

MAINTENANCE PROCEEDINGS IN SINGAPORE AND THE REPORT OF THE COMMITTEE ON CRIME AND DELINQUENCY: SOME OBSERVATIONS

INTRODUCTION

Maintenance proceedings too have apparently not escaped the attention of the Committee on Crime and Delinquency. The report of the Committee, which was presented to the Minister for Health and Home Affairs in January, 1974, and published in August of the same year, includes comments on the service of maintenance summonses on husbands, attachment orders against earnings and proof of husbands' means to pay maintenance. These comments are coupled with a recommendation for a "reappraisal of the procedure for a more effective enforcement of a maintenance order in favour of the wife and child".¹

The Committee on Crime and Delinquency was appointed by the Minister on the 14th February, 1973, with the following terms of reference:

- a) To examine the incidence and nature of crime and delinquency among young offenders in Singapore and to determine the major causative factors;
- b) To review and recommend effective measures for the prevention of juvenile delinquency and the treatment of such delinquents.

The Committee found that there has been an increase in both the volume and incidence of crime and delinquency in Singapore during the 5-year period 1968 to 1972. The Committee's proposals for immediate measures to curb crime and delinquency are summarised in its report under 2 main categories:

- (1) *Specific Measures*, including the creation of a Youth Guidance and Employment Board, a Youth Advisory Bureau and child guidance clinics.
- (2) *General Measures*, stated under several headings — "School", "Society", "Crime Prevention Service", and other measures related to various aspects of re-habilitation.

It is under the heading "Society" that the comments and recommendations as regards maintenance proceedings have been made.

It is difficult to appreciate why a committee that was inquiring into crime and delinquency should concern itself with the subject of

1. See *Report of the Committee on Crime and Delinquency*, Singapore, 1974, pp. 6, 28 and 29.

maintenance and maintenance orders, particularly in view of the Committee's surprise finding that "contrary to popular belief, the delinquent comes from a normal home and not from one dislocated either through divorce, desertion, separation or death or from whatever cause". Maintenance proceedings are almost invariably between spouses whose conduct threatens to break up the family or who have created a broken home which has traditionally been associated with juvenile delinquency.

But perhaps the Committee's findings that to a great extent juvenile delinquency and young adult crime are related to persons of the same poor socio-economic background and who, for a number of reasons, have dropped out of the school system, may justify such observations. In this respect, any factor which enhances poverty or which helps to establish a poor socio-economic background, as the failure of the husband to provide for his wife and children does, may thus be relevant.

The purpose of this paper is to examine some aspects of maintenance proceedings in the Subordinate Courts in the light of the Committee's observations and recommendations.

PROCEDURE FOR OBTAINING MAINTENANCE

In the absence of any private arrangement between the parties, a wife or guardian is able to obtain maintenance from the husband or father by recourse to public authorities in one of three ways:

- (1) Where, after mediation by officers of the Social Welfare Department, the husband consents to pay an agreed sum for the maintenance of his wife and children through the Social Welfare Department. If the husband fails to keep his promise to pay to the Director of Social Welfare, or makes frequent default, the Director will advise the wife or guardian to proceed to a Magistrate's Court to apply for a maintenance order. Legal aid is readily available in maintenance proceedings.
 - (2) Where, at the conclusion of matrimonial proceedings in the High Court, the court makes an order for the payment of maintenance.
 - (3) Where a Magistrate's Court orders the husband to pay maintenance, either by consent of the parties or after trial. Any *married woman*² may apply to a District or Magistrate's Court where her *husband* has been convicted of any offence affecting the human body under Chapter XVI of the Penal Code against her or any of her children, has deserted her, has neglected to provide reasonable maintenance for her and her children whom he is liable to maintain, has treated her or any of her children with cruelty, is a habitual drunkard, or is living in adultery with another woman.
2. In order to succeed in obtaining a maintenance order for herself in a subordinate court, under section 60(1) of the Women's Charter, 1970 Ed., Cap. 47, a woman must establish that she is the wife of the defendant and that there is still in existence a valid marriage. Once the marriage is dissolved the defendant may apply for the order to be rescinded.

On due proof thereof, the court may order the husband to make a monthly allowance for her maintenance "in proportion to his means as to the court seems reasonable". Section 60(2) of the Women's Charter also empowers a court to order any person neglecting or refusing to maintain his legitimate or illegitimate child, that is "unable to maintain itself", to pay a monthly allowance for the maintenance of such a child.

Following a breakdown in matrimonial relations, a wife is able to apply immediately to a Magistrate's Court for maintenance in a speedy, inexpensive and simple procedure. On an application being made to a Magistrate, a maintenance summons is immediately issued.

SERVICE OF MAINTENANCE SUMMONSES

The Committee makes the point that the wife is "obliged under the law to take up a summons against the husband and to accompany a Process Server to have the summons served", and that "where the husband is evasive, it becomes a tedious process in trying to locate him".

