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THE LAW IN SINGAPORE ON CHILD ABDUCTION

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This article analyses the approach taken by Singapore's criminal and family laws when a child is taken away by one parent without consent of the other parent to another jurisdiction. International efforts to ameliorate the difficulties faced by the left-behind parent in tracing the whereabouts of the child and obtaining his or her return come in the form of the Hague Convention on Civil Aspects of International Child Abduction. Although Singapore is not a party to the Convention, signs of its acceptance in spirit can be seen in a recently decided case. It is argued, however, that accepting the Convention is not enough on its own, and a thorough review of Singapore's criminal and family laws, which have hitherto developed separately, is needed to ensure that they speak with one voice and accord children the protection that they deserve.

I. INTRODUCTION

Although there are no reported statistics on the number of child abductions involving Singaporean parents, cases have on occasion come to the attention of the media and the courts.[1] With the rise in the number of divorces,[2] greater geographic mobility, and changes in the roles played by fathers in the family,[3] it is a problem that can only become greater in time. For the parent from whom the child is abducted, it is an expensive, time consuming and emotionally draining process to locate the child and seek his or her return. The child suffers too from the trauma of being abducted by the very person who is expected to protect him or her.[4]

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1 See "She got her child back with little government help", *The Straits Times* (27 October 1997), (LexisNexis); Braema Mathi, "Fight for custody of overseas child", *The Straits Times* (27 October 1997), (LexisNexis); Braema Mathi, "Mother in custody battle wanted in US for 'kidnap"' *The Sunday Times* (3 October 1999); *Jens Christian Thorsen v. Amjit Kaur* [2000] S.G.D.C. 29 (Lawnet); and *AB v. AC* [2004] S.G.D.C. 6 (Lawnet).

2 See *Statistics on Marriages and Divorces* (Singapore: Department of Statistics) of various years.

3 See Stella R. Quah, *Family in Singapore,* 2nd ed. (Singapore: Times Academic Press, 1998) c. 5; and parenting information disseminated by the Ministry of Community Development, Youth and Sports online at <http://www.aboutfamilylife.org.sg> and by the Centre for Fathering online at <http://www.fathers.com.sg>. The approach of the courts is still to favour the mother in custodial disputes, particularly in the case of young children, see *Soon Peck Wah v. Woon Che Chye* [1998] 1 Sing. L.R. 234. This may lead fathers to take "self help" measures when they feel that they have been unjustly denied custody of their child by the courts.

4 See Geoffrey L. Greif & Rebecca L. Hegar, *When Parents Kidnap* (New York: Free Press, 1993). Another consideration at stake is the law being brought into disrepute if its orders can be flouted with impunity once the child is taken across a border, see The Law Commission and the Scottish Law Commission, *Custody of Children—Jurisdiction and Enforcement within the United Kingdom* (Law Com. No. 138, Scot. Law Com. No. 91) Cmnd 9419 (1976).

In order to protect children from the harmful effects of their "wrongful removal or retention",[5] an international instrument is available in the form of the *Hague Convention on the Civil Aspects of International Child Abduction* [*Hague Convention*].[6] This seeks to establish procedures for the return of such children to the State of their "habitual residence" to resolve any custody disputes. While some commentators have argued that the *Hague Convention* could be made more effective,[7] its provisions are of little use if the child is abducted from, or taken to, a country which is not a party to the *Hague Convention*.[8] The provisions also have no retrospective effect and apply only to "wrongful removals or retentions" occurring after the coming into force of the treaty.[9]

Although there is an increasing number of contracting States to the *Hague Convention*,[10] few States in the Asia Pacific region, including that of Singapore,[11] are to date party it. As a non-contracting State, Singapore's criminal and family laws aptly illustrate the legal problems which a left-behind parent has to face in seeking the return of an abducted child.[12] Singapore's laws are also interesting in another sense in that they involve two other issues providing sources of conflict within the domestic legal system. First, the common law system, which Singapore inherited from its

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5 The terms "abduction", "kidnapping" and "wrongful removal or retention" are used interchangeably in this article.

6 1343 U.N.T.S. 89 (entered into force on 25 October 1980).

7 See e.g. David McClean, "'Return' of Internationally Abducted Children" (1990) 106 Law Q. Rev. 375; Frank Bates, "Undermining the Hague Child Abduction Convention: The Australian Way …?" (2001) 9 Asia Pacific L. Rev. 45; Johanna L Schiratzki, "Friends at Odds—Construing Habitual Residence for Children in Sweden and the United States" (2001) 15 Int'l J. L. Pol'y & Fam. 297; Susan Armstrong, "Is the Jurisdiction of England and Wales correctly applying the 1980 Hague Convention on the Civil Aspects of International Child Abduction?" (2002) 51 I.C.L.Q. 427.

8 The *Hague Convention,* Art. 35.

9 *Ibid.*, unless the State parties agree to derogate from these restrictions: The *Hague Convention,* Art. 36.

10 There are 74 contracting States to the *Hague Convention* (as of July 2004): Argentina, Australia, Austria, Bahamas, Belarus, Belgium, Belize, Bosnia & Herzegovina, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China (Hong Kong SAR and Macau SAR only), Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Fiji, Finland, Former Yugoslav Republic of Macedonia, France, Georgia, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Moldova, Monaco, Nicaragua, Netherlands, New Zealand, Norway, Panama, Paraguay, Peru, Poland, Portugal, Romania, Saint Kitts and Nevis, Serbia and Montenegro, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Trinidad and Tobago, Turkey, Turkmenistan, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela, Zimbabwe. See <http://hcch.e-vision.nl/index_en.php> for updates.

11 As far back as 1997, Singapore was reported to be considering acceding to the *Hague Convention*, "MFA may join Hague Convention" *The Straits Times* (27 October 1997), (LexisNexis), but there have not been any developments since then. This is disappointing considering that there is an obligation on State Parties to the *U.N. Convention on Rights of the Child* to combat illicit transfer and non-return of children abroad (Art. 11). Singapore acceded to the *U.N. Convention on the Rights of the Child* (U.N. Doc. A/RES/44/25) on 2 October 1995.

