our judgment, on the true construction of section 106 (read as a whole) a spouse's contribution to the welfare of the family is a relevant consideration when the court exercises its power under [section 106(1)].

Nevertheless, clarity in the provision is welcome.

[143] *Eg, Ng Hwee Keng* v *Chia Soon Hin William* [1995] 2 SLR 231 at 238; *Chan Choy Ling* v *Chua Che Teck* [1995] 3 SLR 667 at 671-672.

[144] *Ibid*, at 239-240. The sections referred to therein are to the former provisions of the Women's Charter (Cap 353, 1985 Rev Ed). The earlier statements in *Wang Shi Huah Karen* v *Wong King Cheung Kevin, supra,* note 140, at 1030 and *Yong Fooi Kian Dorothy* v *Ho Soon Seng Andrew* Divorce Petition No 3161 of 1993, 9 November 1994 were approved.

B. *Inclination Towards Equality*

Despite reservations expressed by several representors[145] to the Select Committee of the removal of the inclination towards equality in division of matrimonial assets acquired by the joint efforts of the parties, the Select Committee was of the opinion that it put an unnecessary constraint on the judges to incline towards equality when "what is equal may not be just".[146]

It is agreed that the retention of the phrase is inconsistent with the abolition of the distinction between assets jointly acquired and assets solely acquired. Instead, the court should consider, in all cases, all the circumstances and order a division that is "just and equitable".[147] When the new section 106 is considered in totality, it may be seen the fears of the representors are misplaced. The object of the amendment is to give greater recognition of the contribution made by the homemaker-spouse[148] to the marriage and the acquisition of wealth.[149] Conversely, the new scheme does not award a greater proportion of the matrimonial assets to the party by whose effort the assets were acquired.[150] This is in marked contrast to statements in previous cases,[151] following *Watchel* v *Watchel*,[152] that a helpful starting point for the division of assets was to award the wife one-third of the capital assets and one-third of the parties' joint earnings. It has been supposed that under the former section 106, the norm for division appears to range from 35% to 45% to the spouse who was homemaker.[153]

Hence, the intent of the legislature is to benefit the homemaker-spouse, which should result in a more equal division than possible under the former scheme. Where the marriage is unusual in some respect, such as one of

[145] Representations of Association of Women for Action and Research (Paper 18); Leong Wai Kum (Paper 19); Singapore Association of Women Lawyers (Paper 20) and National Trades Union Congress (Paper 21) to the Select Committee on the Women's Charter (Amendment) Bill, *Report of the Select Committee* (1996), at B21, B27-B28, B45-B46 and B51 respectively. *Cf* representation of the Council of the Law Society of Singapore (Paper 25) which agreed with the amendment, *Report of the Select Committee* (1996), at B74.

[146] *Report of the Select Committee* (1996), at viii.

[147] S 106(1).

[148] The homemaking role is normally performed by the wife, but the provisions equally benefit a husband who performs this role. See also *Chan Yeong Keay* v *Yeo Mei Ling* [1994] 2 SLR 541.

[149] *Supra,* note 12, col 91.

[150] *Cf* former s 106(4).

[151] *Eg, Jacqueline Bey* v *Edmond Lee Yok Lung* [1988] 2 MLJ 355; *Wong Amy* v *Chua Seng Chuan* [1992] 2 SLR 360.

[152] [1973] 1 All ER 829.

[153] Leong Wai Kum, *supra,* note 136, at 388.

extremely short duration[154] or where the spouses do not live up to their respective breadwinning or homemaking roles, there is freedom to depart from an equal division of matrimonial assets. It is hoped the equal division of matrimonial assets will be borne out by cases decided under the new section 106.

C. *Variation of Orders*

Under the new section 106(4), the court may, "at any time it thinks fit, extend, vary, revoke or discharge any order made under this section...." The power of the court to "extend, vary, revoke or discharge" an order made for the division of matrimonial assets is entirely new. This enlargement of the power of the court must be appreciated in the light of the previous law.

Under the former section 106, the court may exercise its power to divide assets "when granting" a decree of divorce, judicial separation or nullity of marriage. Such power, however, has not been interpreted to mean that it must be exercised at the time of, or before the completion of, the matrimonial proceedings.

In *Lim Tiang Hock Vincent* v *Lee Siew Kim Virginia*,[155] an order that the matrimonial home not be sold until the younger daughter reaches 21 years was challenged as beyond the scope of the former section 106. The Court of Appeal held that there was nothing in the words of the provision which required the power in the former section 106(1) to be exercised on the making of the decree. Further, by virtue of section 27(1) of the Interpretation Act,[156] the court may exercise that power "from time to time as occasion requires". Hence, the court could defer the order of sale to a later date, if the circumstances warrant it.[157]

Although the matter was not specifically argued, it was assumed by Justice Sinnathuray in *Tan Kim Hong* v *Keng Heng Investment Pte Ltd*[158] that the former section 106 applied even though the parties were divorced and no ancillary orders had been made at the time. In *Lim Beng Choo* v *Tan Pau Soon*,[159] the court flexibly interpreted the power to exist for a reasonable

[154] The mean duration of the marriage of couples divorced in 1994 was 13 years. The percentage of divorces by duration of marriage in 1994 was: 15.7% – under 5 years; 28.8% – 5 to 9 years; 23.0% – 10 to 14 years; 15.9% – 15 to 19 years; 16.6% – 20 years and over. See *Statistics on Marriages and Divorces 1994* (1995), at 27.

[155] [1991] 1 MLJ 274.

[156] *Supra,* note 14.