Compelling attendance before a court of law is not a problem particular to wives seeking maintenance. It is a task that is faced by every party that resorts to a court of law to seek redress or the issuance of any process, including the State and a husband who seeks to rescind or vary a maintenance order. The task of effecting service in maintenance summonses is not as great as it has been made out to be, especially because a wife has knowledge of the husband's place of work and places that he frequents, and in this regard may know more places where service of the summons can be effected than even the State would.

The Committee's comment gives the erroneous impression that service of a maintenance summons on the husband is particularly difficult because personal service of the summons on the husband is mandatory, and that husbands are evasive.

It is of course desirable that a summons be personally served on the defendant, and, if such personal service is practicable, it ought to be served on him by showing him the original summons and by tendering or delivering to him a copy thereof. But where the defendant cannot, by the exercise of due diligence, be found, section 42(4) of the Criminal Procedure Code (Cap. 113) permits the summons to be served by leaving a copy of it with some adult member of his family or with his servant residing with him. If the defendant cannot be found by the exercise of due diligence and service cannot be effected as earlier mentioned, or if he is evading service, a court order may be obtained, under section 43 of the Criminal Procedure Code, to paste a copy of the summons on some conspicuous part of the defendant's house or place in which he ordinarily resides. Such an order for substituted service under the Code will not result in the wife incurring any costs. Indeed, an order for pasting the summons is often made by a Magistrate on being informed of the attempts at personal service by the summons clerk and without any application from the wife. After two unsuccessful attempts at service, permission is granted by the Magistrate to paste the summons on the defendant's house.

If the defendant does not appear in court in response to the summons, he may be arrested on a warrant of arrest. The court is also empowered, by section 53 of the Criminal Procedure Code, to issue a warrant of arrest, either before the issue of the summons or after the issue but before the time fixed for his appearance in court, if the court "sees reason to believe that he has absconded or will not obey the summons".

STATISTICS ³

Table 1: Maintenance Summonses Issued and Served

Year	No. of complaints sworn*	No. of summonses Issued	No. with- drawn before service	No. of summonses served	No. of summonses unserved	No. of summonses struck off in court
1971	1,203	1,281	20	(83.9%) 1,058	(16.1%) 203	282**
1972	1,110	1,154	31	(81.3%) 913	(18.7%) 210	374
1973	1,074	1,114	19	(86.2%) 895	(13.8%) 200	393
1974 (as at 31.8.74)	694	784	28	(88.1%) 666	(11.9%) 90	217
Total	4,081	4,333	98	(83.4%) 3,532	(16.6%) 703	1,266

* Number of complaints sworn will always be less than the number of summonses issued as one complaint may be sworn for 2 enforcement summonses e.g. for commitment and attachment of earnings against the same defendant.

** Estimated figure as records for 1971 from one Magistrate's court were not available.

As can be seen from Tables 1 to 3, available statistics seem to suggest that it is not *service* of maintenance summonses, but *compelling attendance* before the court, that presents difficulties to complainants. Of 4,325 summonses released for service during the period from 1st January, 1971, to 31st August 1974, 703 or 16.6% of the summonses remained unserved. However, the percentage of unserved summonses has *declined* steadily from 18.7% in 1972 to 13.8% in 1973 and 11.9% in 1974.

A further examination of the 500 unserved summonses between 1st January 1972 and 31st August, 1974 — see Table 2 — revealed that in 58.7% of these, no attempt at all was made by the complainants to effect service as they were absent on the appointed date for service and have not returned to court. This was probably due to the fact that in a large number of these cases a reconciliation was effected or a maintenance settlement was reached before service of the summonses.

3. These statistics were compiled from those gathered by the summons clerk in the subordinate courts, Mr. Tham Pak Leng, to whom I am grateful.

Only in 9.1% (57) of the 500 unserved summonses were 2 attempts at service made, and non-service of all these summonses cannot be attributed to avoidance of service by husbands. At any rate, complainants in respect of all these unserved summonses, apart from the 34 which are still pending, have not been heard of again. This may again be due to the fact that either a settlement out of court has been reached or the complainants have been discouraged from seeking the process of the court by the inability to serve the summonses.

Table 2: Unserved Maintenance Summonses

Year	1972	1973	1974	Total
No. of summonses where complainants were absent on appointed date for service	121 (57.7%)	122 (61%)	51 (51.1%)	294 (58.7%)
No. of summonses where one attempt at service was made	65 (30.9%)	62 (31%)	34* (37.8%)	161 (32.2%)
No. of summonses where two attempts at service were made	24 (11.4%)	23 (8%)	10 (11.1%)	57 (9.1%)
Total	210	200	90	500

* Summonses still pending service. In all other summonses complainants have not been heard of again.