12 See also Leong Wai Kum, "International Co-operation in Child Abduction Across Borders" (1999) 11 Sing. Ac. L.J. 409. References to decisions of the Indian and Malaysian courts will also be made in this article considering the many legal and historical similarities shared between them and Singapore.

colonial past,[13] allows legal concepts to evolve with changing circumstances,[14] but this comes into conflict with a codified system of criminal law in the form of the *Penal Code* which was enacted more than 130 years ago.[15] And second, the antiquated criminal law provisions conflict with the far more sensitive approach taken by the family law towards child abduction. An example of the sensitive approach taken by the family law can be seen in a recent case which has adopted the spirit of the *Hague Convention* even though it is not part of domestic law. Each of these aspects will be explored below.

II. The Criminal Law

In the situation where a child is abducted from the custody[16] of its parent, one would naturally turn to the criminal law in the hope that the State would reflect its strong disapproval of such conduct by imposing severe punishment for it. In the case of Singapore, the conduct would fall within the serious offence of kidnapping within the *Penal Code*.[17] The punishment for this offence is imprisonment for a term which may extend to 10 years, and the person is also liable to fine or to caning.[18]

"Abduction" is defined in section 362 of the *Penal Code* as "Whoever by force compels, or by any deceitful means induces any person to go from any place", but nothing turns on it since "abduction" is in itself not an offence unless it is committed

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13 Singapore was founded as a trading outpost by the British East India Company in 1819. It remained a British colony, except for a short period when it was under Japanese rule during World War II, until internal self-government in 1959 and accession to the Federation of Malaysia in 1963. It finally gained independence in 1965. Its laws and judicial system were all developed from the common law model. See Andrew Phang Boon Leong, *The Development of Singapore Law* (Singapore: Butterworths, 1990).

14 One notable example in English law is the abolition of the "marital exemption" in rape: *R v. R* [1992] 1 A.C. 599. Lord Keith of Kinkel in that case remarked, "The common law is … capable of evolving in the light of changing social, economic and cultural development. [The marital exemption] reflected the state of affairs … at the time it was enunciated. …[M]arriage 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." This may be compared with the blanket exemption given to husbands who commit what would otherwise constitute rape on their wives under Singapore law: *Penal Code* (Cap. 224, 1985 Rev. Ed. Sing.) [*Penal Code*], s. 375.

15 The *Penal Code* is the main criminal law statute in Singapore. It was first enacted as Ordinance 4 of 1871 when Singapore was under colonial rule as part of the Straits Settlements, and is based on the *Indian Penal Code* which was enacted in India in 1860 (Act XLV of 1860). References will be made to Indian cases to illustrate the interpretation of the *Penal Code* provisions. For an interesting historical account of the enactment of the Singapore *Penal Code*, see Andrew Phang Boon Leong, "Of Codes and Ideology: Some Notes on the Origins of the Major Criminal Enactments in Singapore" (1989) 31 Mal. L. Rev. 46.

16 The term "custody" is used in this article in the wide sense to include physical custody or possession of the child.

17 This is the most serious offence in the *Penal Code* which the alleged kidnapper is liable for. Offenders may be arrested without a warrant and bail is not available as of right, Schedule A to the *Criminal Procedure Code* (Cap. 68, 1985 Rev. Ed. Sing.). Other relevant offences under the *Penal Code* include causing hurt (s. 323), use of criminal force (s. 352), wrongful restraint (s. 341) and wrongful confinement (s. 342). In the situation where the person is kidnapped for ransom—an unlikely scenario for parents who "kidnap" their own children—the severe provisions found in the *Kidnapping Act* (Cap. 151, 1999 Rev. Ed. Sing.) are applicable.

18 *Penal Code*, s. 363.

with one of the ulterior motives mentioned in subsequent sections.[19] Furthermore, the offences found in these sections can be committed by any person who *either* kidnaps *or* abducts another with the specified intents.

Section 359 of the *Penal Code* explains that kidnapping is of two kinds: "kidnapping from Singapore", and "kidnapping from lawful guardianship".

A. *Offence of Kidnapping from Singapore*

Section 360 of the *Penal Code* provides that:

> Whoever conveys any person beyond the limits of Singapore without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from Singapore.

Where the child is kidnapped by a stranger, and taken out of Singapore, no real difficulties are posed in applying this offence. However, if the child is "kidnapped" by his or her father, it could be argued that the offence does not apply because, as the child's father, he is "legally authorised to consent on behalf of [the child]" owing to his superior position in the family recognised by the common law at the time this offence was drafted.[20]

Two fairly recent developments in family law interact in a surprising way with the criminal provision such that children are deprived all protection from abduction by their parents under the criminal law. The first development relates to the recognition of the equal status of husbands and wives in marriage. This can be seen as the underlying principle in various statutory provisions,[21] and was affirmed in the case of *TPY v. DZI* where the husband's action against the defendant based on the tort of enticement was dismissed by the High Court.[22] In doing so, Justice Rubin held that the tort should no longer be recognised since:

> … society no longer subscribes to the view that women are mere chattels and whose existence is only to be in the service of their husbands. Sections [46, 47, 51, 52] of the *Women's Charter* clearly underscore the aspect that a wife is a person in her own right and not someone who is subordinate to, or a chattel of her husband.[23]

The other development in family law concerns the recognition that both parents have a role to play in a child's life even after the breakdown of the family. In the

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[19] See the following provisions of the *Penal Code*: s. 364 (in order to commit murder); s. 365 (with intent to secretly and wrongfully to confine person); s. 366 (to compel marriage, illicit intercourse or life of prostitution); s. 367 (to subject person to grievous hurt, slavery or unnatural lust); s. 368 (wrongfully conceal or keep person abducted); or s. 369 (to dishonestly take movable property from child under 10 years).

[20] See *e.g. Re Agar-Ellis* (1883) 24 Ch. D. 317; and Leong Wai Kum, *Principles of Family Law in Singapore* (Singapore: Butterworths, 1997) 424–426.

[21] See *Women's Charter* (Cap. 353, 1997 Rev. Ed. Sing.), ss. 46, 47, 51, 52, 68, 112; *Guardianship of Infants Act* (Cap. 122, 1985 Rev. Ed. Sing.), ss. 3, 4, 6. See also Leong Wai Kum, *ibid.* at 360–364.

[22] [1997] 3 Sing. L.R. 475.

