Singapore Journal of Legal Studies
[2011] 61–88

THE QUEST FOR OPTIMAL STATE INTERVENTION IN PARENTING CHILDREN: NAVIGATING WITHIN THE THICK GREY LINE

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This article draws upon law and social science research in examining the private and public spheres in parenting children. It argues for state intervention in cases where evidence of acts can be marked out with clear consensus as constituting abuse or ill-treatment. Beyond this, there is a substantially large area of uncertainty, a 'thick grey line', within which it is not always clear whether parents' behaviour should be regarded as abuse or ill-treatment. 'Better safe than sorry' is an inappropriate adage for supporting intervention in the 'thick grey line'. The law should guard against being overzealous in interfering in the parent and child relationship. Suggestions are made on reform of the statutory provisions on child protection as well as how the court may, under the current provisions, be guided to make appropriate orders in this area.

I. INTRODUCTION

A. *Parents Have the Primary Responsibility to Care for their Child*

One of the central family obligations regulated by the *Women's Charter*[1] [the *Charter*] is the parenting of children. Section 46 of the *Women's Charter* encapsulates the most fundamental obligations of a married couple entering into an institution where children are likely to be raised:

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

The *Women's Charter* governs incidents of the parent and child relationship, within and outside marriage. Section 68 of the *Charter* imposes on both parents the legal obligation to maintain their legitimate and illegitimate children. The *Charter* also brings within the divorce court's jurisdiction all children who are members of the family of the married parties undergoing divorce or nullity proceedings, and

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[1] Cap. 353, 2009 Rev. Ed. Sing. [the *Charter*]; the *Women's Charter* is the main statute governing family law in Singapore.

imposes a secondary obligation on such parties to maintain the children so far as the father or mother of the child fails to do so.[2]

The *Women's Charter* regulates the private care of children while another statute, the *Children and Young Persons Act* [*CYPA*][3] regulates the public care of children. The principles in both spheres should ideally be the same. The law should navigate cautiously along the line between private and public care. Where it is unclear whether parents have failed to protect their children or ill-treated them, there is an area of uncertainty, a 'thick grey line' within which the state should be very circumspect in the measures used to protect the children. The law on the public care of children should be consistent with the ideals on parenting contained in the *Women's Charter*.

Consistent with principles on the private care of children in the *Women's Charter*, the most recent amendments to the *CYPA* articulate the primary responsibility of parents with the insertion of the guiding principle that:

> the parents or guardian of a child or young person are primarily responsible for the care and welfare of the child or young person and they should discharge their responsibilities to promote the welfare of the child or young person.[4]

In family law, parents occupy the most important position with respect to the raising of children. The law imposes on them the responsibility to care for, nurture, provide for and protect them.[5] This duty arises upon the fact of parenthood: the birth of a child affixes these obligations to her mother and father.[6] The law supports this parental responsibility by giving only parents and specially appointed guardians the authority to make decisions for their child.

Where a parent brings to the court an issue regarding her child, the court must regard the child's welfare to be the overriding consideration and may make orders that affect the family relationship to protect the welfare of the child.[7] But where neither

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2 *Ibid*., ss. 70, 92. Reference may also be made to how the law supports these expectations with the principle that the paramount consideration in proceedings involving a child is the welfare of the child. In the Singapore legislation, this principle is articulated in the *Guardianship of Infants Act* (Cap. 122, 1985 Rev. Ed. Sing.) [*GIA*], the *Women's Charter* and the *Children and Young Persons Act* (Cap. 38, 2001 Rev. Ed. Sing.) [*CYPA*]. This principle of law governing children is common across many other legal systems.

3 *CYPA*, *ibid.*

4 New s. 3A to be inserted into the *CYPA*: *Children and Young Persons (Amendment) Bill* (No. 35 of 2010, Sing.).

5 In *Lim Chin Huat Francis v. Lim Kok Chye Ivan* [1999] 2 S.L.R.(R.) 392 at para. 91, the then Chief Justice Yong Pung How held:

> A child is a living being, dependent on adults from birth and must be cherished with genuine love from the outset … the very least the court must do is to advocate the underlying premise that parents, natural or potential, must care for their children.

6 In the United Kingdom, unmarried fathers do not have parental responsibility unless certain specified steps are taken to accede to that responsibility. In Singapore, the courts have taken the position that both married and unmarried fathers have parental responsibility: see *AAV v. AAW* [2009] 4 S.L.R.(R.) 488; *VT v. VU* [2008] SGDC 1; *XG v. XH* [2008] SGDC 88.

7 The 'welfare principle' is expressed in s. 3 of the *GIA*, *supra* note 2 as follows:

> Where in any proceedings before the court the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income thereof is in question, the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration…

parent invites the court to intervene in matters relating to the child, family life is kept within the private sphere unless there are legitimate reasons for the state to intervene, such as where parents have plainly failed in their fundamental responsibilities to the child.

Generally, only parents and guardians appointed under the *Guardianship of Infants Act* [*GIA*][8] have the right to make applications to the court for orders affecting their child. Section 5 of the *GIA* provides that the court may make orders concerning custody, access and maintenance "upon the application of either parent or of any guardian appointed under this Act". It has been said that

> Retaining a distinction between the authority of parents (and guardians) and the authority of non-parents over the child gives recognition that parents have the primary responsibility and authority over the child. It is in the child's welfare that parents be enabled to carry out their parental responsibilities without unnecessary interference from third parties and the law. Upon an application under section 5 of the GIA, the court will hear the applications of these adults and make orders in accordance with the welfare principle. On the other hand, non-parents and non-guardians should not be accorded the same locus standi to seek orders regarding the child. They may, however, seek the court's wardship jurisdiction to make orders required for the child's welfare. The wardship jurisdiction will only be exercised in appropriate cases. The distinction in the processes used by the two groups of adults preserves the balance of power between parents and non-parents.[9]

By entrusting parenting entirely to the child's parents, the state does not proactively keep watch over how parenting is carried out. Instead, it supports parenting by putting in place community resources that parents can utilise for the benefit of their child. It is when parents plainly fail in their responsibilities that the state activates its system of intervention for the protection of children.

B. *State Intervention for the Protection of the Child*

On the one hand, the legal framework shields parents from unnecessary external interference by limiting the number of persons who can make decisions for the

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[8] *Ibid*.

[9] Debbie Ong Siew Ling, "A Grandparent's 'Right' to Guardianship, Custody and Access?" (2005) June Singapore Law Gazette 16 at 19. The academics' view differs from the Court of Appeal's position in the last aspect. The Court of Appeal in *Lim Chin Huat Francis v. Lim Kok Chye Ivan*, *supra* note 5 has held that in exceptional situations, a non-parent who has charge of or control over a child at the material time may seek an application under section 14 of the *GIA* when a child is removed from that person's guardianship. It has been argued that a narrower reading of 'guardian' should be adopted. A 'guardian' is authorised to make major decisions for the child, such as authorise the removal of the child's kidney, consent to the child entering into insurance contracts and be the personal representative of the child in the administration of estates. The casual child-minder or kindergarten school teacher would be the guardians of the child within the definition given in *Lim Chin Huat Francis* during the times when they have physical possession of the child and would consequently be authorised to make decisions with drastic consequences for the child; the definition gives more authority to the casual minder than is desirable: see Leong Wai Kum, "Restatement of the Law on Guardianship and Custody in Singapore" [1999] Sing. J.L.S. 432.

child and who can invoke the court's jurisdiction over the child. On the other, the law intervenes in grave situations where a parent has clearly failed in his or her obligations. There were a total of 160 child abuse investigations undertaken by the Ministry of Community Development, Youth and Sports in 2009. 118 contained evidence of abuse, 39 lacked evidence but required assistance, and three were false complaints.[10]

Section 4 of the *CYPA* provides for situations in which the law considers a child or young person to be in need of care and protection. One of the circumstances is when

> (d) the child or young person has been, is being or is at risk of being ill-treated—
> (i) by his parent or guardian; or
> (ii) by any other person, and his parent or guardian, although knowing of such ill-treatment or risk, has not protected or is unlikely or unwilling to protect the child or young person from such ill-treatment[.]

Ill-treatment is defined in section 5 of the *CYPA*. If a child or young person is determined to be in need of care and protection, the court can, under section 49, make care orders such as ordering the child to be committed to the care of a fit person or an approved home or a place of safety. Section 9 of the *CYPA* empowers the Director of Social Welfare, officers authorised by the Director, a protector or police officer to remove a child whom they have reasonable grounds to believe to be in need of care or protection and place her in a place of safety until she can be brought before the court to be dealt with under section 49.[11] In cases where parents seek assistance in the supervision of their child who is "beyond parental control", the court may make orders under section 50 of the *CYPA* to deal with the child appropriately, including sending the child to an approved home.

