

THE WOMEN'S CHARTER

The Singapore 'Women's Charter,' which is now in bill form, represents a significant attempt at legislation in the field of domestic relations. It is notable for its comprehensive view of women's rights in a changing society, and for its avowed purpose of achieving some degree of parity of the sexes in a predominantly man's world. It provides for the solemnization and registration of monogamous marriages and amends and consolidates the law relating to divorce, the rights and duties of married persons, the maintenance of wives and children and the punishment of offences against women and girls.

The most striking feature of the Charter lies in the introduction of monogamy into a community which by religion, custom and usage has always given recognition to polygamous marriages. It prevents any person who is already lawfully married under any religion, custom or usage from contracting a further marriage during the continuance of the existing marriage or marriages. Polygamous marriages prior to 2nd March, 1960 remain valid, while monogamous marriages are only allowed thereafter. This is aimed at protecting the integrity of the family unit which is the foundation of our society. However, an exception is made for persons married under the Muslims Ordinance, 1957, who are excluded from the operation of this part of the charter.¹

Parts II - V of the Charter deal with the topic of monogamous marriages and the machinery for their implementation. Apart from the exclusion of Muslims from this scheme of things, another notable feature lies in section 20 which enables any person who objects to the issue of a marriage certificate to file a caveat, but should his action be found frivolous and vexatious, not only is he penalised by having to pay the costs of all proceedings in relation thereto, but he is also exposed to an action for damages. The query here is that should the aggrieved party decide to open proceedings for damages, how are they to be instituted? Under which cause of action should they be contained?

Part VI deals with the rights and duties of married persons and in the main, it re-enacts the provisions of the Married Women's Property Ordinance.² Section 45 is new and it sets out in general terms the rights and duties of husband and wife. Section 45(4) invites speculation. It reads:

"The husband and the wife shall have equal rights in the running of the matrimonial household and in the ownership and management of the family properties."

1. Section 3(2) of the charter reads, "Parts II to VI and Part IX of this Ordinance shall not apply to any person who is married under, or to any marriage solemnized or registered under the provisions of the Muslims Ordinance, 1957."

An argument that may be advanced for this exception is that the Qur'an sanctions polygamy and therefore the legislature should not impose conditions to the contrary. It is submitted that such an argument is wholly untenable because Hindus who are allowed by their religion to practise polygamy and the Chinese by custom and usage, are in exactly the same position as Muslims: and logic decrees that if Muslims are to be exempted so should the others. The aim of the charter is to abolish polygamy and its attendant social defects. It is meant to protect all women, and as such the exclusion of Muslim women from the operation of the charter can only be justified if they are not in need of such protection. But this is not borne out by the facts as is seen in the frequent abuses arising from the practice of polygamy. The exception so made militates against Muslim women and is irrational and unjust. It is paradoxical that while on one hand programmes are being initiated for the betterment of the living conditions of Malays — a responsibility of the Singapore Government by virtue of the preamble to the Singapore (Constitution) Order in Council, 1958. — on the other hand, we have a perpetuation of one of the root causes of static social and economic conditions. One might justifiably suspect that this discrimination is motivated by political rather than social considerations.

2. Part VI has no application to Muslims but the rights and duties set out there are substantially similar to ss.48-57 of the Muslims Ordinance, 1957.

Here is a general declaration of right, but how is it to be enforced? A declaration of right presupposes the existence of machinery for its enforcement and should this be absent, abstract declarations of rights are mere empty verbal formulae.

Part VII deals with the maintenance of wives and children and re-enacts the provisions of the Married Women and Children (Maintenance) Ordinance, with however the important modifications contained in section 62. This section gives a married woman a right to maintenance in a wider variety of circumstances than was previously enjoyed.

Part VIII deals with the enforcement of maintenance orders and in the main re-enacts the provisions of the Maintenance (Facilities for Enforcement) Ordinance, 1959. The provisions of this part are also made applicable to maintenance orders made in divorce proceedings.