[23] *Ibid.* at 479. The equality of spouses can also be seen in Singapore's approach towards the division of matrimonial assets on divorce, see Leong Wai Kum, "Supporting marriage through description as an equal partnership of efforts" in A. Bainham, ed., *The International Survey of Family Law* (Bristol: Family Law, 2002).

recent case of *Re C (an infant)*, the Singapore Court of Appeal stated that it was a "settled rule that both parents of a child have equal rights over the child …".[24] The equality of parents in terms of their authority can be most clearly seen in the landmark case of *L v. L*.[25] In that case, the parties married in 1980, and a daughter was born to them in 1988. Twelve weeks after the birth, the mother presented a petition for divorce. In 1990, a decree nisi dissolving their marriage was pronounced, and by consent, the mother was granted custody of the daughter with generous access to the father. By way of a deed poll in 1991, the mother on behalf of the daughter changed her surname from "L" to that of "T". The mother then married Mr T more than nine months after that in December 1991. The making of the deed poll was kept from the father's knowledge until he found out about the change in surname in 1996 when the child entered school. The father then took out an application to set aside the deed poll.

Under the family law of Singapore, a custodial parent is given apparently wide authority over a child, unless it is qualified by a court order. This follows from section 126(1) of the *Women's Charter*, where it is provided that:

> An order for custody … shall entitle the person given custody to decide all questions relating to the upbringing and education of the child.

The Singapore Court of Appeal in *L v. L* held that as the surname of a child is such an important symbol of his identity and his relationship with his parents, it was not within the scope of the mother's custody order to sever this link. This differed from the High Court judgment which held that the mother was empowered to change the surname as she was granted custody of the child, although in doing so without consulting the father she had acted irresponsibly and deserved the strongest criticism. However, it is the Singapore High Court judge's view of the role of a father and mother with respect to each other that is worth noting.[26] Reference was made by the High Court judge to the distinctive provision found in section 46 of the *Women's Charter* (which was also referred to in the case of *TPY v. DZI* mentioned above). This provision reads:

> Upon the solemnization of marriage, the husband and the wife shall be mutually bound to cooperate with each other in safeguarding the interests of the union and in caring and providing for the children.

The High Court judge remarked:

> I think that "caring" for the children goes beyond providing them with the necessities and some of the comforts of life and their general upbringing. I think it includes as part of the management of the children's affairs the giving of names to them and the changing of names by which they are to be called. The mutual obligation towards each other in this area of care-giving begins upon solemnization

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[24] [2003] 1 Sing. L.R. 502, 506. See also *Re G (custody of an infant)* [2003] 4 Sing. L.R. 34, 41-42 where the judge in the High Court remarked, "neither parent has a superior right over the other".

[25] [1996] 1 Sing. L.R. 366 (H.C.); [1997] 1 Sing. L.R. 222 (C.A.).

[26] In terms of the actual result the case, the High Court dismissed the father's application as it was found not to be in the child's interest to change her surname again. She had been known by the new surname for the last four years out of the seven years of her young life, and was now the eldest in a family of three young children all bearing the same surname. The Court of Appeal allowed the father's appeal on the basis that the custody order did not empower the mother to change the child's surname unilaterally.

> of the marriage and when the children arrive but does not end upon dissolution of the marriage at any rate as long as the children are in need of care. This mutual obligation recognizes the right of *both* parents to change the child's name and surname. …It is a right that resides in *both* parents and not primarily in the father alone ….[27] (emphasis in the original)

The vision of family life expressed by *L v. L* is that both parents have equal parental authority over their children. The situation may become more complicated on the break-up of a family on divorce, but even where one parent is granted custody of the children, this order only empowers the custodial parent to decide on the day to day matters relating to the children.[28] He or she cannot exercise unilateral decision making power to the exclusion of the other in a serious matter such as changing the child's surname unless there are "compelling reasons" to do so.[29]

Unfortunately, the impact of these developments in the family law on the criminal offence of kidnapping from Singapore is such that even a mother who "kidnaps" her child may now argue that she is not liable for the offence as she too should be considered to have the same measure of authority over her child as the father!

B. *Offence of Kidnapping from Lawful Guardianship*

Section 361 of the Singapore *Penal Code* provides that:

> Whoever takes or entices any minor under 14 years of age if a male, or under 16 years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardianship of such minor or person or unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.
>
> Explanation—The words "lawful guardianship" in this section include any person lawfully entrusted with the care or custody of such minor or other person.
>
> Exception—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child or who in good faith believes himself to be entitled to lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

The equivalent provision in the *Indian Penal Code* was said to be:

> [A]t least as much to protect children of tender age from being abducted or seduced for improper purposes, as for the protection of the rights of parents and guardians having lawful charge or custody of minors or insane persons.[30]

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27 *Supra* note 25 at 370–371 (H.C.).

28 *Supra* note 25 at 228 (C.A.).

29 *Ibid*. The case of *L v. L* may be compared with *Khor Bee Im v. Wong Tee Kee* [2002] 1 Sing. L.R. 101 where the mother changed the son's surname unilaterally to that of her new husband's, but the court there found compelling reasons for the change in surname. The father in the latter case showed no interest in the welfare of the child from the time he left the matrimonial home when the child was about eight months old. The child (now aged 17 years) had also been known by the new surname since he was 7 years old, and had expressed a desire to be known by the new surname.

30 M. Hidayatullah, V.R. Manohar, *Ratanlal & Dhirajlal's The Indian Penal Code*, 27th ed. (Nagpur: Wadhwa and Co., 1992).

In the situation where it is the parents who cannot agree as to which of them should have the physical custody of the child, which parent's interest should be protected? In the case of *Lim Chin Huat Francis v. Lim Kok Chye Ivan*,[31] the Singapore Court of Appeal held that the term "guardian" simply meant "a person who has charge of or control over a child or young person at the material time", and that the term "lawful" involved a "value judgment" as to the status of such a person.[32] Hence, it was implied that a parent who kidnaps a child may be considered its "guardian" in that he or she has physical custody of the child, but that parent is not its "lawful" guardian. In that sense, even though family law would treat both parents as having authority over a child, it is still possible for one parent to commit kidnapping of a child from "lawful" guardianship by taking away a child "out of the keeping of"[33] another parent without the parent's consent.

However, the exception to this section presents another obstacle to the successful prosecution of a father who abducts a child. As the provisions of the Singapore *Penal Code* date back to a time when the father held a superior position in the family,[34] it is not surprising that it is the interest of the father that is protected over that of the mother.[35]

In an old case from India, it was held that a mother who takes away a child without the father's consent could be liable for the offence of kidnapping a child from lawful guardianship under the *Indian Penal Code*.[36] On the other hand, another Indian case held that a father who takes away a child from the custody of the mother cannot be convicted of kidnapping his own child from the lawful guardianship of the mother.[37]

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31 [1999] 3 Sing. L.R. 38 (C.A.).