However, there has been a steady increase in the rate of absence from court by the defendants: 9.4% in 1971, 13.5% in 1972, 16.7% in 1973 and 18.9% in 1974. The difficulties of complainants in compelling attendance are enhanced by the fact that warrants of arrest issued in maintenance proceedings are not executed by the police as speedily as they should be. As shown in Table 3, a number of warrants of arrest issued in 1971 and 1972 are still awaiting execution. It is in the public interest that maintenance claims in particular should be heard and disposed of as soon as possible, but delay in the execution of warrants of arrest issued by the court will prevent speedy trials and remove the process of arrest as an effective deterrence against absence. This is a problem which should perhaps have been considered by the committee in its report to the Minister for Health and Home Affairs, whose Ministry is also in charge of the Police Force.

Table 3: Attendance in Maintenance Proceedings

Year	No. of defendants* served with summonses	No. present in court	No. absent in court	No. of warrants of arrest still pending
1971	980	888 (90.6%)	92 (9.4%)	14
1972	869	772 (86.5%)	97 (13.5%)	19
1973	855	712 (83.3%)	143 (16.7%)	28
1974 (as at 31.8.74)	576	460 (81.1%)	116 (18.9%)	67
Total	3280	2832 (86.3%)	448(13.7%)	128

* The number of defendants involved in maintenance proceedings who were served with summonses was calculated by deleting the no. of summonses withdrawn before service and unserved, from the no. of complaints sworn.

ENFORCEMENT OF MAINTENANCE ORDERS

The Committee has recommended “a reappraisal of the *procedure* for more effective enforcement of a maintenance order *in favour of the wife and child*”.⁴ The phrase “in favour of the wife and child” is of course redundant as a maintenance order can only be enforced in favour of the parties who have obtained it — the wife and child. The Committee was, however, unable to show any defect in respect of the *procedure* in the enforcement process which needs to be remedied.

It is hoped to demonstrate in this paper that some defects lie not in the *procedure* adopted in the enforcement process but in the *legislation* which governs such procedure.

A maintenance order which is not complied with can be enforced in three ways:-

- (1) By an application, under section 61 of the Women’s Charter, for an order directing the amount of maintenance due to be levied in the same manner provided by law for levying fines imposed by a Magistrate’s Court, i.e. by distress and sale of property or by sentencing the defaulter to a term of imprisonment.⁵
- (2) By an application, under section 61 of the Women’s Charter, for the defendant to be committed to prison for a term not exceeding one month for each month’s maintenance remaining unpaid.
- (3) By an application, under section 69 of the Women’s Charter, for an attachment of earnings order.

Enforcement summonses accounted for 45.5% of all summonses issued in maintenance proceedings in the subordinate courts between January 1971 and 31st August 1974.

Either enforcement application (1) or (2) and application (3) may be made if the defendant has neglected to comply with a maintenance order, and for every breach of the order. But it appears that in practice an applicant for an attachment of earnings order will have to show that the defendant has been in breach of the maintenance order on more than one occasion before he can succeed.

As can be seen from Table 4, applications for defendants to be committed to prison in default of payment of maintenance are the most popular of the enforcement applications as they appear to be the most effective enforcement method of compelling payment. Of 1,970 applications made for enforcement of maintenance orders between 1971 and August 1974, 1,687 or 85.6% of the applications were for commitment to prison and 283 or 14.4% of the applications were for attachment of earnings orders. A number of applicants may of course have applied

4. Emphasis added.

5. Section 214 of the Criminal Procedure Code, 1970 Ed., Cap. 113; see also *Chew Cheng Swee v. Chan Chye Neo* [1932] M.L.J. 5, C.A.

for both commitment and attachment at the same time. No applications were, however, received for the levy of distress to recover arrears of maintenance during the period of study.

Table 4: Enforcement Applications

Year	Total No. of maintenance summonses issued	Total No. of enforcement applications	No. of applications for commitment under s. 61	No. of applications for Levy of distress under s. 61	No. of applications for attachment of earnings orders
1971	1,281	591	495 (83.8%)	0	96 (16.2%)
1972	1,154	527	457 (86.7%)	0	70 (13.3%)
1973	1,114	474	431 (90.9%)	0	43 (9.1%)
1974 (as at 31.8.74)	784	378	304 (80.4%)	0	74 (19.6%)
Total	4,333	1,970	1,687 (85.6%)	0	283 (14.4%)

(a) *Applications for commitment*

Applications for enforcement summonses are made as easily as applications for maintenance summonses.

Upon receiving a complaint on oath, with sufficient particulars, that the defendant is in breach of the maintenance order, the court will issue a summons ordering the defendant to show cause why he should not be committed to prison in default of payment of maintenance. The amount of arrears that is considered by the court, and for which the defendant has to account for when he appears in court, is the amount actually outstanding on the date of the mention or hearing, and not that which was due when the application was made by the complainant. This helps to reduce the rate of enforcement summonses, as the necessity for a second action to recover arrears of maintenance between the time of application and hearing is removed.

Since all maintenance payments to wives are ordered to be paid "through the Executive Officer of the Magistrates' Court at Singapore", there is no difficulty in establishing the defendant's default of payment and the amount of arrears. Most applicants appear in court on the date of mention armed with an advice slip from the cashier stating the date of the last payment received and the amount of arrears. If this is challenged by the defendant, and this is done very rarely, the cashier can easily be called as a witness.