The state has given increasing attention to the protection of children over the years. Singapore committed to the *United Nations Convention on the Rights of the Child* [*UNCRC*] in October 1995. It submitted its Initial Report to the Committee on the Rights of the Child in November 2002, listing the legislative, judicial, administrative and other measures adopted to give effect to the provisions of the *UNCRC*.[12] Singapore submitted its Second and Third Periodic Report to the Committee on the

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[10] Ministry of Community Development, Youth and Sports, *Child Abuse Investigations 2006-2009*. Note that the Minister for Community Development, Youth and Sports, Mr. Vivian Balakrishnan, has said:

> In 2009, there were 169 cases that were investigated by the Child Protection Service. Of that 169 cases, 124 of the allegations were substantiated … Of these 124 cases that were substantiated, however, only one-third—60 of them—proceeded to a formal care and protection order awarded by the Court.

Sing., *Parliamentary Debates*, vol. 87 (10 January 2010).

[11] The latest amendments in Bill No. 35 of 2010 repeal the former section 9 and enact the new sections 9 and 9A, giving greater powers for intervention and assessment of the child's condition.

[12] Ministry of Community Development, Youth and Sports, "Obligations under the UN Convention on the Rights of the Child", online: <http://app1.mcys.gov.sg/IssuesTopics/ChildrenYouth/ObligationsundertheUNConventionontheRights.aspx.>. This report was presented to the Committee on the Rights of the Child on 26 September 2003, at the 34th Session of the Committee on the Rights of the Child.

Rights of the Child in January 2009, covering the period 2003 to 2007 and giving details on areas of child welfare and protection, legislative enhancements, initiatives and programmes for children.

Since the 1990s, the Singapore Children's Society has published a number of monographs on child abuse and neglect, child-rearing, parenting styles and children's well-being in Singapore.[13] The Society's first monograph in 1996 on "Public Perceptions of Child Abuse and Neglect in Singapore" surveyed the public's view of whether various actions of parents were acceptable and sought to find a definition of child abuse and neglect.[14] Research by Fung and Chow in 1998 found a lack of consensus amongst professionals on what constituted child abuse and neglect.[15] The second monograph by the Singapore Children's Society on "Professional and Public Perceptions of Physical Child Abuse and Neglect in Singapore: An Overview" presented an overview and comparison of professional perceptions and public perceptions of what constituted acceptable and unacceptable behaviour in the context of child abuse and maltreatment.[16] The third, fourth and fifth monographs focused on aspects reviewed in the second monograph: professional and public perceptions of physical child abuse and neglect, emotional maltreatment of children and child sexual abuse, respectively. The sixth monograph, published in 2006 on "The Parenting Project: Disciplinary Practices, Child Care Arrangements and Parenting Practices in Singapore" presented a survey of parenting practices in Singapore.

With increasing awareness that children can suffer harm from a variety of parental behaviour, the state sought to provide greater protection to children through

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[13] Tong Chee Kiong, John M. Elliott & Patricia M.E.H. Tan, *Research Monograph Number 1: Public Perceptions of Child Abuse and Neglect in Singapore* (Singapore: Singapore Children's Society, December 1996), online: <http://www.childrensociety.org.sg/doc/Monograph1.pdf>; John M. Elliott *et al.*, *Research Monograph No. 2: Professional and Public Perceptions of Physical Child Abuse and Neglect in Singapore: An Overview* (Singapore: Singapore Children's Society, April 2000), online: <http://www.childrensociety.org.sg/images/Professional%20and%20Public%20CAN%20Perceptions.pdf>; Jasmine S. Chan, Yvonne Chow & John M. Elliott, *Research Monograph No. 3: Professional and Public Perceptions of Physical Child Abuse and Neglect in Singapore* (Singapore: Singapore Children's Society, April 2000), online: <http://www.childrensociety.org.sg/services/images/Monograph3.pdf>; John M. Elliott, Chua Yee Sian & Joyce I. Thomas, *Research Monograph No. 4: Emotional Maltreatment of Children in Singapore: Professional and Public Perceptions* (Singapore: Singapore Children's Society, February 2002), online: <http://www.childrensociety.org.sg/images/Emotional%20Maltreatment.pdf>; John M. Elliott, Joyce I. Thomas & Chua Yee Sian, *Research Monograph No. 5: Child Sexual Abuse in Singapore: Professional and Public Perceptions* (Singapore: Singapore Children's Society, June 2003), online: <http://www.childrensociety.org.sg/images/Monograph%205%20Proofread%20Copy.pdf>; Shum-Cheung Hoi Shan, Russell Hawkins & Lim Kim Whee, *Research Monograph No. 6: The Parenting Project: Disciplinary Practices, Child Care Arrangements and Parenting Practices in Singapore* (Singapore: Singapore Children's Society, October 2006), online: <http://www.childrensociety.org.sg/services/images/parenting_project.pdf>; Shum-Cheung Hoi Shan *et al.*, *Research Monograph No. 7: Children's Social and Emotional Well-Being in Singapore* (Singapore: Singapore Children's Society, June 2008), online: <http://www.childrensociety.org.sg/services/images/Singapore.pdf>.

[14] Tong, Elliott & Tan, *ibid*.

[15] D.S.S. Fung & M.H. Chow, "Doctors' and Lawyers' Perspectives of Child Abuse and Neglect in Singapore" (1998) 39:4 Singapore Medical Journal, online: <http://www.sma.org.sg/smj/3904/articles/3904a3.html>.

[16] Elliott *et al.*, *supra* note 13.

amendments to the *CYPA* in 2001:

> Amendments to the CYPA enacted in October 2001 [have] enhanced child protection in Singapore. One key amendment expanded the definition of child abuse to include emotional/psychological abuse. While difficult to detect, emotional and psychological abuse can seriously undermine a child's healthy development.[17]

It may be said that the law has by this step a decade ago moved towards greater regulation of the parent and child relationship. Theoretically, the move towards protecting children against wider types of harm is laudable. The expanded definition, however, was not accompanied by a requirement that the harm to the child be significant or serious. This article argues that this may ironically reduce the protection given to children to be raised by their parents in a private, familial environment free from unnecessary outside interference by state bodies. On the face of the current provision, "any" injury to a child's health or development can constitute ill-treatment.

II. The Search for A Legal Framework of Optimal Intervention

In the United Kingdom, Baroness Hale of Richmond introduced the common challenge in all jurisdictions committed to child protection in *Re S-B (Children) (Care Proceedings: Standard of Proof)*:[18]

> [O]n the one hand, children need to be protected from harm; but on the other hand, both they and their families need to be protected from the injustice and potential damage to their whole futures done by removing children from a parent who is not, in fact, responsible for causing them any harm at all.[19]

A number of issues underlie this dilemma. The first is in determining who has perpetrated the alleged harm: if non-accidental injuries are found on a child, what is the standard of proof required to establish that the parent had indeed caused them? Another is what constitutes harm or ill-treatment that justifies state intervention? Further, if some intervention is necessary, what intervention measures are appropriate for each type of case?

A. *Expanded Scope of "Ill-treatment" in the* CYPA: *Intention of Parliament*

In Singapore, the court may make care orders if it is of the view that a child is in need of care and protection. Section 4 of the *CYPA* provides that a child or young person is in need of care and protection if, *inter alia*,[20] he or she has been, is being, or is at

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17 Rehabilitation and Protection Division, Ministry of Community Development, Youth and Sports, *Protecting Children in Singapore* (Singapore: Ministry of Community Development, Youth and Sports, October 2005), online: <http://app1.mcys.gov.sg/portals/0/summary/publication/Materials_Protect_Children_in_Spore.pdf> at 3.

18 [2010] 1 A.C. 678 [*Re S-B*].

19 *Ibid*. at para. 2.

20 See section 4 of the *CYPA*, *supra* note 2 for other circumstances which include: where the child has no parent or guardian or has been abandoned by his parent or guardian, where his parent or guardian is

risk of being "ill-treated". "Ill-treatment" is not defined in section 4 but is defined in section 5(2). Section 5(1) provides that a person who has the custody, charge or care of a child or young person shall be guilty of an offence if he ill-treats the child or young person or causes, procures or knowingly permits the child or young person to be ill-treated by any other person. Section 5(2) provides the definition of ill-treatment for the purposes of determining the offence in section 5(1) and also for "the purposes of this Act":

> [A] person ill-treats a child or young person if that person, being a person who has the custody, charge or care of the child or young person—
> (a) subjects the child or young person to physical or sexual abuse;
> (b) wilfully or unreasonably does, or causes the child or young person to do, any act which endangers or is likely to endanger the safety of the child or young person or which causes or is likely to cause the child or young person—
> (i) any unnecessary physical pain, suffering or injury;
> (ii) any emotional injury; or
> (iii) any injury to his health or development; or
> (c) wilfully or unreasonably neglects, abandons or exposes the child or young person with full intention of abandoning the child or young person or in circumstances that are likely to endanger the safety of the child or young person or to cause the child or young person—
> (i) any unnecessary physical pain, suffering or injury;
> (ii) any emotional injury; or
> (iii) any injury to his health or development.