32 For a critique of this approach, see Leong Wai Kum, "Restatement of the Law of Guardianship and Custody in Singapore" [1999] Sing. J.L.S. 432.

33 The concept of "out of the keeping" in the *Indian Penal Code* is said to be more advanced than "out of the possession" of the guardian in the equivalent English statute (*Offences Against the Person Act* 1861 (UK), c. 100, s. 55) in that a minor should be protected if he or she is under the parents' control even though not in the parents' physical possession, and that the word "keeping" is more compatible with the independence of action and movement in the object kept rather than "possession" which is used in the Code in relation to inanimate objects: *Emperor v. Jetha Nathoo* (1904) 4 Bombay Law Reporter 785. In *Neelakandan v. PP* (1956) 22 M.L.J. 208, it was also pointed out that the English cases on this statute must be applied cautiously owing to the differences in wording with the equivalent offence under the local *Penal Code*.

34 See *Re Agar-Ellis*, *supra* note 20. In *Neelakandan v. PP*, *ibid.*, it was held that the offence of taking or enticing a minor out of the keeping of the lawful guardian can be committed if the purpose of the taking away was inconsistent with the relation of "father and child" or "parent and child". Both phrases were used without any notice of difference between them.

35 The scope of the protection is almost the same as the first English statute passed on the subject in 1814, 54 Geo. III, c. 101, "An Act for the more effectual Prevention of Child Stealing". The only difference is that under the Singapore *Penal Code*, the father or person who believes himself to be entitled to the lawful custody of the illegitimate child is not protected if the act is "committed for an immoral or unlawful purpose". The words "immoral" and "unlawful" are not defined in the *Penal Code*, and it would seem that the purpose would be considered "unlawful" if it does not serve the welfare of the child: *Mahendranath Chakrabarti v. Emperor* (1935) 62 Indian L.R. Calcutta 629. This however raises another issue as to how the welfare of the child should be determined.

36 *In the Matter of the Petition of Prankrishna Surma* (1882) 8 Indian L.R. Calcutta 969. The Law Commission of India recommended extending the exception to a taking by a mother of a legitimate child out of the keeping of its father, *Indian Penal Code* (42nd Report) (India, 1971), para. 16.94.

37 *In re Kannegati Chowdarayya* All India Reporter 1938 Madras 656.

In the latter case, it was held that:

> The parties being Hindus, the father is the lawful guardian, whose rights … are paramount to those of any other person. … [I]f a person who in good faith believes himself to be entitled to the lawful custody of a child cannot commit an offence under s 361 [of the *Indian Penal Code*], it seems to follow *a fortiori* that a person who is in fact the father of the child, and therefore in law entitled to the lawful custody of the child cannot come within the scope of [this section].[38]

One exception where a father can be held liable for this offence appears to be where there exists an order granting the child to be in the mother's custody.[39] However, this view that a custody order denies the non-custodial parent his or her authority over his or her child is not one that is preferred by family lawyers today.[40] Recent developments in the family law in Singapore such as *TPY v. DZI* and *L v. L* discussed above also indicate that this is not the approach that will be taken by the local courts. Even among the cases decided under the *Indian Penal Code*, some resistance to the supremacy of the father in the family can be found. In a case decided in 1914, *Borthwick v. Borthwick*,[41] the court held that the petitioner, Mrs Borthwick, who was in the process of divorce from her husband, was not liable for kidnapping her child from the lawful guardianship of the father. Until their decree of divorce had been confirmed by the High Court, the parties were still husband and wife such that neither had a preferential right over their child.

Before leaving this topic of the offence of kidnapping, it can also be pointed out that the exception to section 361 of the Singapore *Penal Code* strictly only protects a person who believes himself to be the father of an illegitimate child, or who believes himself to be entitled to the lawful custody of an illegitimate child. As such, it could be argued that, by the maxim *expressio unius est exclusio alterius*, the father of a legitimate child is not protected and he can be convicted of this offence.

However, the approach taken by the cases under the *Indian Penal Code* is that a father of a legitimate child is implicitly protected by the exception as well.[42] Interestingly, when the same argument was pressed before the House of Lords in *R v. D*,[43] Lord Brandon had no difficulty in rejecting it with respect to the common law offence of kidnapping even though similar protections were granted by the legislature for the statutory offence of child stealing. He said:

> My Lords, I think it very likely that, in the state of society and family law which existed in England in the 19th century, this opinion would indeed have been held by the legislature. This is because in those times both the generally accepted conventions of society, and the courts by which such conventions were buttressed and enforced, regarded a father as having absolute and paramount authority, as against all the world, over any children of his who were still under the age of

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38 *Ibid*.

39 *State v. Ramji Vithal Chaudhari* (1958) 60 Bombay Law Reporter 329.

40 See Leong Wai Kum, *supra* note 20, c. 9. In *R v. D* [1984] A.C. 778, 805, Lord Brandon said of English law: "Parents are treated as equals in at least most respects, and certainly in relation to their authority over their children."

41 All India Reporter 1914 Calcutta 609.

42 *Supra* note 37.

43 *Supra* note 40.

> majority (then 21), except for a married daughter. … The common law, however, while generally immutable in its principles, unless different principles are laid down by statute, is not immutable in the way in which it adapts, develops and applies those principles in a radically changing world and against the background of radically changed social conventions and conditions.[44]

Unfortunately, with the codified system of criminal law in India and Singapore, the intention to grant protection to the father from the offence of kidnapping from lawful guardianship is firmly enshrined in the law such that the courts will have great difficulty in restricting its application.

C. *New Offence Under the Women's Charter*

There were formerly only two remedies under the *Women's Charter* to prevent a child from leaving the jurisdiction, both of which were civil in nature. Both required an application to the court to either impose a condition on the person given custody of the child to prohibit him or her from taking the child out of Singapore,[45] or, in the case of a person not given custody of the child, issue an injunction restraining that person from taking the child out of Singapore.[46]

By way of an amendment in 1996, the *Women's Charter* now provides for an automatic prohibition against taking a child who is the subject of a custody order out of Singapore for one month or more without the written consent of both parents or the leave of court.[47] Any person who contravenes this provision is subject to a fine up to $5,000 or to imprisonment for a term up to one year or both.