[157] In the circumstances of the case, the order for postponement of the power of sale was varied to when the appellant reaches 55 years of age.

[158] [1991] 1 MLJ 399.

[159] [1996] 3 SLR 177.

time after the grant of the decree. What is a reasonable time varies according to the facts and circumstances. In that case, leave to apply for a division of the proceeds of the sale of a flat was granted years after the divorce decree.

It has been argued that the power under the former section 106 may not be exercised after the matrimonial proceedings have been concluded: first, *Lim Tiang Hock Vincent* v *Lee Siew Kim Virginia* only dealt with postponement of the power of sale; secondly, *Tan Kim Hong* v *Keng Heng Investment Pte Ltd* was wrongly decided; and thirdly, that there are good policy arguments for such construction.[160] However, such interpretation, as seen in the above cases, has not been followed by the courts and would also be inconsistent with the subsidiary legislation made under the Women's Charter. Under Rule 37 of the Matrimonial Proceedings Rules,[161] an application for an order for the division of assets acquired during the marriage, if not made in the petition or answer, may be made subsequent to the main proceedings by leave of the court or where the parties are agreed upon the terms of the proposed order. However, the concerns raised against allowing a division of matrimonial assets made after the close of matrimonial proceedings are valid and apply equally to a change of such order. Parties after a divorce should be allowed to re-order their affairs without the possibility of either side making a further application to court hanging over their heads. It is hoped that for finality in financial provisions, the court will use its power to make an order for division of matrimonial assets, or to change the order made, after the completion of the proceedings, only exceptionally. Such exceptional circumstances include the non-disclosure of material wealth or change in custody of the children. To interpret it any wider may lead parties to be dilatory in their compliance with the order made or to use it to re-open determination made by the court, thus circumventing the appellate process.

D. *Considerations for Division*

In coming to its decision on the division of matrimonial assets, the court is to consider "all the circumstances of the case" including a lengthy list of enumerated factors. Seven factors are listed in the new section 106(2)(a) to (g) and section 106(2)(h) incorporates another seven factors found in section 108(1) "so far as they are relevant".[162] Many of the factors now

[160] Tan Cheng Han, *supra,* note 25, at 186-187.
[161] 1990 Ed.
[162] But ss 106(2)(d) and 108(1)(f) overlap.

enumerated have been considered by the courts in coming to their decision and stating these expressly would not change the law. The court has made reference to the (short) duration of the marriage;[163] the amounts to be returned to the CPF on sale or transfer of the property acquired by such funds;[164] and agreement between the spouses as to the division of assets.[165] Further, by virtue of section 117 of the Women's Charter, the court is not to make absolute any decree for divorce or nullity of marriage unless it is satisfied that the arrangements for the welfare of every child have been made and are satisfactory.[166]

In a minority of cases, the greatly expanded list of factors may require a different result. In *Ng Kim Seng* v *Kok Mew Leng*,[167] the appellant appealed against the proportions in which their matrimonial home was ordered to be divided. The appellant argued that the relative financial positions of the parties ought to be considered and not just the monetary contributions made by the parties. In particular, the wife had fixed deposit accounts, was the registered owner of a large portfolio of Malaysian shares which paid her dividends of nearly $250,000 per annum, and she was the trustee of a residential property. In contrast, the husband had a comparatively low income and no other home. The learned Chief Justice Yong Pung How held that the court could not take into account the substantial assets of the wife as it was not a relevant factor stated in the former section 106.[168] A different result is now possible. The substantial assets of the wife would be a proper consideration to take into account since it falls within "the income ... property and other financial resources which each of the parties to the marriage has..." under section 108(1)(a) of the Women's Charter.

By virtue of the new section 106(2)(d), to be considered is "the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family *or any aged or infirm relative or dependant of either party*" (emphasis added). Although the provision is similar to the former section 106(4)(a), the words in italics

[163] *Wang Shi Huah Karen* v *Wong King Cheung Kevin, supra,* note 140; *Koh Kim Lan Angela* v *Choong Kian Haw* [1994] 1 SLR 22; *Shi Fang* v *Koh Pee Huat* [1996] 2 SLR 221. *Cf* s 108(1)(d).

[164] *Lim Tiang Hock Vincent* v *Lee Siew Kim Virginia, supra,* note 155. *Cf* s 106(2)(a), (b).

[165] *Wong Kam Fong Anne* v *Ang Ann Liang* [1993] 2 SLR 192. *Cf* s 106(2)(e).

[166] See also *Lam Chin Kian* v *Ong Chin Ngoh* [1993] 2 SLR 253 ; *Chan Choy Ling* v *Chua Che Teck, supra,* note 143. *Cf* s 106(2)(c).

[167] [1992] 2 SLR 872.

[168] The English case of *O'Donnell* v *O'Donnell* [1975] 2 All ER 993 was distinguished as ss 23, 24 and 25 UK Matrimonial Causes Act 1973 were radically different from s 106. It is of greater persuasive value now since the factors mentioned in s 25 UK Matrimonial Causes Act 1973 are *in pari materia* with s 108(1).

are new.[169] In view of the emphasis on Family Values, the recognition given to the efforts of a spouse in caring for the aged or incapacitated, even of one who is not part of the immediate family, is to be commended.