Thus ill-treatment of a child by a parent leads to both criminal and civil consequences under the *CYPA*: it is an offence under section 5 of the *CYPA* and the court can make care orders if there is ill-treatment or the risk of ill-treatment to a child.

The definition of "ill-treatment" in the current section 5 of the *CYPA* was expanded by amendments in 2001. This may have been driven by the commitment of Singapore to protect children in the light of its accession to the *UNCRC* in October 1995. The *Children and Young Persons (Amendment) Bill* of 2001 introduced, *inter alia*, changes driven by the concern that there was then no provision "to require suspected cases of emotional or psychological abuse to receive…assessment to ascertain abuse."[21]

The Minister first introduced the changes as amendments aimed at protecting children against 'emotional and psychological abuse'. Section 5(2)(b)(ii) now provides for causing "emotional injury" and (iii) provides for "injury to…health and development". Thus the current subsection (iii) was the final version of what was first discussed as "psychological abuse":

> Children who are emotionally and psychologically abused usually suffer long-term effects, if not helped. There is currently no provision in the Act to require suspected cases of emotional or psychological abuse to receive professional assessment to ascertain abuse. The amendments … will empower the Protector

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unfit or unable to exercise supervision and the child is falling into bad association, where there is such a serious conflict between the child and his parent or guardian that harm is caused to the child, where the child is found to be destitute, or begging or receiving alms, or engaged in illegal or undesirable activities or using intoxicating substances.

[21] Sing., *Parliamentary Debates*, vol. 73, col. 1609 at 1611 (20 April 2001) (Mr. Abdullah Tarmugi).

> to require a child or young person, who is suspected to be a victim of emotional or psychological abuse, to be assessed. Should a parent or guardian ignore the instruction, the Protector may remove the child or young person for assessment and treatment.[22]

The original intent of Parliament was to protect children against psychological "abuse" and not merely any injury to development regardless of how insignificant the injury. The latter has a wider scope than the former.

Concerns were raised by Members of Parliament that the width of the section could potentially interfere with parenting responsibilities. "[A]ny injury" to development could potentially suffice; there is a lack of clearer guidance on the gravity and effect of the harm on the child.

Associate Professor Chin Tet Yung, then Member of Parliament, said:

> Ill-treatment is widely defined to include emotional injury or injury to the child's health or development. Development itself is widely defined to mean physical, intellectual, emotional, social or [behavioural] development. Sir, these new terms vastly extend the scope of the legislation and will give rise to several problems, quite apart from the open textured nature of the words used. For instance, reasonable people may disagree as to when a child may be said to be in need of protection…There must be a serious attempt to set out clear guidelines as to how these new provisions are to be interpreted and applied. Without such guidelines, I worry that parents and guardians may be wrongly subjected to investigations which may, in turn, give rise to undeserved social ostracism or misunderstanding. In our society, where family values are so enshrined, it would be particularly reprehensible for a parent or guardian to be wrongly accused of ill-treating his child.[23]

Member of Parliament Dr. Vasoo warned:

> [U]nlike physical abuse, psychological abuse is an area which is very contentious and very difficult to establish. Therefore, I think there are likely to be disputes between the Ministry and the parents in terms of what and how one establishes psychological abuse. This issue has to be looked into very carefully.[24]

Unjustified accusations of ill-treatment where there is none, and excessive interference with the parent and child relationship, have grave consequences. Associate Professor Chin said of the potentially pliable definition in section 5(2)(b):

> [I]f I were to ask Members present in this House today to give their views as to what is the degree of risk that would be necessary before it is legitimate to intervene, I believe we would not find a general consensus. Some may say that there needs to be a clear and present danger of ill-treatment, others may put it less strongly. The point is there is likely to be as many interpretations of the degree of risk as there are people asked to interpret it.[25]

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22 *Ibid*. at 1611-1612.

23 Sing., *Parliamentary Debates*, vol. 73, col. 1609 at 1619-1620 (20 April 2001) (Associate Professor Chin Tet Yung).

24 Sing., *Parliamentary Debates*, vol. 73, col. 1609 at 1614-1615 (20 April 2001) (Dr. S. Vasoo).

25 *Supra* note 23 at 1620.

The Minister assured that the aim of intervention is to rehabilitate and support the child in being raised by her own family:

> The issue of discipline and abuse is high in our minds too. Maybe, we must also be sure that, in some cultures, what is abuse is really discipline. In other cultures, what is discipline is really abuse. We are very well aware of that. Whenever we do come across cases whereby there may be a very thin line between what is abuse and what is discipline, we will bring in, as I said, all the expertise and various views to ascertain whether whatever is reported is really abuse or discipline.[26]
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> We understand that, ultimately, the child must go back to the family or, hopefully, the child can go back to the family. Because we too would not want to put all abused children and all victims into institutions. We would rather that they be rehabilitated. We would rather that they become stable and, hopefully, they could go back to their family because that is essentially where the children ought to belong.[27]

The 2001 debates demonstrate the following: First, Parliament is aware of the dangers of inappropriate intervention. Second, there must be guidelines developed to address the concerns raised in Parliament regarding the potential dangers of the new scope and consequences. Third, every step taken as an intervention measure should not jeopardise the ultimate aim of helping the child re-integrate into her own family. Finally, intervention is a measure of last resort.

Yet more recently, when there was opportunity to give clearer guidelines on what constitutes abuse, the *Children and Young Persons (Amendment) Bill*[28] was passed in Parliament in January 2011 without any review of the scope of the definition of abuse. Instead, the new amendments bring into the law greater measures for intervention. They enable the Child Protector to obtain information if there is reasonable cause to suspect that a child or young person is in need of care and protection and to restrict access of parents to the child. They also expand the categories of situations in which a child or young person is deemed to be in need of care and protection to include cases where the parent is unable to provide the child with adequate food, clothing, medical aid, lodging, care or other necessities of life, even though the parent's failure has not been wilful or unreasonable. The amendments also introduce new penalties and increase existing ones. Also of significance is the introduction of a licensing framework to ensure the welfare and safety of children and young persons in residential care, seeking to provide clarity on the requirements and standards of care in the Homes for children and young persons. The combined effect of the new amendments is to give greater powers of intervention, with expanded powers of the state to remove children for assessment or care. Not surprisingly, the parliamentary debates in 2011 again highlighted concerns that inappropriate intervention by the state may be harmful to children:

> [N]otions of emotional and psychological abuse are hard to establish. What constitutes emotional abuse? Or psychological abuse? If a parent overindulges

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26 Sing., *Parliamentary Debates*, vol. 73, col. 1609 at 1638-1639 (20 April 2001) (Mr. Abdullah Tarmugi).

27 *Ibid*.

28 *Supra* note 4.

> her child—does that constitute abuse?…when it comes to a debate on the well-being of children, it is necessarily a difficult one because parenthood in itself is a learned process. As meanings of childhood and responsibilities of parenthood evolve, as our society matures, we must have in place consistent messages and processes to aid parents and empower them to be effective guardians…the first reaction should be to help families help themselves. We should only remove the child from the family as a very last resort.[29]

This author submitted feedback[30] during the public consultation on the draft Bill in 2010, suggesting a more nuanced definition of ill-treatment in the *CYPA*, which is one of the main submissions in this article, set out at parts V and VI below. The suggestion was not taken up.[31] A review remains necessary due to the potential of the current *CYPA* to allow greater, even excessive, intervention in family relationships. The case in the next section highlights the need for review.

III. *ABV v. Child Protector*[32]

In *ABV v. Child Protector*, a seven-year-old child, E, was taken into the custody of the Child Protection Services ("CPS"), a division of the Ministry of Community Development, Youth and Sports. CPS officers took E from school and placed her in a children's home. CPS alleged this was necessary to protect E from ill-treatment by E's mother.

According to the Juvenile Court, the child was in need of care and protection under section 4(d) of the Children and Young Persons Act ("CYPA") for being or is at risk of ill-treatment by her parent pursuant to a complaint laid by the Child Protection Services ("CPS").[33]

The evidence on which the judge relied in making the care order was summarised as follows:

> Disturbing facts were disclosed about the Mother by the Child's schools, who informed the CPS that they were concerned over the Mother's insight and ability

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29 Sing., *Parliamentary Debates*, vol. 87 (10 January 2010) (Associate Professor Paulin Tay Straughan).

30 The organisation collecting public feedback does so via the online portal at http://www.reach.gov.sg/.

31 The response to feedback on the definition of ill-treatment, child abuse and neglect was as follows:

> MCYS has also reviewed comments on the definitions of child abuse and neglect. The current definitions allow for timely intervention in cases of abuse and neglect. We should ensure that there are sufficient legal avenues that continue to protect children from abuse and actions that lead to psychological and emotional harm to the child. With regard to calls to raise penalties for sexual exploitation, MCYS notes there are available penalties that deter the exploitation of children in the Penal Code. Together, the CYPA and Penal Code allow for a range of provisions and penalties to protect children from sexual exploitation and abuse. Child sexual abuse is taken very seriously and MCYS works closely with Police and the Attorney General's Chambers (AGC) in the prosecution of such cases.