The approach of the new *Women's Charter* offence is notable. It recognises the need to protect one parent's interest even when it is against that of the other parent, and there is no trace of discrimination between the two parents. Where the parents cannot agree and the court is asked to determine if it should grant leave to allow the children to be taken out of Singapore, the standard of the "welfare of the children" is applied.[48]

D. *Reforms Needed*

As can be seen from the above discussion, the criminal offences found in the Singapore *Penal Code* leave much to be desired. In terms of the first offence of kidnapping from Singapore, the raising of the status of married women and the recognition that both parents have equal legal authority over their children unfortunately result in a failure to protect children because the mother may now claim the same protection from liability which used to extend only to the father. As for the

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44 *Ibid.* at 804–805.

45 *Women's Charter*, s. 126(2)(e).

46 *Women's Charter*, s. 131. See Chan Wing Cheong, "Latest Improvements to the Women's Charter" [1996] Sing. J.L.S. 553, 596–597.

47 *Women's Charter*, s. 126(3), (4) & (5) were added by the *Women's Charter (Amendment) Act* (No. 30 of 1996). The provision is similar to *Children Act* 1989 (UK), c. 41, s. 13.

48 *Tan Kah Imm v. D'Aranjo Joanne Abegail* [1998] S.G.H.C. 247 (Lawnet); *Liew Kah Heng v. Kwok Fong Ee* [2000] S.G.D.C. 7 (Lawnet).

second offence of kidnapping from lawful guardianship, this is still very much tied to a conception of the dominant position of the father such that it is inconceivable that he should be liable for an offence of acting against the mother's or the child's interest.

It is proposed that a simple solution, and one that seeks to protect children from abduction, is to clarify that both parents can be liable for kidnapping his or her child. A father or mother who subsequently abducts the child will have to justify the action. An example of this approach is the *Child Abduction Act 1984* (UK), c. 37, where an offence is committed if a "person connected with a child" takes or sends the child out of the United Kingdom without the appropriate consent.[49]

The new offence found in the *Women's Charter* of Singapore of taking a child out of Singapore for more than one month without the written consent of both parents or the leave of court is an example of a step in the right direction. However, it is still a limited remedy in that the offence only applies where the child is the subject of a custody order *and* the child is taken out of Singapore. The mental distress caused by the abduction to the child and the left-behind parent is no less where the child is not under a custody order, or is not taken out of the jurisdiction. These two restrictions in the *Women's Charter* offence should be removed.

With the suggested reforms, there would be some overlap in the *Penal Code* and *Women's Charter* offences in Singapore, but it is suggested that they can be reconciled by requiring the Public Prosecutor's consent to initiate criminal action under the *Penal Code* with its heavier penalties. The *Women's Charter* offence remains as an alternative for the less egregious cases.

III. Welfare of the Child

A. *Principle Fails to Protect Abducted Children*

While the emphasis on the welfare of the child is a crucial development in the history of the protection of child rights,[50] further complications arise where the custody of the child may have been already granted to one parent by an order in one jurisdiction and the dissatisfied parent now seeks to have the issue reconsidered in another jurisdiction. In such a case, to what extent should a court reassess the issue of whether it is in the welfare of the child to be in a particular parent's custody? This is an issue of great importance because one of the main reasons for abduction of a child by a parent is the hope that another judicial system would be more sympathetic to his or her case.

It should be noted that such a case would be easily resolved under the *Hague Convention*. Save for limited exceptions, it is always for the court where the child

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[49] *Child Abduction Act 1984* (UK), c. 37, s. 1(1). The prosecution bears the burden of disproving the existence of the applicable defences provided that the defence adduces sufficient evidence to put them in issue, s. 1(6).

[50] It is through the use of the welfare principle that the interests of the child were finally separated from the interests or wishes of the child's father. See Susan Maidment, *Child Custody and Divorce* (London: Croom Helm, 1984). This principle can now be found in the *U.N. Convention on the Rights of the Child*, Art. 3, a treaty that has been ratified by all countries in the world except the U.S., Somalia and Timor Leste.

"habitually resides" to determine questions of custody.[51] This lessens any attraction for a dissatisfied parent to abduct his or her own child in the hope that a different judicial system would favour him or her, and promotes international respect and trust of foreign legal systems. Two decisions from the region, one from Malaysia and the other from India, will be used to illustrate the legal difficulties faced in States which are not parties to the *Hague Convention*.

As a preliminary point, it would be useful to turn first to the case of *McKee v. McKee*, decided by the Privy Council on an appeal from Canada.[52] The case involved a long series of litigation between a mother and father over the custody of their child. Custody was granted to the mother by the Californian court in the U.S.A., but the father, on learning that his appeals against the order were dismissed, removed the child to Ontario, Canada, where another series of litigation was started in the Canadian courts. The majority of the Supreme Court of Canada found that the Ontario court was wrong to have reconsidered the matter of custody on its merits. On appeal to the Privy Council, it was held that the majority had applied the wrong approach. Lord Simonds said:

> It is the law of Ontario (as it is the law of England) that the welfare and happiness of the infant is the paramount consideration in questions of custody….To this paramount consideration all others yield. The order of a foreign court of competent jurisdiction is no exception. Such an order has not the force of a foreign judgment: comity demands, not its enforcement, but its grave consideration. This distinction …rests on the peculiar character of the jurisdiction and on the fact that an order providing for the custody of an infant cannot in its nature be final.[53]

Thus, *McKee v. McKee* can be said to stand for the proposition that once the court's jurisdiction is invoked concerning the custody of the child, it must make an independent judgment as to what the welfare of the child requires and cannot blindly follow an order made by a foreign court.[54]

In the Malaysian case of *Mahabir Prasad v. Mahabir Prasad*,[55] the parties were married in India, and the father subsequently left two children behind with the mother while he made a home in Malaysia. The mother and children later followed him to Malaysia, but the marriage broke down after two years and the mother returned to India. The children stayed with the father with the parties' mutual consent. The mother petitioned for divorce in India and was awarded interim custody. The father undertook to bring the children to India for the hearing but failed to do so. The Indian court nevertheless made an order in favour of the mother. The father then applied to the Malaysian courts for custody of the children.

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51 The *Hague Convention*, Arts. 12 and 13. But see the criticisms of the *Hague Convention* expressed by some, *supra* note 7.

52 [1951] A.C. 352. See J.D. McClean, *Recognition of Family Judgments in the Commonwealth* (London: Butterworths, 1983) 253–263; John M. Eekelaar, "International Child Abduction by Parents" (1982) 32 U.T.L.J. 281. The final court of appeal for Malaysia, India as well as Singapore used to be the Privy Council in London.