Problems, however, occur when wives encourage husbands to violate the court order to make payments into court by accepting various sums of money directly from the husbands. This often results in disputes in court as to the actual amount paid or received.

Where parties have resumed normal marital relations after the maintenance order has been made and have lived together for a certain period, the court will refuse to enforce the order for the period of the reconciliation. The maintenance order will be suspended during this period.⁶ It is believed that this will encourage husbands to return to their wives and children and to resume their marital and paternal responsibilities even after a maintenance order has been made. Every attempt is made by the court to effect a reconciliation between the parties, for in the final analysis there can never be a substitute for a husband or a loving father.

Although the court may commit the defendant to prison upon mere proof of neglect to comply with the maintenance order,⁷ it is reluctant to impose the final sanction of imprisonment as this will only result in making matters worse by removing the defaulter from gainful employment, unless of course it is clear that the defendant either has wilfully refused or culpably neglected to comply with the maintenance order. The requirement of either "wilful default" or "culpable neglect" before commitment is not provided for in the Women's Charter but has been established in practice. It is interesting to note that these requirements are essential pre-requisites for committal to prison in England.

A defendant is usually given time to pay up all arrears of maintenance within a given period, or his monthly maintenance payment is increased until all arrears are cleared. In either case a sentence of imprisonment in default of each payment is fixed and the defendant is informed of this. If he defaults again without any good reason he may forthwith be committed to prison. A defendant who has frequently been in default of payment may be required by the magistrate to appear before him every month to satisfy him that he has made the payment for that month.

(b) *Attachment of earnings orders*

Section 69 of the Women's Charter empowers a court to make a type of garnishment of earnings order, known as an attachment of earnings order, if the defendant neglects to comply with any maintenance order made by the court. The term "neglect" in section 69 has not been defined nor judicially considered. Does it import, for purposes of enforcement proceedings, considerations opposed to concepts of strict liability? Must there be persistent non-compliance with the maintenance order or is a single breach of the order sufficient to constitute neglect? In England, section 3 of the Attachment of Earnings Act of 1971 now permits an application for attachment, except by the defendant, to be made fifteen days after the making of the maintenance order if the

6. The power to make an order must include an inherent power of the court to suspend it. See also section 27(3) of the Interpretation Act, 1970 Ed., Cap. 3.

7. The term "neglect" appearing in sections 61 and 69 of the Women's Charter has not been defined, but in *Quek Ah Chian v. Ng Guan Ching* [1968] 1 M.L.J. 255, the Chief Justice held that before it can be said that a husband "has neglected to provide reasonable maintenance for the wife" (emphasis added) under section 62(1)(c) of the Charter, there must be proof of *culpable* omission on the part of the husband to maintain her.

defendant has failed to make “one or more payments”, but such failure must be due to the defendant’s wilful refusal or culpable neglect.

However, it is clear that an attachment of earnings order under the Women’s Charter may only be made if there is a *breach* of the maintenance order and then only in respect of the *arrears* in payment, although the present practice in the Subordinate Courts is to order an attachment order to continue to be in force even after the arrears have been paid.

The Committee has observed that “an attachment order against wages is not automatic and a wife has to apply for it”. A more significant observation would have been that a wife is not able to apply for an attachment of earnings order until and unless the defendant has neglected to comply with the maintenance order. She will also not succeed in her application unless at the time of hearing the defendant is in breach of the order and there are arrears of payment due to her. Thus, a defendant who seeks to frustrate his wife may withhold maintenance payments until she commences enforcement proceedings and serves a summons on him.

Similar limitations imposed by the Maintenance Orders Act of 1958 on the obtaining of an attachment order in England, must be viewed in the light of very strong opposition to the introduction of any attachment of earnings from both trade unions and employers who sought to uphold the policy that a wage earner must be guaranteed payment of his earnings clear of deductions.⁸ The opposing social policy that the employee’s family must be protected in the event of his failure to provide proper support from his earnings did not persuade the Royal Commission to recommend legislation on attachment orders.

But there seems to be no reason why we should impose similar restrictions on the availability of attachment orders. It is submitted that an attachment order should also be available to *prevent* a breach of the maintenance order where there is a likelihood of such breach, or to ensure that no arrears fall due under the order as a result of the defendant’s neglect or refusal to pay.

In my view, amendments to Part VIII of the Women’s Charter are necessary to empower a court to make an attachment order, without proof of default or neglect, at least in the following cases :-

- (1) Where the defendant applies for or consents to an attachment order being made either at the time of the making of the maintenance order or at any time thereafter.
- (2) Where the court has reason to believe, at the time of the making of the maintenance order or at any time thereafter, that the maintenance order may not be complied with, or that the defendant will continue to fall into arrears or breach the order. Such a power can well be used by the court where, for example,

8. The English Wages Attachment Abolition Act of 1870 in fact completely prohibited any attachment of wages. See O. Kahn-Freund, “Note on the Maintenance Orders Act, 1958”, 22 M.L.R. 175.

by his demeanour and conduct during the trial the defendant makes it clear that he will not comply with any maintenance order made by the court, or where he frequently falls into arrears in order to frustrate the complainant, or where service of summonses cannot be effected without unnecessary delay or expense.