Ministry of Community Development, Youth and Sports, "Public Consultation on Draft Children and Young Persons (Amendment) Bill: Response to Feedback" (22 November 2010), online: REACH <http://app.reach.gov.sg/olcp/asp/ocp/ocp01d1.asp?id=6303>.

32 [2009] SGJC 4 [*ABV*]. There are no written grounds for the High Court decision.

33 *Ibid*. at para. 1.

> to meet the Child's developmental needs. For example, whilst in pre-school the Mother disallowed teachers from changing the Child's diapers even if it was soiled but was also against the idea of toilet-training the Child, who was then already 5 years old. They were not allowed to change the Child's school uniform even if it was very wet or dirty. This controlling behaviour continued even after the Child went to primary school and she was still made to wear diapers in primary two. But when questioned by the doctor who examined her during the school health screening exercise, the Mother said that there was no medical reason for her to continue wearing diapers.
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> Schools which the Child attended repeatedly complained that the Mother would harass and question teachers over minute details regarding the Child. This caused a lot of frustration, distress and even fear amongst the school staff, including the canteen vendor and members of the parents' support group. When unhappy, the Mother would write letters of complaint to the Ministry of Education, Ministry of Finance, the Prime Minister's Office and the press …
>
> The Child has an unhealthy fear of the Mother, even though they shared a close relationship. She seemed constantly worried that the Mother would interrogate her over what happened in school … The Child follows the Mother's instructions to a T but ostentatiously out of fear. According to the CPS, this restricted the Child's developmental potential and ability to be spontaneous and free in her learning and interaction with her peers.
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> The Mother's difficult personality and demanding attitude had made it necessary for the Child to change schools frequently and this is detrimental at a stage when the Child needed stability, continuity and predictability in her life. The Mother's antagonistic and adversarial ways also make it a challenge for various community-based professionals to work with her.

The Juvenile Court's interim orders included an order that the child be committed to a place of safety, The Salvation Army Gracehaven, under section 49(1)(c) of the *CYPA* for three months and that the child and the parents receive counselling and psychological services. The parents of the child appealed against the interim orders made by the Juvenile Court. This author was appointed *amicus curiae* in proceedings arising from an appeal to the High Court[34] in which the parents sought to reverse the Juvenile Court's order of removal of the child from them.

The High Court ordered that the child be returned to her parents. Its orders also included one that counselling and psychological assessment should continue to be carried out and that the case be reviewed by the High Court in two months' time.

The High Court's decision was reported in *The Straits Times*:[35]

> A mother who had her child taken away because she was deemed to be too controlling was reunited with the seven-year-old girl yesterday after the High Court overturned the decision of a lower court. It ordered the Child Protection Services

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[34] The High Court gave an oral judgment. As there are no written reports, the facts and holding are presented by the author based on the oral judgment delivered, the reports in *The Straits Times* and her involvement as *amicus curiae* in the proceedings.

[35] Selina Lum, "Child ordered to be returned to her mother" *The Straits Times* (6 October 2009).

> (CPS), an agency of the Ministry of Community Development, Youth and Sports, to return the child, who was removed two months ago after the authorities complained to the Juvenile Court that the mother's domineering behaviour might have a negative impact.
>
> Her parents, a 40-year-old housewife and a 42-year-old production worker, appealed to the High Court for her return.
>
> Yesterday, Justice V. K. Rajah acknowledged that the mother was an 'obsessive' parent and 'difficult' person. But he noted: 'The removal of a child from the parents is a very drastic remedy that should be resorted to only when there is a real fear of imminent physical or psychological danger.'
>
> In this case, he said, the child was not physically abused. Rather, the CPS was concerned over the medium- and long-term psychological impact that her mother would have on her.

The High Court reversed the order of removal given by the Juvenile Court, thereby disagreeing with the lower court that the facts warranted the intervention. The mother might have poor parenting skills and required some assistance by way of counselling, but this did not amount to a finding that there was ill-treatment or a risk of it which called for a removal of the child from her parents.

The Juvenile Court did not elaborate on the definition of "being or is at risk of being ill-treated" and no reference was made to section 5 of the *CYPA* identifying the applicable definition. It may be deduced from the judgment that the Juvenile Court considered section 5(2)(b)(iii) to be the most relevant subsection, that is, the parents' behaviour is likely to cause the child "injury to his health or development".

The judge relied on "the Case Summary" furnished by CPS which was not made available to the parent in reaching its decision. This "Case Summary" contained allegations of acts amounting to ill-treatment argued to justify the removal of E from her parents. The *amicus curiae*'s submissions highlighted that:

> the Court should be concerned that the judge relied to some extent on "the Case Summary" furnished by CPS which was not made available to the Mother. An order for the removal of a child from her parent with whom she "shared a close relationship" (para. 12) is a drastic order with grave effects on the Child. It must not be made lightly. It must be resorted to only as the last option. Here, it is crucial that there are indeed facts supporting the finding that the Child was being or at risk of being ill-treated by the Mother. The Mother should have had the opportunity to present her version of the 'facts' so that the court is equipped to consider all the possible perspectives in order to determine whether the Child was being or at risk of being ill-treated. This is especially important here because there is no other evidence of ill-treatment, such as physical abuse. While the definition of ill-treatment appears to be quite wide, it may not be intended to cover a case such as the present one. There is a wide spectrum and range of parenting styles and parental personalities. The Mother in this case falls on an extreme end of one spectrum (excessively preoccupied with every minute aspect of the Child's life, overly protective and controlling, excessively fussing over the Child). But parental behaviour and styles can vary very much. The question is whether the

Mother's behaviour has crossed the line to what is not acceptable, considering that there is a wide spectrum of 'acceptable' behaviour in parenting matters.

It was argued that in order to determine whether the facts fell within the definition of ill-treatment, the court must consider all relevant evidence. A more robust method of discovering the facts on which an order was based had to be in place to serve the welfare of the child. The mother should have had the opportunity to present her version of the 'facts' so that the court was equipped to consider all the possible perspectives in order to determine whether the child was being or at risk of being ill-treated. The mother's explanations or reasons for certain behaviour, such as having the child wear diapers to school, were relevant in considering whether there was ill-treatment or the risk of ill-treatment.

In the High Court, the learned Justice of Appeal V.K. Rajah rightly ordered that the parents be furnished with a copy of "the Case Summary". After considering the evidence, his Honour reversed the lower court's order, explaining that "[t]he removal of a child from the parents is a very drastic remedy that should be resorted to only when there is a real fear of imminent physical or psychological danger."[36]

The facts of *ABV* appeared to fall within the expanded scope of sections 4 and 5 of the *CYPA*. There may be some injury to the long-term development of E if the mother continued to be excessively controlling over E and antagonistic towards the school teachers. But is this injury of sufficient gravity or significance to justify state intervention? *ABV* is a case that demands a sound interpretation of the expanded definition. Guidance may be sought from legislation on care orders in other jurisdictions which require serious or significant harm to the child's health or development.

IV. Models of Legislation for Care Orders

Section 5 of the *CYPA* allows intervention in instances of abuse or ill-treatment, using criminal sanctions when there is some degree of culpability on the parent or caregiver: section 5(2) requires wilfulness or unreasonableness in causing injury to the child.[37] However, once there is such culpability, there can be liability for "any injury" of the forms listed in section 5(2). The threshold is high for culpability, but low on the type and gravity of injury caused. Since the same definition of "ill-treatment" is used as a basis for care orders in section 49 read with section 4, care orders made on the basis of ill-treatment or the risk of it are also subject to the same thresholds. The provisions are centred on the wilfulness and unreasonableness of the acts of the offending parents or caregiver rather than the seriousness of harm to the child.

Legislation on care orders in some other jurisdictions differ from this model.

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[36] *Ibid.*

[37] It is noted that corporal punishment used reasonably is not criminal nor will it elicit intervention. Section 64 of the *Women's Charter*, *supra* note 1, provides that "family violence" does not include any force lawfully used by way of correction towards a child. Rule 88 of the *Education (Schools) Regulations* (Cap. 87, Reg. 1) provides for the restricted use of corporal punishment on boy pupils in primary and secondary schools (the corporal punishment of boy pupils shall be administered with a light cane on the palms of the hands or on the buttocks over the clothing. No other form of corporal punishment shall be administered to boy pupils). However, corporal punishment is not permitted to be used on children in child care centres (*Child Care Centres Regulations*, Cap. 37A, Reg. 1, reg. 17).