53 *Ibid.* at 365.

54 See e.g. the Australian case of *ZP v. PS* 122 A.L.R. 1 (1994).

55 [1982] 1 M.L.J. 189 (Federal Court of Malaysia).

The Federal Court of Malaysia followed the Privy Council decision of *McKee v. McKee* and held that a court hearing the custody application was not bound to give effect to a foreign court order if it would not be for the children's benefit.

The Indian case of *Dhanwanti Joshi v. Madhav Unde*,[56] involved an appellant-mother who had removed the child from the US to India in violation of a U.S. court order. The Privy Council case of *McKee v. McKee* as well as the English case of *Re L (Minors)*[57] were cited by the Supreme Court of India, which held that it was ultimately a question whether returning the child would be in his paramount interest. The unauthorised removal of the child itself was not considered an independent factor which could disqualify the appellant-mother from having custody of the child.

It is submitted that allowing for a full investigation of the merits of the case based on welfare considerations plays into the hands of the parent who has abducted the child. It takes time for the evidence and social enquiry reports to be amassed, and depending on the backlog of cases, it could be years before the case is heard. By that time, the child may very well have formed roots in the new country of residence and it would be extremely difficult for a court to order the child to be returned even if other evidence points in its favour.

If there is an existing custody order made by the foreign court already, repeating the analysis in another jurisdiction can also be faulted for being highly unproductive. In the case of *Mahabir Prasad v. Mahabir Prasad* itself, the Malaysian High Court eventually also decided that the mother should be given custody of the children and this was later upheld by the Federal Court of Malaysia on appeal.[58]

B. *Reinterpretation of the Welfare Principle in England*

It is of no surprise then that some courts in England have found ways to restrict the necessity of a full investigation into the merits of each case under the welfare principle.[59] Four approaches may be identified. One approach is to argue that a presumption that an abducted child should be returned accords with the welfare of the child. In *Re F (minor: abduction: jurisdiction)*, Neill L.J. opined:

> The general principle is that, in the ordinary way, any decision relating to the custody of children is best decided in the jurisdiction in which they have normally been resident. This general principle is an application of the wider and basic principle that the child's welfare is the first and paramount consideration.[60]

Another approach is to adopt the policy of the *Hague Convention* within the welfare principle even when the *Hague Convention* does not apply to the State in question. In *Re F (minor: abduction: jurisdiction)*, Lord Donaldson recognised the "normal rule that abducted children should be returned to their country of habitual residence" even though the *Hague Convention* did not apply in that case.[61] The exceptions to

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56 (1998) 1 Supreme Court Cases 112.

57 [1974] 1 All E.R. 913.

58 [1982] 1 M.L.J. 189.

59 See McClean and Beevers, "International Child Abduction—Back to Common Law Principles" (1995) 7 Child & Fam. Law Q. 128 for criticisms of this development.

60 [1990] 3 All E.R. 97, 101.

61 *Ibid.* at 100. See also *G v. G (Minors) (Abduction)* [1991] 2 Fam. L.R. 506; *Re F (A Minor) (Abduction: Custody Rights)* [1991] Fam. 25; *Re S (Minors) (Abduction)* [1993] 1 Fam. Court Reporter 789

this *prima facie* rule are when the foreign court does not apply "principles which are acceptable to the English courts as being appropriate" and where factors such as those in Article 13 of the *Hague Convention* are present.[62] There must be sufficiently strong contra-indications to persuade a judge to apply such exceptions.[63] In the case of *Re S (Minors) (Abduction)* where the child was sought to be returned to Pakistan, evidence was given that Pakistani law would give effect to the minor's welfare from the Muslim point of view.[64] A sensible result was achieved by the court in holding that it need not be satisfied that the law of the country of previous residence was exactly the same as in England in order to justify summary return.[65]

The third and fourth approaches undermine the predominance of the welfare principle itself. The third approach is to admit other considerations of equal weight to the welfare principle in coming to a decision such as the injustice done to the innocent parent, the need to respect a previous custody order, questions of comity and the psychological damage to the child caused by its sudden removal from familiar surroundings.[66] The fourth approach considers the issue from the principle of *forum non conveniens*.[67] In this latter approach, the court may be argued to have abdicated its responsibility by declining to decide on the matter and deferring to a court of another jurisdiction.[68] In *ZP v. PS*, it was held by Mason C.J., Toohey and McHugh J.J. that:

> [W]hen a child is within the jurisdiction of the Family Court, the doctrine of *forum non conveniens* has no application to a dispute concerning the custody of the child. Injustice to one or other of the parties, expense, inconvenience and legitimate advantage, which are always relevant issues in a *forum non conveniens* case, are not relevant issues in a custody application. In some cases, those matters may bear on issues which touch the welfare of the child but they are not themselves relevant issues when the question arises whether the welfare of the child requires the making of an order that the issue of custody be determined in a foreign forum. When the Family Court is seized of jurisdiction in relation to the custody of a child, its duty is to exercise its jurisdiction.[69]

On the other hand, there are also cases in England which have sought to underline the welfare principle as the sole principle to be considered in such cases. Whether or not a peremptory order for return of the child is made is only to be considered

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("*Re S (1)*"); *Re S (Minors) (Abduction)* [1994] 1 Fam. L.R. 297 ("*Re S (2)*"); *Re M (Jurisdiction: Forum Conveniens)* [1995] 2 Fam. L.R. 224; *Re M (Abduction: Non-Convention Country)* [1995] 1 Fam. L.R. 89.

62 *Ibid.* at 101 *per* Lord Donaldson.

63 *Re S (1)*, *supra* note 61; *G v. G (Minors) (Abduction)*, *supra* note 61; *Re M (Abduction: Peremptory Return Order)* [1996] 1 Fam. L.R. 478.

64 *Re S (2)*, *supra* note 61.

65 See also *Re S (1)*, *supra* note 61, and *Re M (Abduction: Non-Convention Country)*, *supra* note 61 which involved countries in the European Union. *Cf Re JA (Child Abduction: Non-Convention Country)* [1998] 1 Fam. L.R. 231.

66 *In Re H (Infants)* [1966] 1 All E.R. 886.

67 The approach of *forum non conveniens* is similar to the approach of adopting the policy of the *Hague Convention* in that it is inevitably the court in the child's habitual residence which is considered *conveniens*.

68 *Re R (Minors) (Wardship: Jurisdiction)* (1981) 2 Fam. L.R. 416.