A factor which can become a potent source of unfairness is section 106(2)(e) concerning an agreement between the spouses made in contemplation of divorce. According to the cases decided before the amendments, it was understood that an agreement between the spouses will not oust the jurisdiction of the court as to the division of matrimonial property, although it may be reason for not exercising its power.[170] The underlying principle is that while giving parties the autonomy to compromise or settle their disputes is important, there is nevertheless a public interest element involved in ensuring that the weaker spouse and children are not neglected such that they need to be supported by the State.[171]

In *Lee Hong Choon* v *Ng Cheo Hwee*,[172] a consent order for the division of matrimonial assets was approved by the court because the parties were legally represented and the "wife's solicitor as an officer of the court must be taken to have been vigilant". However, in an appropriate case, the court should be minded to interfere even with an agreement which was entered into with legal advice. Instances where an agreement entered into may be considered not binding should not be limited to the use of undue influence or duress but include agreements which prejudice the wife materially.[173]

This appears to have been achieved in practice. In *Lim Beng Choo* v *Tan Pau Soon*,[174] the wife applied for leave to apply for a division of the proceeds of sale of a flat despite an agreement in 1987 not to claim a share of it. Justice Warren Khoo accepted that the agreement was entered into as the wife was anxious to get out of an unhappy marriage and held:

> An agreement between the parties as to the division of matrimonial property does not oust the jurisdiction of the court under section 106 of the Women's Charter. ... Had the court been asked to intervene

[169] But these words are oddly not added to s 108(1)(f) or found in s 61A(4)(e). However, such considerations in assessing maintenance are nevertheless relevant since the court is to have regard to "all the circumstances of the case".

[170] *Wee Ah Lian* v *Teo Siak Weng* [1992] 1 SLR 688; *Wong Kam Fong Anne* v *Ang Ann Liang, supra,* note 165; *Lim Beng Choo* v *Tan Pau Soon, supra,* note 159.

[171] *Wee Ah Lian* v *Teo Siak Weng, ibid*, citing *Hyman* v *Hyman* [1929] AC 601.

[172] [1995] 2 SLR 663.

[173] Leong Wai Kum, *supra,* note 136, at 383. *Cf Chia Hock Hua* v *Chong Choo Je* [1995] 1 SLR 380 in relation to the factors for consideration by the court in sanctioning an agreement of a capital sum in settlement of all future claims for maintenance under s 110.

[174] *Supra,* note 159.

> at any time after the entering into of the agreement, albeit entered into with advise [sic] of solicitors, I am quite certain it would not have sanctioned it without a good reason....

In view of the spirit in which the amendments were made and section 117, the direction for an equitable division of assets is clear. An agreement made by the parties in contemplation of divorce as to their shares in the matrimonial assets ought not to tie the court's hands. As guidance however, especially where section 106(2)(e) appears to give implicit validation to agreements entered into between the parties, it may have been better to use the phrase "fair agreement" in the subsection.

E. *Definition of Matrimonial Asset*

Fears were also expressed to the Select Committee that the understanding of assets available for distribution derived from past cases would be discarded.[175] Particularly impressive were the decisions which have held that despite the words of the former section 106 that "the courts shall have power...to order the division between the parties of any assets acquired by them *during the marriage*" (emphasis added), the general principle to be followed is that any property owned by the spouses at the time of divorce is subject to division.[176] With due respect to the concerns of the representors and a member of Parliament,[177] it would appear that the amendments to the Women's Charter have made the provisions potentially more generous. The definition, albeit convoluted, in the new section 106(10) for "matrimonial asset" brings more items into the pool for division and sale.

Where the asset is acquired during marriage, it may be an "asset of any nature acquired during the marriage by one party or both parties to the marriage."[178] Hence, contribution towards property acquisition in terms of money, homemaking or other intangible efforts is irrelevant so long as it

[175] Representations of Leong Wai Kum (Paper 19); National Trades Union Congress (Paper 21) and Council of the Law Society of Singapore (Paper 25) to the Select Committee on the Women's Charter (Amendment) Bill, *Report of the Select Committee* (1996), at B28-31, B51 and B75 respectively.

[176] See, *eg, Shirley Koo* v *Kenneth Mok Kong Chua* [1989] 2 MLJ 264; *Lam Chin Kian* v *Ong Chin Ngoh, supra,* note 166; *Hoong Khai Soon* v *Cheng Kwee Eng (mw)* [1993] 3 SLR 34 and *Koh Kim Lan Angela* v *Choong Kian Haw, supra,* note 163. For further discussion, see Leong Wai Kum, *supra,* note 136; Leong Wai Kum, "Trends and Developments in Family Law" in *Review of Judicial and Legal Reforms in Singapore* (1996) 632.

[177] *Supra,* note 12, col 82 (Dr Kanwaljit Soin).

[178] S 106(10)(b).

is "acquired during the marriage".[179] It is expected that the courts will continue to read the time when the asset is acquired not in strict legal terms as the date on which ownership passes but in accordance with financial reality. Many expensive items, such as a car, home or club membership, are bought with moneys borrowed from a financial institution and repaid over the years in instalments. An "asset of any nature" also signals the legislature's approval of decisions holding items as diverse as club membership;[180] business assets;[181] car, jewellery and shares;[182] CPF funds;[183] property bought with CPF funds[184] or with funds derived from the sale of the former matrimonial home[185] as subject to division.

Where the asset is acquired before the marriage, there are two alternative methods in which it may be brought into the pool of matrimonial assets, namely, if it has been:[186]

(i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or

(ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage.

This may be compared with the former section 106(5) where an asset acquired before marriage may be brought into the pool only if it has been "substantially improved during the marriage by the other party or by their joint efforts". Hence, under the new scheme, items such as a car, club membership or art pieces purchased by one of the parties prior to the marriage but enjoyed by the spouse or children will fall within the first limb and therefore be matrimonial assets without also having to satisfy the second.[187]

[179] Such considerations are however relevant to the determination of the proper share of the matrimonial asset to be given, s 106(1), (2).