A. *United Kingdom*

In the United Kingdom, the *Children Act 1989*[38] confers on the court the power to grant a care order or supervision order. Section 31(2) provides:

> A court may only make a care order or supervision order if it is satisfied—
> (a) that the child concerned is suffering, or is likely to suffer, *significant harm*; and
> (b) that the harm, or likelihood of harm, is attributable to—
> (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
> (ii) the child's being beyond parental control. [emphasis added]

Section 31(9) defines "harm" as "ill-treatment or the impairment of health or development", "development" as "physical, intellectual, emotional, social or behavioural development", "health" as "physical or mental health" and "ill-treatment" as including "sexual abuse and forms of ill-treatment which are not physical".

The English legislation is phrased broadly, similar to the current Singapore legislation in terms of the breadth of harm: harm includes harm to the health or development of a child. However, "significant harm" is required in the U.K. whereas the *CYPA* in Singapore requires only "any injury". It is submitted that the requirement of significant harm is an important control device which can be used to ensure an acceptable equilibrium in state intervention.

In *Re L (Care: Threshold Criteria)*,[39] "significant harm" was held to be "fact-specific and had to retain the breadth of meaning that human fallibility required of it", however, it contemplated "the exceptional rather than the commonplace".[40] In this case, the mother had severe learning difficulties and the father had partial learning difficulties. It was acknowledged that the parents had loving relationships with the children. In fact, the court found that the two children, despite having been in foster care, had real attachments in an emotional sense only with their parents. The court held that:

> [I]t is the tradition of the UK, recognised in law, that children are best brought up within natural families…It follows inexorably from that, that society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done…Only exceptionally should the state intervene with compulsive powers and then only when a court is satisfied that the significant harm criteria in s 31(2) is made out.[41]

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[38] (U.K.), 1989, c. 41 [*1989 CA (UK)*].
[39] [2007] 1 Family Law Reports 2050 (Bristol Crown Court).
[40] *Ibid*. at para. 51, Hedley J.
[41] *Ibid*. at paras. 50-51.

The court concluded that the local authority had not satisfied the court that the children had suffered significant harm, although "[c]ertainly they have suffered harm; certainly it is likely they will do so in the future and certainly that has been and will be attributable to the parenting they receive." What a difference the absence of this requirement of "significant harm" might have made to the result.

In *Humberside County Council v. B*,[42] the court held that "significant harm" had to be harm that was "considerable or noteworthy or important", or "harm which the court should take into account in considering a child's future".[43] As for when harm is "likely", the House of Lords in *Re H (Sexual Abuse: Standard of Proof)*[44] held that a child was likely to suffer harm if there was "a real possibility, a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case".[45]

In the U.K., the standard of proof in care proceedings is put this way:

> The leading case on the interpretation of these conditions is the decision of the House of Lords in *In re H* (*Minors*) *(Sexual Abuse: Standard of Proof)* [1996] AC 563. Three propositions were established which have not been questioned since. First, it is not enough that the court suspects that a child may have suffered significant harm or that there was a real possibility that he did. If the case is based on actual harm, the court must be satisfied on the balance of probabilities that the child was actually harmed. Second, if the case is based on the likelihood of future harm, the court must be satisfied on the balance of probabilities that the facts upon which that prediction was based did actually happen. It is not enough that they may have done so or that there was a real possibility that they did. Third, however, if the case is based on the likelihood of future harm, the court does not have to be satisfied that such harm is more likely than not to happen. It is enough that there is "a real possibility, a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case": per Lord Nicholls of Birkenhead, at p 585 f.[46]

In *Re S-B*, the first child was found with non-accidental bruising to his arms and face and was placed in foster care. The mother subsequently gave birth to the second child who was also placed with the same foster carer as his brother, although he had never been harmed. The local authority applied for care and placement for adoption orders for both children. The judge made the care and placement for adoption orders. She indicated that there was a high index of suspicion in relation to the father as the perpetrator and although there was no such index in relation to the mother, she could not be ruled out. The mother's appeal to the Court of Appeal was dismissed. However, the Supreme Court allowed the appeal and sent the case back to be decided afresh. The highest court held that the fact-finding judge had misdirected herself on the standard of proof. The judge did not in terms ask herself whether she could identify the perpetrator and later indicated she could not decide. Further, the judge found the threshold crossed in relation to the second child on the basis that there was

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42 [1993] 1 Family Law Reports 257.

43 *Ibid.* at 263, Booth J.

44 [1996] A.C. 563 [*Re H*].

45 See *ibid*. at 585, Lord Nicholls. This was adopted in *Re S-B*, *supra* note 18 at para. 8.

46 *Re S-B*, *ibid.*, Baroness Hale of Richmond.

a real possibility that the mother had injured the first child; this was not a permissible approach.

B. *New Zealand*

In New Zealand, the *Children, Young Persons and Their Families Act* [*CYPFA (NZ)*][47] provides for the definition of a child or young person in need of care or protection. Section 14 provides:

> A child or young person is in need of care or protection…if
> (a) the child or young person is being, or is likely to be, harmed (whether physically or emotionally or sexually), illtreated, abused, or seriously deprived; or
> (b) the child's or young person's development or physical or mental or emotional wellbeing is being, or is likely to be, impaired or neglected, and that impairment or neglect is, or is likely to be, *serious and avoidable*… [emphasis added]

The provisions, like those in the U.K. and Singapore, are also phrased broadly in terms of the scope of injury justifying state intervention. However, the statute specifically provides that there must be serious and avoidable impairment or neglect in cases involving impairment or neglect of the child's development, or physical or mental or emotional wellbeing. But where there is harm, ill-treatment or abuse, there appears to be an assumption that such physical or sexual character of injury is significant enough not to call for the same requirements.

Section 13 of the *CYPFA (NZ)* sets out the principles on the care and protection of children which the court must be guided by; section 13(d) states

> the principle that a child or young person should be removed from his or her family…and family group only if there is a serious risk of harm to the child or young person[.]

If the risk of ill-treatment is based on ill-treatment in the past, then ill-treatment in the past must first be proved. If the risk is not based on past abuse of the child in question, but, for instance, on the fact that a parent had been convicted of sexual offences against other children, then the risk of sexual abuse to the child in question could be assessed by proof of the fact of the convictions and facts relevant to the risk of reoffending.[48]

C. *Australia*

A number of states in Australia adopt the model of extending abuse to include impairment of the psychological or emotional wellbeing of a child and requiring significant

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[47] (N.Z.), 1989/24 [*CYPFA (NZ)*].

[48] See *Re C* [2004] N.Z.L.R. 49 where the court found that the sexual offender released from prison had a high risk of reoffending, having failed to engage in a treatment programme while in prison while the child was unable to protect herself, having had no effective father figure in her life and was thus particularly susceptible to the charms of the ex-convict.

harm. The *Queensland Child Protection Act 1999* [*CPA 1999 (Qld)*][49] provides that "harm" warranting state protection is "any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing".[50] It is "immaterial how the harm is caused",[51] and harm can be caused by physical, psychological or emotional abuse or neglect; or sexual abuse or exploitation.[52] However, there must be a detrimental effect of a significant nature. The *Western Australia Children and Community Services Act 2004*[53] and *South Australia Children's Protection Act 1993*[54] are phrased similarly to the *CPA 1999 (Qld)*.

The state of Victoria's *Children, Youth and Families Act 2005*[55] provides for circumstances in which a child is in need of protection: when the child has suffered, or is likely to suffer, "significant harm" as a result of "physical injury",[56] "sexual abuse";[57] or the child has suffered, or is likely to suffer, "emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged";[58] or the child's physical development or health has been, or is likely to be, "significantly harmed";[59] and the child's parents have not protected, or are unlikely to protect, the child from harm of that type.

The New South Wales *Children and Young Persons (Care and Protection) Act 1998*[60] provides that a child must be "at risk of significant harm" before he or she becomes eligible for state intervention.[61] This includes the risk that the child is being "physically or sexually abused or ill-treated",[62] or where the child's household has incidents of domestic violence and the child is at risk of suffering "serious physical or psychological harm".[63]

The models in these jurisdictions are child-focused in that the outcome of the parent's behaviour on the child determines intervention measures. The intention of the offending parent or caregiver is more relevant for the imposition of criminal liability but less relevant for care orders. The types of harm are widely defined, but harm must be significant before intervention is justified. In the U.K. and Australian provisions, generally all forms of harm—physical, sexual, emotional or developmental harm—must be significant or serious before intervention is justified. In New Zealand, harm that arises from impairment or neglect of the child's development or physical or mental or emotional wellbeing must be serious and avoidable.

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[49] Act No. 10 of 1999 [*CPA 1999 (Qld)*], Reprint No. 6D of 1 July 2010.
[50] *Ibid.*, s. 9(1).
[51] *Ibid.*, s. 9(2).
[52] *Ibid.*, s. 9(3).
[53] Act No. 34 of 2004 [*CCSA 2004 (WA)*]. See Part 4 of the Act.
[54] Act No. 93 of 1993 [*CPA 1993 (SA)*].
[55] Act No. 95 of 2005 [*CYFA 2005 (Vic)*].
[56] *Ibid.*, s. 162(1)(c).
[57] *Ibid.*, s. 162(1)(d).
[58] *Ibid.*, s. 162(1)(e).
[59] *Ibid.*, s. 162(1)(f).
[60] Act No. 157 of 1998 [*CYPA 1998 (NSW)*].
[61] *Ibid.*, s. 23(1).
[62] *Ibid.*, s. 23(1)(c).
[63] *Ibid.*, s. 23(1)(d).