Most respondents resist an attachment order on the ground that knowledge by their employers or colleagues of the maintenance order made against them will prove embarrassing. But there are at least two compelling reasons why the making of an attachment order is in the defendant's own interests:-

- (1) It saves him the inconvenience of having to go to court every month to make maintenance payments.
- (2) It ensures that the defendant never falls into arrears which may result in his being frequently taken to court on enforcement summonses, and in his having to pay a larger amount every month until the arrears are cleared or in being committed to prison in default of payment with consequent loss of earnings.

An attachment of earnings order may only be directed to a person "appearing to the court to be the defendant's employer",⁹ requiring him to deduct from the defendant's earnings an amount appearing to the court to be reasonable. Such an order, therefore, cannot be made where the defendant has no employer (for example, if he is self-employed or is an itinerant or casual worker), and the question of *enforcing* an attachment order against such a defendant, which troubled the Committee, does not arise.

In determining the quantum of deductions from the defendant's earnings, the court is required by section 70(2) of the Women's Charter to take into account the "resources and needs of the defendant and the needs of persons for whom he must or reasonably should provide". Unlike as in England, the court is not obliged to announce two figures: the protected earnings rate, which is the amount reasonable for the husband to retain having regard to his resources and needs, and the normal deduction rate, which is the amount reasonable to cover the husband's liability under the order. But it ought not to remove the incentive to work by depressing his earnings below subsistence level.¹⁰

The present provisions in the Women's Charter also contain no safeguards against moves by a defendant to frustrate an attachment of earnings order by changing jobs. An attachment order should be made to follow a defendant to his new job.¹¹ In practice this now occurs only if the defendant is a government employee. Although,

9. Section 68 of the Women's Charter defines an employer to mean "a person by whom, as a principal and not as a servant or agent, earnings fall to be paid to a defendant".
10. See note on "Subsistence Level" (1973) 137 *JP Jo.* 757 and authorities cited therein.
11. This has been achieved in England by the Attachment of Earnings Act, 1971.

pursuant to section 76(1) of the Women's Charter, an attachment order is addressed to the head of the employee's department, salary adjustments, deductions and payments in respect of the order are made by the Accountant-General. The attachment order is therefore unaffected even in the event that the defendant is transferred to another government department.

With a view to ensuring that, wherever possible, the attachment order is also able to follow the defendant to his new job in the private sector, it might be prudent to explore the following measures:

- (a) Impose on the defendant an obligation to inform the court of any changes in his employment and earnings, and upon his employer a similar obligation to notify the court of particulars of the defendant's new employment and earnings, if these are known.
- (b) Empower the court to re-direct an attachment order to a new employer without further process, if the court is satisfied that there has been no substantial decrease in the defendant's earnings.

These additional powers of the court will supplement those contained in section 73 of the Women's Charter which empowers the court, in proceedings relating to an attachment order, to order the defendant and his employer to furnish particulars of the defendant's employment and earnings.

(c) *Enforcement of High Court maintenance orders*

Another reform in the enforcement machinery is long overdue.

Maintenance orders for wives and children are often made by the High Court at the conclusion of divorce proceedings, but these orders can only be enforced in the High Court, as sections 61 and 69 of the Women's Charter expressly restrict the power to enforce the maintenance order to "only the court which made such order". Thus, where there is default of payment, the order cannot be enforced in the lower courts even if the wife prefers the speedy and inexpensive enforcement procedure in the subordinate courts which are more easily accessible.

Ironically, a maintenance order made in the High Court of England or in the High Courts of a number of Commonwealth countries may be enforced in the District Courts in Singapore "as if it had been originally obtained in the District Court", once it has been registered in the District Court under section 3 of the Reciprocal Enforcement of Maintenance Orders Act (Cap. 26).

Clearly, a very valuable new remedy would be given to wives and to guardians of children if the High Court maintenance orders that they have obtained could be registered and enforced in the lower courts. This has been demonstrated in England where a High Court order may be registered under the Maintenance Orders Act, 1958, and enforced in the Magistrates' Courts, although the additional power granted to these courts to vary the High Court order compels them to act as a

court of appeal over decisions of a superior court and is, therefore, unsatisfactory. Enforcement of all maintenance orders in the subordinate courts will also ensure consistency in enforcement procedure and policies.

PROOF OF MEANS TO PAY MAINTENANCE

An order against the defendant for the payment of maintenance to his wife and children must be for a monthly allowance which is "in proportion to his means as to the court seems reasonable".¹² It seems to be clear that it is upon the applicant to establish not only that the defendant is liable to pay maintenance under section 60 of the Women's Charter but that he has also the means to pay the amount of maintenance that is applied for.