[180] *Shirley Koo* v *Kenneth Mok Kong Chua, supra,* note 176.

[181] *Koh Kim Lan Angela* v *Choong Kian Haw, supra,* note 163.

[182] *Ng Hwee Keng* v *Chia Soon Hin William, supra,* note 143.

[183] *Lam Chih Kian* v *Ong Chin Ngoh, supra,* note 166.

[184] *Ibid*.

[185] *Hoong Khai Soon* v *Cheng Kwee Eng (mw), supra,* note 176.

[186] S 106(10)(a).

[187] The width of this amendment caused one representor to the Select Committee to propose that "all assets acquired before the marriage should not be available for division, with only two exceptions, namely: (i) the matrimonial home, and (ii) assets which have been substantially improved". See representation of the Law Reform Committee of the Singapore Academy of Law, *Report of the Select Committee* (1996), at B80-B81.

However, expressly excluded from the definition of matrimonial asset is:[188]

> any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

It is unclear how broadly this exclusion should be read. If it applies to all assets acquired by gift or inheritance, irrespective of whether it is acquired before or during the marriage, then no substantive change has been brought about by the amended provisions.

Under the former section 106, a claim to a share of a pre-marital gift received by the other party would succeed only on showing that there had been a substantial improvement of the asset made by either or both parties to the marriage.[189] Similarly in the case of a gift received during marriage, only property in which some personal effort had been expended in acquiring it would be subject to division. In *Cheng Kwee Eng (mw)* v *Hoong Khai Soon*,[190] the wife claimed *inter alia* a share of a property owned jointly by the husband and his brother which was bought using funds from the sale of the former matrimonial home. It was common ground that the husband did not play any part in the acquisition of the former matrimonial home or in the new property. Justice LP Thean, as he then was, at first instance decided that although the new property was given to the husband during marriage, it was not "acquired" within the meaning of the former section 106(3) as he did not make any contribution in work, money or in kind towards acquiring it. On appeal, the Court of Appeal came to a different conclusion. Justice Lai Kew Chai held that:[191]

> Although the latter property was a gift, we do not think that we should trace the source of funds for a purchase to its origin. It would be inimical to the concept of a matrimonial partnership if the source of funds of every asset acquired during marriage had to be shown to not originate from the generosity of a third party.

[188] S 106(10).

[189] *Shi Fang* v *Koh Pee Huat, supra,* note 163. See also Leong Wai Kum, "Trends and Developments in Family Law", *supra,* note 176, at 697-698.

[190] Divorce No 1911 of 1989, 5 June 1991. The decision of the High Court has been criticised, see Tan Cheng Han, *supra,* note 25, at 190-192; Leong Wai Kum, "Trends and Developments in Family Law", *supra,* note 176, at 694-696.

[191] *Supra,* note 176, at 40.

The above statement should be read in context. In the circumstances, the gift of the former matrimonial home was sold and its proceeds used to purchase part of the new property. In that situation it would be unrealistic to continue to consider the new property as a "gift". However, if the new property was received directly by the husband through a gift or inheritance, some personal effort in its acquisition (under the former section 106) or substantial improvement (under the new section 106) should be shown for it to be brought into the pool of matrimonial assets.

There are good reasons to follow this interpretation. A gift or inheritance may be seen as a unexpected gain received by one party. It is not an asset brought about by the efforts of the partnership and therefore, should not be subject to division and sale. Moreover, this appears to be the intent of the drafters considering the positioning of the exclusion clause and the use of the words "at any time". However, it would appear highly unfair to exclude such an asset from the pool of matrimonial assets, especially where it has been used by the parties or children, for example, a car which was given to the husband by his parents and used as a family car.

An alternative interpretation is that the exclusion only applies to assets acquired during the marriage, but not assets acquired before marriage. Hence, an asset acquired before marriage by way of gift or inheritance would fall within the definition of matrimonial assets if it were "ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together..." or if it has been "substantially improved during the marriage by the other party or by both parties to the marriage". This interpretation distinguishes assets given to or inherited by one party during the marriage (which is not subject to division unless there is substantial improvement) from assets acquired by gift or inheritance before the marriage (which may satisfy either of the two limbs above).

It is submitted that either interpretation is acceptable and will not lead to unfair results for the following four reasons. First, the matrimonial home is in a privileged position whether it is acquired during the marriage or before the marriage.[192] Hence, even if the title to the matrimonial home were transferred to one of the parties by way of gift or inheritance, it would still be subject to division if no substantial improvements were made. A case such as *Shi Fang* v *Koh Pee Huat*,[193] where the Court of Appeal held

[192] See also the legislation in New Zealand and Ontario, Canada where a separate regime is provided for the matrimonial home: (New Zealand) Matrimonial Property Act 1976 and (Ontario) Family Law Act 1986 respectively.

[193] *Supra,* note 163, at 233-234. However, the share to be awarded is likely to be small or even nil considering the short duration of the marriage and her little contribution towards the welfare of the family.

inter alia that a matrimonial home given to the husband by his father before the marriage could only be considered a matrimonial asset if there had been substantial improvement, may have to be decided differently under the new scheme. No definition of "matrimonial home" is provided and probably none will be adequate to cater to the myriad situations which may occur in real life. In most cases, the following working definition proposed to the Select Committee will be adequate:[194]

> A matrimonial home means the property where the parties to the marriage and their children (if any) were ordinarily resident at or immediately prior to the presentation of the petition for divorce, judicial separation or nullity of marriage.