V. Developing A Framework of Optimal Intervention

A. *Behaviours that Amount to Child Abuse and Neglect: Studies in Social Science Research in Singapore*

The Singapore Children's Society's first monograph on "Public Perceptions of Child Abuse and Neglect in Singapore"[64] surveyed 401 members of the public on the definition, profile of child abuse and neglect and the reporting of abuse. It reported that the respondents' ideas of child abuse and neglect included four categories, namely physical abuse, physical neglect, sexual abuse and emotional abuse/neglect. The monograph suggested that a distinction be made between "abuse" and "maltreatment": "abuse" is a more serious and derogatory term that may imply intention and wilfulness on the part of the perpetrator, whereas "maltreatment" may include behaviour considered by the respondents as unacceptable and may be unintentionally inflicted but does not amount to abuse.

The monograph listed the following as behaviours with potential to be considered child abuse or neglect[65]:

Sexual abuse/lack of protection from sexual advances:
1. Having sex with child
2. Parent not protecting child from sexual advances by other family members
3. Adult appearing naked in front of child

Physical abuse:
4. Burning child with cigarettes, hot water, or other hot things
5. Tying child up
6. Shaking child hard
7. Slapping child on the face
8. Caning child

Physical neglect:
9. Ignoring signs of illness in child (e.g., high fever)
10. Leaving child alone in the house

Emotional abuse/neglect:
11. Locking child outside the house
12. Locking child in a room
13. Threatening to abandon child
14. Never hugging child
15. Calling child "useless"
16. Always criticizing child
17. Making child study for a long time
18. Telling child other children are better

The first monograph found that respondents, who were members of the public, considered sexual abuse to be the most serious form of abuse and were less concerned with emotional abuse. There was also a widespread acceptance of emotionally

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[64] Tong, Elliott & Tan, *supra* note 13.

[65] *Ibid*., Table 2.2 at 22.

harsh or insensitive child-rearing style. Caning was widely accepted as a method of physical discipline and regarded by the fewest respondents to be "never acceptable" or "abuse or neglect". However, sexual abuse and some forms of severe physical abuse or neglect were generally accepted to be forms of abuse; but emotional abuse was not as well accepted as constituting abuse.

The second research monograph on "Professional and Public Perceptions of Physical Child Abuse and Neglect in Singapore: An Overview"[66] concluded that there was a need for greater agreement among professionals, as the results point to a measure of difference in the opinions across the professionals explored and to the diversity of attitudes to the various actions and circumstances. Professionals surveyed included the police, social workers, doctors, nurses, lawyers and teachers.

The studies reveal that in general, there is greater consensus that the following are unacceptable behaviour and also perceived as child abuse or neglect: sexual abuse and lack of protection from sexual advances; physical abuse in the form of burning a child with cigarettes, hot water, or other hot things, and tying a child up; and physical neglect in the form of ignoring signs of serious illness (*e.g.* fever) in a child. Behaviours listed as potentially amounting to emotional abuse or neglect received less consensus, as did less extreme forms of physical acts such as caning. It is noted that respondents did not necessarily consider all "unacceptable" behaviour to be abuse. For example, 84.4 per cent of respondents indicated that appearing naked in front of a child was unacceptable but only 66.8 per cent of the same respondents indicated that this was abuse. The focus here is on behaviour regarded by the respondents to be abuse, not whether they are unacceptable.

If we take actions that at least 75 per cent of respondents in the first study regarded as abuse or neglect to be actions receiving consensus as amounting to abuse or neglect, markers of child abuse could be grouped in the following way. Sexual abuse in the form of having sexual contact with the child and failing to protect the child from sexual contact with family members will ordinarily be regarded as sexual child abuse, but appearing naked in front of a child falls within the 'grey area'.[67] Burning a child with cigarettes, hot water, or other hot things and tying a child up will ordinarily amount to physical child abuse, but shaking a child hard, slapping a child on the face and caning fall in the 'grey area'.[68] Ignoring illness in a child is physical neglect but leaving a child alone in the house falls within the 'grey area'.[69] All actions listed under "emotional abuse/neglect" fall within the 'grey area'.[70] The perceptions of professionals are very close to those of the public except for one act, which is ignoring signs of illness in a child; in this category, 87.7 per cent of the public regarded this

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[66] Elliott *et al.*, *supra* note 13.

[67] Monograph 1 records that 97% and 90.7 % of respondents considered sex with child and not protecting child from sexual advances to be child abuse/neglect, and 66.8% regarded appearing naked in front of a child to be abuse.

[68] 99% and 84.7% of respondents considered burning and tying up a child to be abuse, respectively. 48.2%, 41.7% and 27.9% considered shaking hard, slapping on the face and caning a child to be abuse, respectively.

[69] 87.7% of respondents considered ignoring a serious illness to be abuse or neglect, while 31% considered leaving a child alone in the house to be abuse or neglect.

[70] Locking a child outside was regarded by the highest percentage of respondents (68.6%) to be abuse/neglect; saying others are better was regarded by the fewest respondents (17.8%) to be abuse/neglect.

as abuse or neglect while 74.7 per cent of the professionals regarded it as abuse or neglect.[71]

The research also studied how acceptable selected behaviours were under varying "mitigating" circumstances. For example, it found that caning was considered acceptable if: the child was older, the child was disobedient, the child was not physically or mentally handicapped, the child was not treated differently from his siblings, only the limbs and buttocks were caned, there were no permanent marks or injuries, it happened infrequently, the adult had good intentions, or the adult was not under stress.[72]

It is submitted that behaviours which received clear consensus as amounting to abuse should be markers of cases of potential abuse. The other behaviours fall within the 'thick grey line'. Child protection agencies should refrain from intervening in cases falling within the 'thick grey line' unless circumstances are exceptional, while courts should require serious harm or exceptional circumstances before orders are made in respect of cases within this 'grey area'.

If there must be sufficient room for parents to adopt parenting approaches that they consider best for their children, variations to parenting, which can be affected by culture, personal experiences and personalities of both parents and child involved, can be accommodated within the limits suggested.[73] It is easy to predict that cultural variations lead to different value judgments on what amounts to acceptable or unacceptable behaviour. Even within the same culture, parents differ in disciplinary methods. In fact, a parent may use different methods of discipline for different children in the same family, because children have different personalities. A child who is disobedient recurrently will receive more intense variations of disciplinary methods than what his more compliant siblings will receive. Two parents in the same family may also differ in disciplinary methods.[74] Behaviour which falls within the 'grey area' may not be the best parenting practices but neither does such behaviour necessarily justify state intervention. Public education on good and effective parenting is suggested to be the more appropriate measure. Singapore's Second and Third Periodic Report to the United Nations Committee on the Rights of the Child reports that public education programmes exist to promote appropriate discipline and discourage the use of corporal punishment as a means of child discipline.[75] In schools, counselling is advocated and corporal punishment is meted out only as a last resort for serious offences. The use of guidelines and public education are submitted to be more appropriate than the use of legal sanctions in the *CYPA* to address child disciplinary methods which fall within the 'grey area'. One cannot stress enough the importance of public education in this respect.

However, the state must draw a line beyond which even cultural variations cannot be acceptable. Where there is clear consensus from the studies that an action is

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[71] See Elliott *et al*., *supra* note 13 at 20-21, 23.

[72] Tong, Elliott & Tan, *supra* note 13 at 56-57.

[73] See Stella R. Quah, "Ethnicity and Parenting Styles Among Singapore Families" (2004) 35:3 Marriage & Family Review 63.

[74] Shum-Cheung, Hawkins & Lim, *supra* note 13 at 24 reported that mothers used physical punishment more frequently than fathers did.