The Committee is of the view that the fact that the wife has to prove her husband's means of income is an "inadequacy in the present legal provisions" and has especially recommended that the "onus of proof of the lack of income and the consequent inability to meet the order for maintenance should rest upon the husband".

But proving the defendant's income is not as onerous a task as the committee's comments seem to suggest. Indeed, the writer is not aware of any case where the applicant failed to succeed only because she could not prove her husband's income, although there may have been cases where the income of a self-employed defendant was probably more than even the wife was aware of. The problem posed by self-employed defendants will be considered later.

In practice, all that the wife need do is to give evidence as to the amount of money that the defendant previously contributed towards household expenses, the defendant's previous monthly financial commitments (for example, rent, hire-purchase payments), his occupation, and, if this is known, his last drawn salary. This will give a fair indication to the court, at the close of the complainant's case, of the amount of the defendant's earnings.

If the husband then refuses to give evidence the court may rely on the wife's assessment of the husband's earnings: *Wallis v. Wallis* [1941] 2 All E.R. 291. District Judges and Magistrates have never insisted on documentary proof of earnings.

Again, legal aid is readily available to indigent wives and the Legal Aid Bureau conducts inquiries through its investigators as to the defendant's means and represents wives in maintenance proceedings.¹³ Unrepresented wives are also aided by court clerks in obtaining a subpoena to compel employers to give evidence as to defendants' earnings.

12. Sections 60(1), 60(2) of the Women's Charter, Cap. 47. The term "means" includes capacity to earn: *Muni Kantivijayayi v. Bai Lilawati* (1932) I.L.R. Bom. 260.

13. Between 1971 and 1973 the Legal Aid Bureau granted legal aid and advice in 507 maintenance cases: *Annual Reports* of the Singapore Legal Aid Bureau (Singapore National Printers (Pte) Ltd.) for the years 1971 (p. 2), 1972 (p. 4) and 1973 (p. 4).

However, the Women's Charter needs to be amended to enable a court to obtain documentary proof of the defendant's earnings if it so desires. In England, difficulties in determining husbands' earnings were considerably removed by section 80 of the Magistrates' Courts Act, 1952, which allows a written statement of earnings from the defendant's employer to be admitted in evidence. In a high proportion of cases which now come before English magistrates the question is now not what the defendant's income is but what is the figure below which the husband's income cannot be reduced by the making of the order.¹⁴

Section 73 of the Women's Charter empowers a court, in attachment of earnings proceedings only, to order the defendant to furnish the court with a written statement of his earnings and the name and address of his employer. The defendant's employer may also be ordered to produce to the court a written statement of the defendant's earnings. It is an offence to fail to comply with a court order to produce the written statement or to make a statement falsely or recklessly.¹⁵ Such a statement of the defendant's earnings is admissible in evidence in attachment proceedings.

It is submitted that the ambit of section 73 should be extended to empower a court to order a written statement of earnings to be produced in *all* maintenance proceedings.

Reversal of the onus of proof of means

On the question of the reversal of the onus of proof of the husband's income, it is not clear from the brief comments of the Committee just how such a reversal will constitute a panacea for all the purported ills of the system.

How is the reversal to be achieved? If upon presumptions, upon what essential fact or facts can a court be required to make a reasonable presumption that the defendant has the means to pay maintenance to the applicant? That he is her husband or the father of her children? Or by the fact that an application for a particular amount of maintenance has been made? As realised by Australian legislators,¹⁶ the only order that can in fact be made upon proof of a ground of liability *simpliciter* is a nominal order for maintenance. But what a wife needs is not an order *per se*, but maintenance.

Any determination of the effectiveness of reversal of onus provisions must begin with a consideration of section 67 of the Women's Charter. Sub-section (1) of that section expressly provides that all applications in respect of maintenance in the subordinate courts "shall be made and heard in the same manner and in accordance with the same procedure as applications for summonses are made and heard under the provisions

14. Brian Harris, "A Wife's Worth" (1972) 136 *JP Jo.* 3; Note on "Subsistence Level" (1973) 137 *JP Jo.* 757.

15. The punishment for such an offence is imprisonment for a term not exceeding one year or a fine not exceeding \$1,000 or both (s. 77(1), Women's Charter, Cap. 47).

16. Victoria Maintenance Act, 1965, s. 18.

of the Criminal Procedure Code". Maintenance proceedings although civil in substance are, therefore, criminal proceedings in form: *Haji Ahmad v. Sadah* [1954] M.L.J. 101.

Reversal of onus provisions in criminal cases present little difficulty, for even if the defendant remains silent when the defence is called, the defendant can be convicted and sentenced. But how is a court in maintenance proceedings to make a proper determination as to the *quantum* of maintenance if the defendant elects not to give evidence and the complainant has relied on reversal provisions which have sought to place the burden upon the defendant? Does a maintenance order made under such circumstances lend itself to subsequent enforcement? The insistence on reversal provisions in maintenance proceedings ignores the crucial point that maintenance decisions can only be as good as the *actual information* on which they are based.