In cases where the parties spend their time in more than one property, litigation may be expected confidently to arise as to when a property becomes a "matrimonial home" and whether it is possible to have more than one "matrimonial home". Much will depend on the qualitative and quantitative use to which the property should be put for parties to be considered "ordinarily resident".[195]

Secondly, although the provision requires the gift or inheritance to be substantially improved by efforts traceable to the other party or by both parties to the marriage before it becomes part of the matrimonial assets, much depends on the efforts the courts require. In *Koh Kim Lan Angela* v *Choong Kian Haw*,[196] the Court of Appeal accepted the efforts of the wife in having accompanied the husband on social functions and selling trips, taking charge of fashion shows and helping in advertising and publicity matters as contribution towards the substantial improvement of the pre-marital gift of business assets given to the husband. It should be remembered that the final goal is a determination of what is a fair share in the particular circumstances of the case.[197] The Select Committee has noted that the provisions "call for judges to take into account all circumstances and to order the division according to what is *just and*

[194] Representation of Leong Wai Kum (Paper 19) to the Select Committee on the Women's Charter (Amendment) Bill, *Report of the Select Committee* (1996), at B31. See also the suggestion of the Law Reform Committee of the Singapore Academy of Law, *Report of the Select Committee* (1996), at B81.

[195] *Cf* an asset acquired before marriage which needs to be "ordinarily" used or enjoyed by both parties or one or more of their children to be considered a matrimonial asset, s 106(10)(a)(i).

[196] *Supra,* note 163, as explained in *Shi Fang* v *Koh Pee Huat, supra,* note 163, at 236.

[197] This was also the position under the former law, see Leong Wai Kum, *supra,* note 136, at 360 (footnote 30 and the cases mentioned therein).

equitable...” (emphasis added).[198] Hence, a purposive reading of the term should be adopted: so long as there is an increase in the value of the asset, part of which can be attributed to the efforts of the other party or both parties to the marriage, it should be brought into the pool of matrimonial assets subject to division and sale.

Thirdly, the requirement for substantial improvement can only apply to an asset which is derived *directly* by way of a gift or inheritance. If it were sold and the proceeds used to purchase another asset, the new asset may be considered to be “acquired during the marriage” and no longer a gift or inheritance.[199]

Finally, the Select Committee was of the view that, despite the change in section 106, “the body of case law built up over the years would not be disregarded by the judges, but would be used to guide the judges in their judgment.”[200] It is with this assurance that the principle developed in the previous cases to “minimise the disparity in the economic positions of the breadwinner-spouse and the homemaker-spouse...[and not flinch] from doing justice between spouses” is expected to continue to apply.[201]

F. *Power of Court to Order Division of Matrimonial Assets*

The former section 106(1) and (3) only granted the court the power to order the “division” between the parties of any assets or the sale of such assets. On a literal reading, it may be argued that orders such as ones to transfer the matrimonial home, whether or not subject to the refund of contributions made by the other party, or subject to a condition that the property not be sold until the child reaches 21 years-old are not allowed. The fact that such arguments have been rejected, and such orders made,[202] is testimony to the desire for a sensible and fair operation of the provisions.

Under the new section 106(5), the possible orders (which includes the two mentioned above) the court may make are clearly spelt out:

> (a) an order for the sale of any matrimonial asset ... and for the division ... of the proceeds;
>
> (b) an order vesting any matrimonial asset owned by both parties jointly...;

[198] *Report of the Select Committee* (1996), at viii.
[199] *Hoong Khai Soon* v *Cheng Kwee Eng (mw), supra,* note 176.
[200] *Report of the Select Committee* (1996), at viii.
[201] Leong Wai Kum, “Trends and Developments in Family Law”, *supra,* note 176, at 699.
[202] *Eg, Fan Po Kie* v *Tan Boon Son* [1982] 2 MLJ 137; *Rayney* v *Spencer* [1995] 2 SLR 153; *Lim Tiang Hock Vincent* v *Lee Siew Kim Virginia, supra,* note 155.

(c) an order vesting any matrimonial asset ... in either party;

(d) an order for any matrimonial asset, or the sale proceeds thereof, to be vested in any person ... to be held on trust...;

(e) an order postponing the sale or vesting of any share in any matrimonial asset ... until such future date ... as may be specified...;

(f) an order granting ... the right personally to occupy the matrimonial home to the exclusion of the other party; and

(g) an order for the payment of a sum of money by one party to the other party.

If the last order is made, under section 106(6), the court may "direct that it shall be paid either in one sum or in instalments, and either with or without security, and otherwise in such manner and subject to such conditions (including a condition requiring the payment of interest) as the court thinks fit".

Chong Li Yoon v *Soo Yook Thong*[203] illustrates how broad the power has become. The wife, in her petition for divorce, prayed *inter alia* that "the respondent do repay the petitioner all the loans and debts incurred by the petitioner on his behalf". Justice Commaraswamy held that the former provisions of the Women's Charter did not allow him to make such an order, even if it were highly desirable to do so in the circumstances of the case:[204]

> The court's jurisdiction and powers concerning ancillary matters in matrimonial proceedings are expressly laid out in the Women's Charter (Cap 353), Pt IX, Chs 4 and 5 and nowhere else.... Except under [these provisions], a court is given no jurisdiction whatsoever to grant any order in an ancillary matter in a matrimonial cause. An order that is not specified in the provisions referred to cannot be made in the course of matrimonial proceedings or at or consequent to the grant of a decree.