[75] Ministry of Community Development, Youth and Sports, *Second and Third Periodic Report to the United Nations Committee on the Rights of the Child* (January 2009) at 60, para. 8.31.

abuse, some form of intervention is suggested to be necessary. These acts are also more likely to cause significant or serious harm, which has been argued ought to be a requirement in the interpretation of ill-treatment. Chan *et al.* argued that:

> any discussion on children's rights within a culture, let alone across cultures, raises controversial and emotional responses. Yet it is necessary to set some kind of standard in identifying child abuse and neglect within and across cultures such that two apparently contradictory goals are met. Such a standard must necessarily be flexible, so that social and cultural differences may be respected while the child's right to be safe is protected. Yet, that same standard must be clear enough to enable caregivers and professionals to identify markers of child abuse and neglect in order that intervention can occur.[76]

Findings made in "The Parenting Project: Disciplinary Practices, Child Care Arrangements and Parenting Practices" in 2006 are interesting, particularly the responses of 533 children in Singapore between 10 and 12 years old to various disciplinary practices.[77] Seven examples of disciplinary options were included in the survey for parents and children. They were as follows:

> 1) use physical punishment on the child
> 2) show anger towards the child (e.g., scolding, shouting, etc.)
> 3) take away some of the child's privileges (e.g., no TV, games, etc.)
> 4) explain to the child what he/she has done wrong
> 5) isolate the child
> 6) tell the child that he/she is not loved
> 7) do nothing[.][78]
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> …
>
> [The study] found reasoning to be the most frequently used practice among local parents. On the other hand, parents reported that they did not frequently use physical punishment. This finding is consistent with results obtained in past research on Asian and local populations … This is contrary to the popular belief that Asian parents tend to use punitive disciplinary methods like physical punishment, given that Asian parenting is often described as authoritarian in Western-based literature … Not only was physical punishment infrequently used, it was also deemed to be an ineffective discipline method by parents. Children, however, were neutral about the effectiveness of physical punishment.[79]

It was noted that the study showed that children rated telling a child that he or she is not loved to be an unfair disciplinary practice, while physical punishment was deemed to be neither fair nor unfair. In terms of effectiveness of this practice, both parents and children considered telling a child that he or she is not loved to be less effective than the use of physical punishment. Not surprisingly, it also found that the more frequently a child misbehaved, the more likely it was for parents to use more power-assertive methods of discipline, including physical punishment.

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[76] Chan *et al.*, "Does Professional and Public Opinion in Child Abuse Differ? An Issue of Cross-Cultural Policy Implementation" (2002) 11 Child Abuse Review 359 at 363.

[77] Shum-Cheung, Hawkins & Lim, *supra* note 13.

[78] *Ibid*. at 11.

[79] *Ibid*. at 23-24.

B. *Suggested Reform to the* CYPA *Provisions on Ill-Treatment*

While the next section below suggests how the court should be guided in the interpretation of the current provisions, the best approach is reform to the law. The latest review of the *CYPA* should have considered including the requirement of significant or serious harm for the wide range of injury types. The scope of injury to a child's development without the condition of significant detriment is so wide that it could cover a case of a child witnessing his parents' frequent quarrels, or being exposed to second-hand smoke emitted by smoker parents; or of a child whose parent suffered from some symptoms of depression. The need to restrict the scope is made even greater when the provisions are viewed in the light of Parliament's intention to provide intervention for emotional and psychological abuse, where "abuse" connotes more serious and derogatory behaviour.[80]

Reform should also have considered delinking the culpability requirements for criminal ill-treatment from ill-treatment that justifies care orders. Presently, the width of the current provisions necessitates a more circumspect interpretation of the current provisions. They should be read in a more child-oriented way when the court considers whether a child is in need of care and protection; it should look at the impact of the caregiver or parent's acts on the child rather than the intention of the caregiver, but ensure that the orders made are commensurate with the kind, gravity, degree and imminence of the danger of harm. As argued above, the harm must be at least significant before any intervention can be considered. However, under the current provisions, the intention of the parent remains relevant to whether acts cause harm to the child.

It is easy to fall into the fallacy that it is better to intervene as it is 'better safe than sorry'.[81] This view fails to take into account the harm that could ensue from separating a child from her parents to whom she is attached. It is not necessarily 'safer' to intervene than not intervene. This adage is inapplicable in this context. The U.K. Supreme Court has warned:

> As to the test, it is not enough that the social workers, the experts or the court think that a child would be better off living with another family. That would be social engineering of a kind which is not permitted in a democratic society. The jurisprudence of the European Court of Human Rights requires that there be a "pressing social need" for intervention and that the intervention be proportionate to that need. Before the court can consider what would be best for the child, therefore, section 31(2) of the 1989 [Children] Act requires that it be satisfied of the so-called "threshold conditions"…Social workers are the detectives. They amass a great deal of information about a child and his family. They assess risk factors. They devise plans. They put the evidence which they have assembled before a court and ask for an order … The court subjects the evidence of the local authority to critical scrutiny, finds what the facts are, makes predictions based upon the facts, and balances a range of considerations in deciding what will be

[80] See discussion on public perceptions of this term in the first paragraph of Part V section A above.

[81] Social scientists have taken this view: see Chan *et al.*, *supra* note 76 at 364: "While some have argued that it is better to err on the side of protection, we argue that this in itself is a violation not only of the parents' rights but also of the child's right."

> best for the child. We should no more expect every case which a local authority brings to court to result in an order than we should expect every prosecution brought by the CPS to result in a conviction. The standard of proof may be different, but the roles of the social workers and the prosecutors are similar. They bring to court those cases where there is a good case to answer. It is for the court to decide whether the case is made out.[82]

C. *Suggested Approach to Interpretation of the Current* CYPA *Provisions*

The 2011 amendments have moved towards greater empowerment of the state to intervene by assessment and removal. Yet no change has been made to qualify the broad definitions and range of harm which activate intervention. In fact, the Minister for Community Development, Youth and Sports affirmed that almost anything that affects a child could be emotional and psychological abuse:

> There have also been questions of what constitutes emotional and psychological abuse. I know that is difficult to define easily but, again, I would go on a practical basis and I think that anything that causes damage to the behavioural, social, cognitive, affective or physical functioning of a child, including things like terrorising a child, rejecting or degrading a child, isolating, exploiting or corrupting a child would constitute emotional or physical abuse.[83]

With respect, this response does not address the concerns raised by Members of Parliament, which are that the potential breadth and pliability of the definition of emotional and psychological abuse will include too many cases, including those which are inappropriate for state intervention.

Until the current provisions are reviewed, as argued above, it is submitted that the court should be guided by clearer principles suggested below. The framework suggested takes on this structure: a 'blunt instrument' of intervention is appropriate in cases of physical and sexual abuse but the 'light touch' should be used in cases of emotional injury. Full measures of state intervention are more appropriate in cases involving more extreme acts causing serious harm that requires medical treatment and cases involving sexual abuse. In such cases where there is sufficient evidence of physical or sexual abuse, an investigation should be conducted and the removal of the child for assessment is justifiable. But cases falling short of such abuse fall within the 'thick grey line', where there should not be any harsh intervention, such as removing the child from her parents, even if for a temporary period of time. Instead, because these cases usually involve emotional injury and a risk of significant harm only in the long term, there is less urgency to remove the child immediately. The 'lightest touch' such as a conversation between child protection officers and parents may sometimes be appropriate and sufficient. Public education should be the main means to manage issues in the grey. Cases where parents themselves seek state intervention and assistance are excluded from this reasoning.

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[82] *Re S-B*, *supra* note 18 at paras. 7, 18-19.

[83] Sing., *Parliamentary Debates*, vol. 87 (10 January 2010).

The paramount consideration in care proceedings is the welfare of the child.[84] It is suggested that in pursuing the child's welfare, the court applying the current *CYPA* provisions in care proceedings involving ill-treatment should consider the following.

1. *Respect and support parents' responsibility*

The first principle to bear in mind is that the law places the primary responsibility of raising children on the parents. Article 9 of the *UNCRC* provides that children have a right not to be separated from their parents. Article 5 of the *UNCRC* provides that the state shall respect the responsibilities, rights and duties of parents to provide appropriate direction and guidance to the child. Respecting the responsibilities of parents necessitates giving parents sufficient room to attend to their children in the way they think best. This entails resisting the urge to judge and condemn too quickly a parenting method in the 'thick grey line'.

2. *Appropriate measures*

The second principle is to consider the measures that are commensurate with the alleged abusive behaviour. The definition of ill-treatment which triggers all sorts of intervention measures is currently very wide. Not every type of behaviour notionally falling within the definition merits the same legal response. It is submitted that the measures taken to protect a child should be commensurate with the following:

1. The kind of harm alleged to have been suffered
2. The gravity of harm alleged to have been suffered
3. The degree of risk that the child will suffer the harm
4. The imminence of the danger of harm

In *ABV*, the measure endorsed by the lower court—the removal of the child—was harsh. It was not commensurate with the type, gravity, degree of risk and imminence of danger of harm. The facts did not involve physical abuse or sexual abuse but a possible risk of psychological harm to the child in the future. The harm did not appear to be serious or imminent. The High Court believed that a 'light touch' would be the more appropriate step to take, that is, to pursue counselling support for the parents and require the child's development to be assessed and monitored in a non-intrusive manner. In this case, intervention was called for, but of a less drastic nature.

It is submitted that generally, if specific circumstances suggest a somewhat 'extreme' method of parenting or discipline short of physical or sexual abuse but possessing a risk of significant harm, the first order made should still not be the removal of the child but possibly an order for assessment and counselling for the parent and child. The case can be reviewed by the court and only if necessary should

[84] *Children and Young Persons (Amendment) Bill*, *supra* note 4 amends the *CYPA* by inserting the following:

> 3A. The following principles apply for the purposes of this Act:
>
> …
>
> (b) in all matters relating to the administration or application of this Act, the welfare and best interests of the child or young person shall be the first and paramount consideration.

the next measure be taken. It is observed that in introducing the changes which widened the scope of ill-treatment under the *CYPA* in 2001, the Minister suggested that intervention in the form of "assessment" may be carried out as a check for abuse and it was not intended that separating the child from her parents would be the usual measure taken in cases of emotional abuse. The ultimate aim is for the child to be brought up in her own family and no unnecessary step should be taken which may jeopardise this aim.