Hasty maintenance decisions, made without proper verification of the husband's means and on the basis of presumptions and reversal provisions, will only result in more defaulters and prison committals. If the defendant is sent to prison his wife will suffer the consequences, which include the following:

- (a) There will be no prospect of any reconciliation between the parties.
- (b) The wife will be unable to recover the arrears of maintenance in respect of which the defendant was committed to prison and the amount of maintenance due during the period of imprisonment.
- (c) If the defendant loses his job as a result of the prison term, the wife will be unable to obtain maintenance until he regains employment. She may also face proceedings by the defendant to vary or rescind the existing order.

However, the major task in maintenance proceedings in the subordinate courts lies not in ascertaining the income of the defendant, but in determining the *quantum* of maintenance that should be awarded — which determination is dependent upon a number of factors, of which the defendant's income is only one. Judicial officers have frequently to remind themselves that what is important is not what the defendant spends but what he needs to spend, and it is not what the applicant requests but what she reasonably needs. On the existing authorities, the court must ensure that the wife is able to enjoy the same material standard of living, and must also consider such other factors as the defendant's inescapable commitments, his subsistence level, the wife's earnings and the conduct of both parties.¹⁷

17. See, e.g., *Attwood v. Attwood* [1968] 3 All E.R. 385; *Roberts v. Roberts* [1968] 3 All E.R. 479; *Ashley v. Ashley* [1965] 3 All E.R. 554; *Rose v. Rose* [1950] 2 All E.R. 311; *Courtney v. Courtney* [1966] 1 All E.R. 53.

FURTHER PROPOSALS

Any reform of the law governing maintenance proceedings in Singapore should generally be geared to achieve the following objectives:

- (a) To reduce maintenance litigation, and
- (b) To provide applicants and the courts with as much factual information as possible, to enable them to make a proper maintenance and enforcement application or order as the case may be.

(a) *Reducing maintenance litigation*

A significant number of maintenance applications are settled without further proceedings in court, because either the parties have been reconciled, or they have reached a maintenance agreement out of court. The number of reconciliations would probably increase if wives had less need, or were less eager to serve maintenance summonses on their spouses, because, as empirical evidence has demonstrated,¹⁸ in an Asian society a summons is regarded not as an invitation for a settlement but as a challenge to a fight. In realisation of this, some countries prohibit parties involved in minor disputes from invoking the process of the court unless they have previously presented themselves before a Conciliation Board and the Board has failed to settle the dispute amicably.¹⁹

Attempts are presently made at both reconciliation and private settlement of maintenance claims by officers in the Counselling and Advice Section of the Social Welfare Department. But attempts at reconciliation are sometimes frustrated by a refusal of one of the spouses to appear before a social welfare officer.

In 1970, the Counselling and Advice Section made a study of 1,110 marital disputes to ascertain the extent to which marital counselling done by the Section in its present non-statutory form had been accepted by the disputing parties. The study revealed that in 29% of the cases the party complained against did not respond to attempts at reconciliation, or had rejected the attempts.²⁰

Again, maintenance agreements effected after much discussion in the Department are completely negated by the husband's refusal to pay or by the making of irregular payments. In order for the Social Wel-

- 18. Pyong-Choon Hohm, "The Decision Process in Korea" in Schubert & Danelski, *Comparative Judicial Behaviour*, Chapter 2.
- 19. E.g. in Sri Lanka, section 6(d) of the 1958 Conciliation Boards Act empowers Conciliation Boards to inquire into complaints in respect of certain scheduled offences (e.g. mischief, trespass and simple hurt) with a view to effecting an amicable settlement. The intervention of the Conciliation Boards has resulted in a reduction in the volume of cases before the Rural and Magistrates' courts. For a fuller discussion see S. Chandra Mohan, "The Nature and Extent of Public Participation in the Administration of Justice in the Republic of Singapore", *UNAFEI Resource Material Series*, No. 3 (Tokyo, 1972), p. 133.
- 20. *Annual Report of the Social Welfare Department, 1970* (Government Printing Office, Singapore), p. 8.

fare Department to exist as a more effective forum for reconciliation work and maintenance settlements, and to reduce maintenance litigation, two statutory remedies are necessary:

- (i) The granting of powers to the Director of Social Welfare and his assistants, on receipt of information of a matrimonial or domestic dispute from one of the spouses, to compel either or both spouses to appear before a social welfare officer for counselling and discussions, either for a reconciliation or to execute a maintenance agreement.

If discussions at the Social Welfare Department fail, then the parties should be at liberty to pursue other remedies.

The powers of the Director that are envisaged to compel appearance of the spouses before him are similar to those of police officers investigating seizable offences under section 119 of the Criminal Procedure Code. Failure to comply with such an order from a police officer may result in an application to a magistrate under section 119(2) for a warrant of arrest to secure attendance, or in a prosecution under section 174 of the Penal Code (Cap. 119) for the offence of non-attendance in obedience to an order from a public servant.