A separate action would have to be brought for any liabilities under contract or quasi contract (or restitution). Under the new section 106(2)(b) and (g), consideration of "any debt owing or obligation incurred...by either party for their joint benefit"[205] and "the giving of assistance or support by one

[203] [1993] 3 SLR 181.
[204] *Ibid, at* 182-183.
[205] Under the former s 106(2)(b), "debts owing by either party which were contracted for their joint benefit" is only relevant to the division of assets acquired by the joint efforts of the parties.

party to the other party" is relevant to the decision of a fair and equitable division of the matrimonial assets. Under section 106(5)(g), the court may order one party to make payment to the other party. Hence, the court would now be empowered to make the order sought.

The range of orders mentioned above is not even exhaustive. Section 106(5) expressly states that the orders are not limited to those therein. Hence, these may be as appropriate in arriving at a just and equitable division of matrimonial assets as the inventiveness of the court allows.

In ensuring the execution of its orders, the Family Court will, despite being a District Court, be able to utilise the same powers as the High Court with the consolidation of the Rules of the Supreme Court 1970 and the Subordinate Courts Rules 1986 in the new Rules of Court 1996.[206] This is supported by section 106(3) which provides that the court may make "all such other orders...as may be necessary or expedient to give effect to any order made...." The court is empowered by section 106(7) to execute its order for sale of the matrimonial asset by appointing another person to *inter alia* sell the matrimonial asset and divide the proceeds of sale despite a lack of cooperation from the party vested with ownership.

VI. Reconciliation, Mediation and Counselling

The duty of the court to be ever vigilant to the chance of the parties being reconciled is now greatly expanded. The former section 89 of the Women's Charter is now deleted but its substance re-enacted in a new section 47A. In addition to the possibility of reconciliation being considered when a petition for divorce or judicial separation has been instituted, it is also to be considered in proceedings for determination of title to property (section 56), application of a protection order (section 60B) or expedited order (section 60C), and application for maintenance of wife and children (section 61A).[207] The court is also given the discretion to nominate any other suitable person or organisation besides a Conciliation Officer[208] to assist in considering a possible reconciliation.[209]

Under the new section 47B, the court may, in any proceedings other than in a petition for a decree of nullity under the Women's Charter, give consideration to the possibility of a harmonious resolution of the matter.

[206] S 71/96. Rule 2 of the Women's Charter (Matrimonial Proceedings) Rules (1990 Ed) provide that, "the Rules of the Supreme Court, shall apply with the necessary modifications to the practice and procedure under the Act...."

[207] *Cf* the former s 89(1).

[208] S 47(1).

[209] *Cf* the former s 89(1)(c).

For this purpose, the court may, with the consent of the parties, refer them for mediation by such person as the parties may agree or, failing such agreement, as the court may appoint.

It is heartening to note the increased attention given to reconciliation and harmonious resolution of family disputes since the introduction of the principle in the Women's Charter nearly thirty years ago.[210] A study of cases in the Family Court between the months of March to August 1995 found that 69% of cases mediated at the pre-mention stage, and 87.9% of cases mediated at the mention and trial stages, reached settlement.[211] With the insertion of the sections 47A and 47B to the Women's Charter, it can be expected that even greater emphasis will be given to reconciliation and the harmonious resolution of disputes.

The court before which any proceedings under the Women's Charter, other than an application for a protection order or expedited order, is empowered to direct or advise either or both of the parties or their children to attend counselling if it considers it in the interests of the parties or their children to do so.[212] Counselling is to be provided by such person as the Minister may approve or the court may direct, but failure to comply with the direction or advice to attend counselling does not constitute a contempt of court by the parties.[213]

In the original Women's Charter (Amendment) Bill presented by the Minister for Community Development, the emphasis on harmonious resolution and the power to refer the parties for mediation or to attend counselling was only granted to a court making a maintenance order[214] or a custody order.[215] The Select Committee accepted the suggestion made by one representor to the Select Committee to widen its scope to cover other applications as well.[216] This will doubtless complement the powers of Conciliation Officers under section 47 in settling family disputes.

Reconciliation may be thought of as the overarching aim of the court in helping to prevent the break-up of families where possible. Where this is not possible, the adversarial judicial process may be avoided or its impact

[210] *Vide* Women's Charter (Amendment) Act 1967 (Act No 9 of 1967).

[211] Doris Lai-Chia Lee Mui, "The Family Court of Singapore" [1995] SJLS 655.

[212] In the case of a protection order or an expedited order, the court may refer the person against whom the order is made or the protected person or both or their children to attend counselling under section 60B(5)(b).

[213] S 47B(3).

[214] Cl 11 in the original Women's Charter (Amendment) Bill.

[215] *Ibid,* cl 20.

[216] Representation of Leong Wai Kum (Paper 19) to the Select Committee on the Women's Charter (Amendment) Bill, *Report of the Select Committee* (1996), at B34.

alleviated through mediation and counselling.[217] In Practice Direction No 1 of 1996 issued by the Subordinate Courts, mediation and counselling are described thus:[218]

> *Mediation* is conducted to encourage and assist parties in reaching an agreement or to narrow the issues in contention. In *counselling*, the emphasis is on exploring the possibility of reconciliation and assisting the parties to manage the emotional trauma of a divorce.

The attractiveness of such resolution of conflicts is three-fold: the parties retain control of the possible remedies instead of having one imposed on them; they are not confined to the remedies available to a court under the Women's Charter; and the souring of the relationship between the parties may be prevented hopefully.