3. *Closeness of relationship*

The factors above should be balanced also with the strength of emotional attachment to the parent. The court should direct its mind to the potential harm to the child from the sudden loss of this close relationship with her parent.

Where a case does not involve sexual or physical abuse of the type described earlier, a court considering drastic intervention involving the removal of the child must at the very least conscientiously balance the closeness of relationship between the parent and child against the behaviour alleged to be "ill-treatment". Where the relationship is not a close one, or where the parent is an absent one (such as in cases where neglect constitutes the substance of the ill-treatment), there is less risk of harm to the child if the child is removed from the parent. In contrast, in cases involving sufficient evidence of sexual abuse, the need to remove the child is a strong one even if there is an attachment between the child and the parent (the allegedly abusive parent or the other parent). The immediate risk of danger may outweigh the risk of harm arising from separating the child from her parents.

It is submitted that the error of the lower court in *ABV* began with its failure to give due consideration to the close relationship shared between the child and her mother and how the loss of this close relationship might affect the child. The risk of harm to the child's development must be balanced against the risk of harm to the child when she is separated from her mother. A child has, under the *UNCRC*, the right to live with her parents unless this is deemed to be incompatible with the child's best interest.[85] This is the minimum the court must do in applying the welfare principle. In *ABV*, E had been in the care of the mother since she was a baby and her development had been normal enough that the *amicus curiae* found that she had become a rather mature and independent seven-year-old child. The court found that she shared a close relationship with her mother. There was no allegation of physical or sexual abuse or neglect.

However, because of the allegations of the CPS, the court should be alert in safeguarding the welfare of the child. In the circumstances, the mother in *ABV* should undergo counselling and assessment and the child should continue to be assessed by an independent professional. Further, an order for mandatory assessment and counselling is appropriate in this case because the mother had, by her own actions, brought her child's issues into the public sphere by numerous confrontations with the child's school principal and teachers. Counselling may be presented as a route to resolving these confrontations and tensions between her and the school and hence

[85] See Ministry of Community Development, Youth and Sports, *Second and Third Periodic Report to the United Nations Committee on the Rights of the Child*, *supra* note 75 at 50, para. 3; see also Article 9 of the *UNCRC*.

can be considered a 'light touch' measure. The mother may be overbearing, overly protective, overly controlling and excessively preoccupied with every aspect of the child's life, but she may not be ill-treating her child despite her actions. Orders for counselling and parenting programmes may be required to ensure that she does not cross the line to seriously harming the development of the child. They are less dire orders but still effective steps that serve the child's welfare at that stage.

4. *The child's views*

The child's right to express her opinion is not provided for in the *CYPA*. Further, there is no 'child advocate' in the family justice system through whom the child can voice her views. If appointed, the *amicus curiae*'s role is closest to the functions performed by a child advocate where she is allowed to interview the child. A Court-Appointed Counsel ("CAC") may sometimes be appointed to take on a role similar to the *amicus curiae* in selected high conflict custody cases in the Family Court. It is understood that very few are appointed each year. Even then, the *amicus curiae* and CAC are not the child's advocate or lawyer but are neutral parties who assist the court with their legal expertise and experience in the particular area.

Article 12 of the *UNCRC* provides that the state should respect the child capable of forming her view and respect her right to express her views. She should be given the opportunity to be heard in any judicial or administrative proceedings affecting her; her views should be given due weight in accordance with her age and maturity. A court hearing care applications ought to respect this right of the child and incorporate it as an important factor in its search for an arrangement that serves the child's welfare.

Without any specific laws providing for consideration of the child's views in care proceedings, the court should not forget to direct its mind to ensuring that the child's views have been sought and presented in ways it thinks appropriate. Section 49(5) of the *CYPA* obliges the court making care orders to

> treat the welfare of the child or young person as the paramount consideration and…endeavour to obtain such information as to the family background, general conduct, home surroundings, school record, medical history and state of development of the child or young person as may enable the Court to deal with the case in the best interests of the child or young person.

A judge can require the child's views to be sought to enable her to deal with the case in the child's best interests.

VI. Conclusion

Media reports on specific cases of abuse and harm tend to have the effect of raising doubts on whether the state has done enough to protect children. In Singapore, *The Straits Times* recently headlined an article "Govt wants better safety net for abused kids" which reported that "a wide ranging review will assess the way the Child Protection Service (CPS) investigate[s], intervenes and finally, terminates cases of violence against children".[86] It explained that the exercise "was meant to assess the

[86] *The Straits Times* (16 June 2010).

adequacy and robustness of the system in protecting children" and noted that the manual on the Management of Child Abuse in Singapore was last reviewed recently in 2007 and 2008 and that enhancements to the child protection system were also made in the mid-1990s. The report hinted that the move came after the reports of the case of a father who abused his daughter after serving time for molest:

> The CPS hit the headlines … after the so-called Monster Dad case. It involved a man who had been sent to jail for molesting his daughter and wound up being allowed to return home after serving his sentence, and began abusing her again later … When asked if the review was being carried out in response to the case, the MCYS said only that it is "part of the regular effort to take stock of the current protocols and areas for enhancement".[87]

In England, the death of Victoria Climbie caused ripples to the system of public care of children in England.[88] The changes introduced as a response to the Laming Report on the death of Victoria Climbie have been argued to introduce a "preventive-surveillance" state where the changes will reorder the relationship between children, parents, professionals and the state and affect the civil liberties and human rights of citizens, particularly children and parents, resulting from the increased power vested in professionals to intervene early in childhood.[89] This grates against the principle of non-intervention.[90] The current growing awareness to protect children should not be allowed to breed an intrusive surveillance-centred climate which may threaten the child's right to be raised by her parents without interference and not to "be separated from his or her parents against their will".[91] A case similar to Victoria Climbie's would have been caught within the abuse markers suggested for Singapore, and the suggestion here is not to say that such abuse cases should be left alone. On the contrary, it is clear that such extreme physical abuse should trigger drastic intervention measures.

The move in European countries to prohibit the use of any corporal punishment on children also puts pressure on countries eager to protect children to follow suit. Sweden was the first country to outlaw corporal punishment of children in 1979; twenty-five countries have anti-spanking statutes, with Brazil moving to be the next.[92] Instead of being hard-pressed to adopt the same position, Singapore can view these moves as indications that there are other effective methods of discipline than the use of corporal punishment and educate the public accordingly.

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[87] *Ibid.*

[88] See House of Commons Health Committee, *The Victoria Climbie Inquiry Report*, Sixth Report of Session 2002-03 (London: The Stationery Office, 25 June 2003).

[89] Nigel Parton, "The 'Change for Children' Programme in England: Towards the 'Preventive-Surveillance State'" (2008) 35:1 J.L. & Soc'y 166.

[90] Masson notes that the English *Children Act*:

> was intended to establish a balance between the family and the state which reflected community views about the need for child protection and for supported families … Courts would only allow compulsory intervention where the prospect of harm to a child warranted action and where the child's best interests dictated that intervention. Care proceedings would be a last resort.

Judith Masson, "The State as a Parent: The Reluctant Parent? The Problems of Parents of Last Resort" (2008) 35:1 J.L. & Soc'y 52 at 54.

[91] Article 9 of the *UNCRC*.

[92] *The Straits Times* (26 July 2010) B12.

Re L (Care: Threshold Criteria)[93] has pointed out that there will be children flourishing in loving and stable homes, and children who will grow up with defective parenting. But the state cannot shoulder the consequences of human imperfections and fallible humanity.

The Minister for Community Development, Youth and Sports recognised the difficulties in the quest for optimal intervention:

> [S]ometimes we will have to achieve a difficult balance—a balance between fairness, due process, the rights of the parents versus the real danger and risk of neglect or harm to children. We have to get the balance right. I, as the Minister for MCYS, would confess to having a bias and, if in doubt, I would rather err on the side of safety for children.[94]

The Minister chose to advocate a law which intensified the state's powers of intervention, relying on the belief that it is better to err on the side of safety. But where what is 'safe' is not clear, excessive intervention is a danger in itself which children must be protected against. What is optimal intervention where a blunt instrument may be used in a most delicate relationship is admittedly difficult. What we must guard against is being overzealous and excessively paternalistic in condemning parenting behaviour and seek instead to focus on the welfare of the child, who is entitled to be raised and nurtured by her own parents, for which there is no equal substitute.

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[93] *Supra* note 39.
[94] Sing., *Parliamentary Debates*, vol. 87 (10 January 2010).