- (ii) The recognition of maintenance agreements entered into by the spouses either at the Social Welfare Department or in the presence of their counsel. Such a maintenance agreement could, with the approval of the court, and subject to the right of the court to vary the same, be registered in the court and subsequently enforced as if it had been an order of court.

Legislation could be considered in terms similar to the English Matrimonial Proceedings and Property Act, 1970, which recognises the validity of a maintenance agreement and, *inter alia*, permits parties to apply to the court to vary the agreement if there is a change in circumstances, or if it is intended to include provisions omitted from it.

A maintenance agreement may have considerable advantages over a court order in terms of time, trouble and expense, and may enable better terms to be obtained.

(b) *Providing factual information*

We should seriously consider charging the Social Welfare Department with the responsibility of tracing recalcitrant husbands, investigating their means, and making the information so gathered available to the applicant and to the court.

The Department already aids in tracing missing persons. It is obvious that only a government department will best be able to obtain a defendant's address from a variety of sources, including the Central Provident Fund, Commissioner for National Registration, Immigration Department, Police Force, Registrar of Vehicles, Ministry of Defence and Comptroller of Income Tax.

The Director of Social Welfare should be empowered to conduct wide investigations into the means of the husband, including examination of account books, pay sheets, bank statements and accounts, C.P.F. contributions and also, if necessary, to receive a statement from the Comptroller of Inland Revenue as to the defendant's declared income. This is the only way in which the earnings of the defendant, particularly one who is self-employed or is a casual worker, can be determined with any certainty.

Courts in England are at least able to direct probation officers to investigate the means of parties in domestic proceedings under section 60 of the Magistrates' Courts Act, 1952, and to report to the court the results of such investigations.

Investigating and reporting to the court on the means of the defendant will not be an unfamiliar undertaking for the Director of Social Welfare. In adoption proceedings in the High Court and District Courts the Director files an affidavit stating, *inter alia*, whether the means and status of the petitioners are such as to enable them to maintain and bring up the child suitably. Such investigation and report were made in 2,916 cases between 1970 and 1972. It must also be remembered that if the wife is unable to obtain maintenance from her husband, it is the Social Welfare Department which has to bear the burden of providing her with public assistance.

The plea for a more active participation in maintenance proceedings by government agencies has also been made in other countries. In *Winter v. Winter* (*The Times*, November 14, 1973), Mr. Justice Payne suggested that the Department of Health and Social Security should not only investigate the husband's means but should take over enforcement where the wife had instituted proceedings.²¹ A private Member's Bill has also been moved in England "to transfer responsibility for the mechanics of collection and payment" of alimony and maintenance to the Ministry of Social Security and Inland Revenue Department.

CONCLUSION

Unfortunately, the observations and recommendations of the Committee, including the call for a "reappraisal of the procedure for a more effective enforcement of a maintenance order in favour of the wife and child", give the erroneous impression that the task of a wife who wishes to obtain or enforce a maintenance order in the subordinate courts is an onerous one, filled with impediments created by law and procedure. Had the Committee given the matter of maintenance proceedings more than a cursory examination, it may well have been moved to reveal the following facts:

- (i) The procedure in making an application for a maintenance or enforcement summons is simple, and only involves the swearing of a complaint before a magistrate.

21. This suggestion has been discussed in detail in (1973) 3 *Family Law*, p. 11; (1972) 136 *JP Jo.*, 771.

22. By Tam Dalyell, M.P. for West Lothian. See (1971) 135 *J.P. & L.G. Review*, 250.

- (ii) The swearing of the complaint does not involve any expenditure, and a maintenance summons is issued on the payment of 50 cents. The only expense involved after that is the transport charges of the process server. Where an applicant has genuine financial difficulties and is unable to meet even this expenditure, payment for such purposes will be made to her from the poor box in the Subordinate Courts on the order of a District Judge or Magistrate.
- (iii) Summonses in maintenance cases are issued on the day payment of 50 cents is received from the applicant.
- (iv) Summonses are fixed for mention within 3 to 4 weeks from the date of issue.
- (v) After criminal cases involving accused persons who have been remanded in custody, maintenance summonses are given top priority in the fixing of hearing dates. In cases where parties are unrepresented, maintenance applications are heard in the Filter Court within 2 weeks from the date of mention, and enforcement summonses are dealt with on the Saturday following the date of mention. Where parties are represented by counsel, hearing dates depend on the availability of counsel but do not normally exceed 6 weeks. It does not benefit the defendant if he employs delaying tactics as maintenance orders are invariably ordered to take effect from the date the defendant ceased to provide maintenance.

However, the task of constantly reviewing maintenance proceedings in the Subordinate Courts, with a view to improving them further, has not ceased.

S. CHANDRA MOHAN *

* LL.B., LL.M. (S'pore); District Judge, Singapore; part-time Lecturer in Law, University of Singapore. The writer would like to emphasise that the views expressed in this paper are his personal views and do not necessarily represent those of his colleagues.