The ability of the court to live up to this aim can only be as good as the professional resources that it can call upon. Such persons must also be neutral and acceptable to the parties. It should be noted that the court is now empowered to tap available community resources by referring the parties to reconciliation, mediation and counselling by other agencies. Furthermore, the confidentiality of things said or done at mediation or counselling sessions is strictly protected. Evidence of anything said, or of any admission made, in the course of an endeavour to effect a reconciliation, or in the course of any mediation or counselling, is not admissible in court.[219]

VII. Repeal of Section 85

Although section 85 has remarkable vintage and ancestry, one which can be traced[220] to section 81 of the Women's Charter 1961,[221] section 4 of the Straits Settlements Divorce Ordinance 1910,[222] section 7 of the Indian Divorce Act 1869,[223] section 22 of the UK Divorce and Matrimonial Causes Act 1857[224] and perhaps even the Second Charter of Justice 1826, the full

[217] That this should be so was pointed out in 1979, see Leong Wai Kum, "A *Turning Point* in Singapore Family Law" (1979) 21 Mal LR 327 at 332-333.
[218] Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to the Subordinate Courts (25 March 1996).
[219] Ss 47A(5), 47B(4).
[220] See RH Hickling, *Essays in Malaysian Law* (1991), chap 11.
[221] Ord 18 of 1961.
[222] Ord XXV of 1910.
[223] Act No IV of 1869.
[224] 20 and 21 Vict, c 85.

import of the provision is unclear. In *Martin* v *Umi Kelsom*,[225] the learned judge seemed to have used the corresponding Malayan provision[226] to transport himself to sit as a Divorce Court in England. Furthermore, although the prevailing principles or rules applicable in England are imported by this provision,[227] it is doubtful if it ever directly imported English family law statutes since the operative word is "principles" and not "law".[228]

Representors to the Select Committee pointed out the desirability of repealing the section in order to advance the evolution of our own distinctive family law and the localisation of our laws in general.[229] In any case, changes to the law have overtaken any significance of this provision. Where reference to English common law is desirable, this is possible via section 3 of the Application of English Law Act[230] "subject to such modifications" as local conditions require.

VIII. Jurisdiction Over Matrimonial Proceedings

Under the former section 86, before the High Court has jurisdiction to entertain matrimonial proceedings, two facts must be shown: the marriage characteristic[231] and the connection of one of the parties with Singapore.

[225] (1963) 29 MLJ 1. For criticism of the case, see David Jackson, "The Invalidity of a Marriage by the Law of its Place of Celebration" (1963) 5 Mal LR 388.

[226] S 3 Divorce Ordinance 1952 (No 74 of 1952).

[227] *Tay Kay Poh* v *Tan Surida* [1989] 1 MLJ 276.

[228] *Cf* s 5 Criminal Procedure Act (Cap 68, 1985 Rev Ed) and the repealed s 5 Civil Law Act (Cap 43, 1985 Rev Ed). See also CMV Clarkson, "Recognition of Foreign Nullity Decrees in Singapore" (1987) 8 Sing LR 166; Leong Wai Kum, *supra,* note 15, at 20-21; and *Ng Sui Wah Novina* v *Chandra Michael Setiawan* [1992] 2 SLR 839 where English statutes were ignored in favour of common law principles. But see GW Bartholomew, *Tables of the Written Laws of Singapore 1819-1971* (1972), at xxxviii-xliv; RH Hickling, *supra,* note 220; Debbie Ong Siew Ling, "Financial Relief in Singapore After a Foreign Divorce" [1993] SJLS 431 at 435 for a contrary view. Intermediate views have also been taken. Kenneth Wee, "The Recognition of Foreign Divorce Decrees: Creativity and Orthodoxy" (1974) 16 Mal LR 142 at 150, suggests that "only those English principles which are equally applicable in questions other than those arising under Part IX of the Charter" are imported for fear of inconsistency with other proceedings. Tan Yock Lin, *Conflicts Issues in Family and Succession Law* (1993), at 391-393, opines that the provision imports English statutes as well but only those enacted pre-1961.

[229] Representations of Shriniwas Rai (Paper 5); Leong Wai Kum (Paper 19) and Law Reform Committee, Singapore Academy of Law (Paper 26) to the Select Committee on the Women's Charter (Amendment) Bill, *Report of the Select Committee* (1996), at B5, B36 and B79 respectively.

[230] Cap 7A, 1994 Ed.

[231] Leong Wai Kum, *supra,* note 15, at 225-232.

The requirement for a particular marriage characteristic (namely, that the marriage has been registered under the Women's Charter, or is deemed to be registered under the Women's Charter, or was solemnised under a law which expressly or impliedly provides that the marriage shall be monogamous) is now deleted. All that remains is that either party to the marriage be connected with Singapore in terms of being domiciled in Singapore at the commencement of the proceedings or habitually resident in Singapore for a period of 3 years immediately preceding the commencement of the proceedings.[232]

The object of this amendment is to extend the jurisdiction of the court in matrimonial proceedings to include marriages which are potentially polygamous entered into abroad.[233] As pointed out by the Select Committee, this change is not tantamount to an approval of polygamy.[234] A Singapore domiciliary still has no capacity to enter into an actually polygamous marriage by sections 5 and 11.

IX. Restrictions on Person Granted Custody of a Child

In an era where international transportation is fast and relatively cheap, the problem of a parent taking a child to another jurisdiction without the other parent's consent is growing.[235] Such removals may not be in the best interests of the child and it can be traumatic for the other parent. Difficulties may also be encountered in ascertaining the location of the child and obtaining his return.[236]

The best response is to prevent the child from leaving the country in the first place. However, the remedies available before the present amendments were cumbersome. An application to the court must be made to impose a condition that the person given custody be prohibited from taking the child out of Singapore;[237] or, in the case of a person not given custody

[232] For proceedings for nullity of marriage on the ground that the marriage is void or voidable, the court has jurisdiction provided both parties to the marriage reside in Singapore at the time of the commencement of the proceedings.