Part IX deals with divorce and in the main re-enacts the provisions of the Divorce Ordinance. A notable amendment lies in the extension of the jurisdiction of the court to entertain petitions for divorce by a wife and to prevent the recurrence of situations like *Charnley v. Charnley*.³ This amendment brings the law in line with the latest amendment in the Federation of Malaya Divorce Ordinance.

Part X embodies the anti-vice provisions of the Charter and is aimed at stamping out traffic in women and girls. It re-enacts with amendments the provisions of the Women and Girls Protection Ordinance. The amendments are directed at securing more convictions by eliminating the technical shortcomings which abounded in the old ordinance. The new definition of "brothel" is illustrative of this. The High Court case of *Michi v. R.*⁴ made it clear that under the original definition of brothel, it was impossible to obtain a successful prosecution against a brothel operator who had let rooms in his house to individual prostitutes, for the law required proof that each room was used by two or more prostitutes at the same time before the premises could answer in law to the description of a brothel. Proof of a solitary instance of user by two or more women or girls was insufficient. However, under the new definition,⁵ the premises become a brothel once it is occupied or used by any two or more women whether at the same time or at different times for the purpose of prostitution. Section 133(2) imposes the burden of proof on a tenant, lessee or occupier charged with allowing his premises to be used as a brothel, to show that he has no knowledge that his premises were being so used. Previously, the burden rested on the prosecution. This transfer of the onus of proof has been deemed necessary to facilitate the procurement of convictions.

Section 128(4) is also noteworthy for it gives rise to several interesting questions in the sphere of criminal law. It abolishes the defence of a *bona fide* mistake of fact to a charge of an offence under section 128(1)(j) viz. having carnal connection with any girl under the age of 16 years except by way of marriage. This defence is provided by section 79 of the Penal Code which states,

"Nothing is an offence which is done by any person . . . who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it."

3. (1960) 26 M.L.J. 29.

4. (1931) 3 M.L.J. 11; [1934] S.S.L.R. 187. See also *Teoh Siew Lean v. P.P.* (1958) 24 M.L.J. 145.

5. The new definition was introduced by Ordinance 14 of 1960 which amended the Women and Girls Protection Ordinance. However, the whole Ordinance with the amendments is re-enacted in the charter with certain modifications.

The protection afforded by this section is extended by virtue of a number of decisions⁶ to offences outside the Penal Code. The abolition of this defence has the salutary effect of whittling down the sphere of operation of the highly unsatisfactory case of *Abdullah v. Regina*⁷ where the Court of Criminal Appeal by a majority held that, upon a charge of rape under section 375 of the Penal Code, a *bona fide* belief that the girl was over 16 years of age was a good defence. It is to be noted that the age referred to is 16 years whereas the relevant age under section 375 is 14 years. The reason is that having carnal knowledge of a girl under 16 years is an offence under the Women and Girls Protection Ordinance, now section 128(l)(j) of the Charter, and as such a *bona fide* belief that the girl was over 14 years of age would fail to operate as a defence since the accused would in no wise be "justified by law." Section 128(l)(j) is also silent on the point of consent, whereas consent is a complete defence to a charge of rape except where the girl is under 14 years of age. This difference therefore makes it more profitable to prosecute under the Charter than the Penal Code in the case of young girls as (a) the age limit is higher, (6) consent does not operate as a defence and (c) having reasonable cause to believe the girl is over 16 years of age is no defence. However, on the last score, an exception is made in the case of a man under 24 years, upon the first occasion on which he is charged with such an offence. Presumably, it is thought that a man under that age is insufficiently mature to appreciate the legal implications of his act.

With the exception of the enigma surrounding the exclusion of Muslims from the operation of a vital part of its provisions, the Charter is a commendable piece of legislation which marks the beginning of much needed social reform.

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6. *P.P. v. Chin Kiang Yin* (1956) 22 M.L.J. 217. where Thompson J. held that ss.76-106 of the Penal Code referred to *exceptions* and not *excuses* and that consequently no act that came within their scope would ever be an offence at all. In *Arumugam & Anor. v. Rex* (1947) 13 M.L.J. 45, a defence of mistake under section 79 was allowed to a charge under the Food Control Order.
7. (1954) 20 M.L.J. 195.