69 *Supra* note 54 at 6.

on the basis of the welfare of the child. In coming to this decision, the removal of a child to a foreign land, cutting him off from familiar surroundings and his normal caregiver, interrupting his education and so on are relevant considerations—but only on the basis of the welfare principle.[70] This was expressed strongly by Ormrod L.J. in *Re R (Minors)(Wardship: Jurisdiction)*:

> "Kidnapping", like other kinds of unilateral action in relation to children, is to be strongly discouraged, but the discouragement must take the form of a swift, realistic and unsentimental assessment of the best interests of the child, leading, in proper cases, to prompt return of the child to his or her own country, but *not* the sacrifice of the child's welfare to some other principle of law.[71]

Some cases have also held that it is wrong to require proof of matters found in Article 13 of the *Hague Convention* in a non-convention case before refusing return of the child instead of applying the broader criterion of welfare.[72] The case of *In re P (A Minor) (Child Abduction: Non-Convention Country)* involved a mother who moved to England with her child without the consent of the father and wardship proceedings was initiated by the mother there.[73] The father responded by applying for an order that the child be returned to India, where the child resided before being taken away, for the courts there to consider the matter. The judge reasoned that:

> Were it not for the weight of authority, which compels me to apply, if not the letter, certainly the spirit of the *Hague Convention* in cases where there have been wrongful abductions, as there has in this case, from a non-Convention country, I should have been very tempted, were I applying what might be described as pure welfare principles, to refuse the husband's application.[74]

The English Court of Appeal held that this was the wrong approach:

> [The judge should not have] literally applied Art 13 [of the *Hague Convention*] when what was required was to look at the spirit of the Convention in the context of welfare overall. To elevate Art 13 into the test which governs return (or rather no return) is [wrong in that it is not] necessary to establish that the child would be in some obvious moral or physical danger if returned.[75]

In this case, the circumstances that the father had played a minor part in the child's life, the limited connection of the child with India, and the adverse effect on the mother's health if she were to return to India and therefore on the child herself meant that the peremptory order was not appropriate.[76]

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70 *Re L (Minors)*, *supra* note 57. See also the Australian case of *ZP v. PS*, *supra* note 54.
71 *Supra* note 68 at 425 (emphasis in the original).
72 *D v. D (Child Abduction: Non-Convention Country)* [1994] 1 Fam. L.R. 137; *Re JA (Child Abduction: Non-Convention Country)*, *supra* note 65.
73 [1997] Fam. 45.
74 Reproduced in *ibid.* at 50.
75 *Ibid.* at 56.
76 *Ibid.* at 58.

C. *The Approach in Singapore*

Although the superior courts in Singapore have not pronounced on how a situation involving international child abduction would be resolved locally, the issue has been faced in two unreported cases decided by the District Court but with different results. Both involved Singaporean women who married foreigners and had wrongfully brought their child back to Singapore.

In *Jens Christian Thorsen v. Amjit Kaur*,[77] the parties involved were divorced in 1997, and the custody of their five year-old boy was granted by the Singapore court to the father, a Danish national, with stated periods of access to the mother. The father brought the child back to Denmark and he was to bring the child back to Singapore for the mother to have access in December 1999. He did not do so. The mother went to Denmark in April 2000, managed to track down the father's address, and brought the child back to Singapore without the consent of the father.

The mother then applied to the Singapore court for custody of the child. The father took out various applications, one of which was that he be allowed to bring the child back to Denmark with him pending the hearing of the main application. He argued that the existing custody order allowed him to bring the child to Denmark and that the child's school term was about to commence. Furthermore, the action of the mother in bringing the child to Singapore was wrong and should not be condoned. The mother responded by pointing out that the father had breached the existing custody order himself by having failed to come back with the child in December to allow her access, to disclose his residential address, and to send the child's school report to her as required. The judge rejected the father's application and held that the child's welfare required that the child remain in the jurisdiction until the mother's application was heard.

This case unfortunately showed that the Singapore court was willing to re-examine the issue of custody over a child afresh even where it was its own existing order made barely a year ago that was challenged, and the fact that the child was taken to this jurisdiction without the custodial parent's consent did not detract the court from its duty to consider the matter on its merits.[78] From this case alone, it may be thought that the approach of a Singapore court would be the same with respect to a child who is brought to Singapore in violation of a foreign custody order.

However, in the case of *AB v. AC*,[79] an entirely different approach was adopted. The case involved parties who were married in Singapore in 1998. The wife was a Singaporean, and the husband, a Norwegian. A son was born to them in March 1999, and the parties and the son left Singapore for Norway three weeks after the son's birth.

Some time in late 2001, the relationship between the parties broke down and both sought custody of their son in the Norwegian courts. A consent order on custody and access arrangements was made on 31 January 2002 which provided *inter alia* that "the parties shall have joint legal custody of the child". A divorce was eventually

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77 *Supra* note 1.

78 The judge sought to explain her order that: "This was not a sanction of the wrongful act of the mother but a practical order under the circumstances. The main [application by the mother] should be heard as soon as possible so that the child could settle down quickly either in Denmark or Singapore" (para. 30).

79 *Supra* note 1.

granted by the Norwegian court on 20 November 2002, but the issue of division of matrimonial assets was still pending before that court.

In February 2003, the mother brought the child to Singapore in contravention of the Norwegian custody order. She applied to the Singapore court for custody and maintenance of the child. The father also applied to the Singapore court for the following orders:

(1) A declaration that the Bergen District Court in Norway is the proper forum to decide on the enforcement and/or variation of the consent order dated 31 January 2002;
(2) An order that he be granted custody of the child … solely for the purpose of returning the child to the jurisdiction of the Bergen District Court in Norway; and
(3) An order that the mother be restrained whether by herself, her servants or agents, from removing the child from Singapore and/or of the jurisdiction of this court without the approval in writing of the father.

In addition, the father also filed a summons-in-chambers for a stay or dismissal of the mother's application on the grounds of *forum non conveniens* and *res judicata*.