[233] *Report of the Select Committee* (1996), at ix and see representation of Law Reform Committee, Singapore Academy of Law (Paper 26) to the Select Committee on the Women's Charter (Amendment) Bill, *Report of the Select Committee* (1996), at B79-B80.

[234] *Report of the Select Committee* (1996), at ix.

[235] *Eg,* "Man who kidnapped his sons to India gets one year's jail" *The Straits Times* 8 December 1995 where the father pleaded guilty to "kidnapping" his two sons to India.

[236] This is ameliorated by the 1980 Hague Convention on the Civil Aspects of International Child Abduction but Singapore is not yet party to the Convention.

[237] S 120(2)(e).

of the child, an injunction restraining that person from taking the child out of Singapore.[238]

By a new section 120(3), it is automatically provided that "where an order for custody is in force, no person shall take the child who is the subject of the custody order out of Singapore except with the written consent of both parents or the leave of court".[239] Hence, there is no need for an application to court, thus saving time, expense and the burden of having to prove one's case. This provision does not apply if the child is taken out of Singapore for a period of less than one month by the person given custody of the child or by any other person who has the written consent of the person given custody of the child.[240] Failure to abide by the provision leads to an offence carrying a fine not exceeding $5,000 or to imprisonment for a term not exceeding one year or both.[241]

This amendment is highly sensible,[242] especially in view of the lack of clarity in the powers of a parent granted custody over a child *vis-à-vis* the other parent.[243] "Parental kidnapping" is an oxymoron by definition since, whoever gets custody, neither parent has complete authority nor complete absence of authority.[244]

The introduction of punishment for infringement of section 120(3) furnishes an alternative to the kidnapping and abduction offences found in the Penal Code.[245] The Penal Code offences fail to cater for situations of removal of a child by a parent. Section 359 of the Penal Code states that kidnapping is of two kinds: kidnapping from Singapore, and kidnapping from lawful guardianship. However, both require the taking of the child to be either without the consent of a person legally authorised to consent or the consent of the lawful guardian. Without a clear definition of the scope of parental authority, it may be argued that a parent, even one who is not granted custody, taking his child is not kidnapping as he may be

[238] S 130.

[239] *Cf* s 13(1) UK Children Act 1989 where a "residence order" includes a restriction on the removal of the child from the UK without either the written consent of every person who has parental responsibility for the child or the leave of the court.

[240] S 120(4).

[241] S 120(5).

[242] The amendment was suggested by the Law Reform Committee, Singapore Academy of Law (Paper 26) to the Select Committee on the Women's Charter (Amendment) Bill, *Report of the Select Committee* (1996), at B79.

[243] *L* v *L* [1996] 1 SLR 366; *Yasmin Yusoff Qureshi (mw)* v *Aziz Tayabali Samiwalla* Originating Summons 799/1990, 19 December 1992.

[244] *L* v *L, ibid,* at 371.

[245] Particularly ss 359-365 Penal Code (Cap 224, 1985 Rev Ed).

legally authorised to consent to the taking of the child outside Singapore, or be included as the "lawful guardian" of the child.[246]

X. Other Amendments

The inconsistency between section 133 of the Women's Charter and rule 10(1) of the Women's Charter (Matrimonial Proceedings) Rules[247] is now resolved with the deletion of section 133. Hence, there is no need to obtain leave of court to serve a petition out of the jurisdiction.[248]

References to the local marriage register[249] under the Act are deleted as these have become obsolete. The means through which the notice of marriage is brought to the attention of the public is also changed to allow its display by computerised multi-media terminals.[250] The requirement for a copy of the rules made under the Act to be transmitted to the President has also been deleted.[251]

XI. Conclusion

The latest improvements may be viewed in macroscopic terms as part of the evolutionary process of developing a complete legal system suitable for local conditions. It has been pointed out that because our non-Muslim family law system is one derived largely from a hodge-podge English statutes and, therefore, ultimately from the norms of the Christian Church, it does not sit very well with the practices and expectations of the local population.[252] Where the recent changes to the Women's Charter have begun to reflect the values and respond to the needs of our society, they are much welcomed.

But a localised family law does more than that. It helps to create an ideology of the family by playing a leading role in shaping attitudes as to the proper role for each family member and the relationship between them.[253] The recent amendments to the Women's Charter can also greatly

[246] "Lawful guardian" is defined to include any person lawfully entrusted with the care or custody of the minor, see explanation to s 361 Penal Code (Cap 224, 1985 Rev Ed).

[247] 1990 Ed.

[248] This was suggested by the representation of the Law Reform Committee, Singapore Academy of Law (Paper 26) to the Select Committee on the Women's Charter (Amendment) Bill, *Report of the Select Committee* (1996), at B83.

[249] In ss 2, 26, 27, 28, 42 and 182.

[250] S 15. See also *supra,* note 12, col 70.

[251] Former s 139(3).

[252] Leong Wai Kum, *supra,* note 15, at 15-16.

[253] Leong Wai Kum, "Trends and Developments in Family Law", *supra,* note 176, at 634.

improve our understanding of family life. As noted by the Minister for Community Development at the second reading of the Women's Charter (Amendment) Bill:[254]

> [The Women's Charter] is a unique legislation and it has contributed a lot to the welfare and well-being of our women, children, the institutions of marriage and the family. The amendments...will hopefully deepen this contribution.

CHAN WING CHEONG*

[254] *Supra,* note 12, col 96.

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