The learned District Judge rightly noted that the father's argument on *res judicata*—in the sense that the Norwegian order constituted an absolute bar to reopening the issues decided therein—was misplaced as a custody order by its nature could not be said to be final and conclusive.[80] However, noting that the mother did not object to the jurisdiction of the Norwegian court and that the allegations that the father was unfit to have custody were raised in those proceedings, she held that there was no reason not to recognise the Norwegian order.[81]

Reliance on the case of *McKee v. McKee* by the mother's counsel was briskly dismissed on the basis that "*McKee* was decided way back in 1951. … [and] since the case, attitudes towards the basic common law rule had changed."[82] The approach to be adopted is instead one which accords with the spirit of the *Hague Convention*:

> Although Singapore was not a signatory to the Hague Convention … the principle… that it was in the best interest of a child for questions relating to custody to be decided by the court in the country of habitual residence unless there were exceptional circumstances, should be followed. With globalisation, the courts were increasingly dealing with highly mobile parties. Adopting a test whereby the court in the country in which the child was habitually resident should be the most appropriate forum to determine the custody dispute would promote certainty and avoid an awkward situation whereby contradictory orders were made by different courts. More importantly, it would dissuade parties from unilaterally removing a child from the place where he was most familiar, in order to gain some perceived personal or juridical advantage.

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80 *Ibid.* at para. 14.
81 *Ibid.* at para. 21.
82 *Ibid.* at para. 17.

> Since a child's interest was best served by deferring a custody dispute to the country of habitual residence, *a fortiorari*, where the court of habitual residence had already made an order on custody, that order should be respected and recognised.[83]

Reference to the legislative injunction that the welfare of the child be the "first and paramount consideration"[84] was conspicuously absent in the judgment. The use of the phrase "best interest of *a* child" and "*a* child's interest" rather than "*this* child" is in line with the lesson of the *Hague Convention* that the best chance of protecting *all* children from the harmful effects of parental abduction is by their prompt return, so that it is for the courts of the State of their habitual residence to decide on the child's custody rather than a case by case analysis of what each child requires in his or her best interests. Abduction cases are therefore recognised as belonging to a different category and cannot be resolved in the usual fashion.[85]

The learned District Judge was also well aware of the need to respond reciprocally given the nature of international child abduction:

> It should be noted, moreover, that section 126(5) of the *Women's Charter* provides that where a custody order is in force, it is an offence to take a child who is the subject of the order out of Singapore without the written consent of both parents or the leave of court. There would be double standards if the Singapore court were to hold that it was an offence for a child to be taken out of Singapore in breach of a custody order made by the Singapore court and yet sanction the breach of a foreign custody order by proceeding to hear and determine the custody dispute as if a foreign order had not been made.[86]

This approach is admirable considering the fact that Singapore, as a non-Convention country, depends on the goodwill of Convention countries in extending its terms in spirit to those cases involving Singapore nationals.[87]

In fact, the learned District Judge had earlier characterised the main issue before the court as no more than one of *forum non conveniens*, "The issue in this case was whether the Singapore court should exercise its jurisdiction to hear the case or

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83 *Ibid.* at paras. 19 and 20, citing *Re F*, *supra* note 60. The approach of interpreting local statutes in accordance with the State's treaty obligations so long as there is no conflict with domestic law has also been noted by the Singapore High Court in *Tan Ah Yeo & Anor v. Seow Teck Ming & Anor* [1989] Sing. L.R. 257, 263E-F. For an intricate analysis of this area of the law, see CL Lim, "Public International Law Before the Singapore & Malaysian Courts" (2004) 8 S.Y.B.I.L. (forthcoming). The complication here is that Singapore has not even acceded to the *Hague Convention* and naturally has not enacted local statutes to give it effect.

84 *Guardianship of Infants Act* (Cap. 122, 1985 Rev. Ed. Sing.), s. 3. The only reference to this Act was that it granted the Singapore courts jurisdiction to hear and determine questions relating to the custody and maintenance of a child. *Ibid.*, at para. 11.

85 The approach adopted in England between 1966 and 1974 was that the child should be returned *unless* the parent who had taken the child proves that returning the child will expose him or her to harm: *Re H (infants)*, *supra* note 66; *Re T (Infants)* [1968] Ch. 704; *Re E (D) (An Infant)* [1967] Ch. 761. This was changed by *Re L (Minors)*, *supra* note 57, where the welfare of the child was again given prominence in abduction cases.

86 *Supra* note 1 at para. 20.

87 Compare with *Re JA (Child Abduction: Non-Convention Country)*, *supra* note 65, at 238 where Ward L.J. said: "I see no reason why our courts should not be cautious and circumspect about offering close adherence to the [*Hague*] *Convention* and with it the benefits of the narrowly circumscribed Art. 13 defences, to citizens of those countries who do not offer reciprocal enjoyment when our citizens appear in their courts."

whether the case should be heard in some other forum."[88] The learned judge found that there were many connecting factors in the case to Norway and that Norway was clearly the more appropriate forum.[89] The only connecting factor to Singapore that the mother could argue was that the child was physically located in Singapore at the time of the hearing.[90]

In other words, the approach of the learned District Judge in *AB v. AC* can be seen to utilise all of the four approaches identified above that had been used by some English courts in restricting the need to examine each case on its merits under the welfare principle.

IV. Conclusion

The *Hague Convention* emphasises the interdependence of countries in the world today, and the cooperation that is needed to overcome the problem of child abduction by his or her parents. Where a child is unlawfully taken to a different jurisdiction, it cannot be right for a dissatisfied parent who has not been awarded custody of the child to initiate new court proceedings in that jurisdiction in the hope of a more favourable custody order. It is hoped that Singapore, and other countries which have not yet become party to the *Hague Convention*, will do so soon.

However, as seen from the example of Singapore, there is also some urgency in re-examining the criminal and family laws of a country in order to ensure that they speak with one voice. All too often these laws are thought of as being separate from each other without realising that the developments in one can have a great impact on the other. Furthermore, there is a danger that where laws are codified, as in the situation of the *Penal Code* in Singapore, a pre-existing common law view of patriarchal family relations is enshrined in the law such that it deprives children of the protection they deserve. It is nothing short of a legal nightmare in that these *Penal Code* offences portray family relations as it was in the 19th century. Given the fundamental change in how family law perceives the legal authority of a father *vis-à-vis* a mother, as well as the legal relationship between a child and his or her parents, it can only mean that family law must lead the proper development of criminal law in this regard.

In the case of Singapore, a large gap is therefore left by its failure to accede to the *Hague Convention* as well as its failure to re-examine its criminal and family laws. A glimmer of hope is found in the recent decision of *AB v. AC* but as it is a decision of the lower courts, its significance is not beyond doubt. We can, and must, do better for our children and children around the world.

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88 *Supra* note 1 at para. 11.
89 *Ibid.* at para. 24.
90 *Ibid.* at para. 27.