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Corporal punishment of Children by parents: Is it discipline or violence and abuse?

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CORPORAL PUNISHMENT OF CHILDREN BY PARENTS

Is It Discipline or Violence and Abuse?

Physical punishment is still used as a means of child discipline by Singaporean parents. Is there a difference between such use of violence and abuse of children which is punishable as a criminal offence? What does Singapore and international law say about the use of punitive force on children by parents and other adults who act *in loco parentis*? This article argues that there is in fact sufficient evidence that Singapore law implicitly prohibits corporal punishment of children by their parents.

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I. Introduction

1 Although there may be evidence of the use of corporal punishment as a form of child discipline since ancient times in various civilisations,[1] its modern use has been increasingly frowned upon. The prohibition of corporal punishment of children in *all* settings has accelerated in recent years: from only one country in 1979, to five countries in 1996, 28 countries in 2008, and 51 countries in 2016.[2] A total of 53 countries have banned the corporal punishment of children

1 Leonard P Edwards, "Corporal Punishment and the Legal System" (1996) 36 Santa Clara L Rev 983.

2 Global Initiative to End All Corporal Punishment of Children, *Ending Legalized Violence against Children: Global Progress to December 2016* (December 2016). Corporal punishment in the home is the most difficult to prohibit. Some countries may have prohibited it in day care, penal institutions or in school, but it is still allowed in the home. Of course, just because the practice may be prohibited in law does not necessarily mean that corporal punishment no longer takes place, but it is a clear step taken by the country to show that the practice is not to be continued. Paulo Ségio Pinheiro, the independent expert who led the United Nations Secretary General's Study on Violence against Children, has been quoted as saying "prohibition of corporal punishment in law provides the essential foundation for eliminating it in practice": see p 2.

to date, which are located mostly in South America and Europe.[3] The only countries in the broader Asian region to join this list so far are Turkmenistan which prohibited the practice in 2002 and Mongolia in 2016, but it can be comfortably predicted that the number of Asian countries to do so will no doubt increase in the coming decades.

2 The diametrically opposite positions taken by the two camps for and against corporal punishment of children is well-known and this section will just briefly summarise some of the arguments. Those who claim the right to carry out corporal punishment may make arguments based on (a) a religious viewpoint (for instance, "the Bible instructs parents to do so"); (b) cultural or traditional values (for example, "that is how I was brought up"); (c) family autonomy (for example, "parents should be free of state intrusion/parents are the ones responsible for teaching children what is socially acceptable behaviour"); (d) pragmatism (for example, "it works/leads to better behaviour"); (e) parents know best (for example, "parents know the difference between abuse and discipline"); (f) personal experience (for example, "I was caned and I turned out ok/better than if I weren't"); or even link it with (g) crime rates and perceived social disorder (for instance, "juvenile delinquency is up because their parents did not cane them").[4]

3 On the other hand, those who argue against corporal punishment of children may refer to (a) its long-term consequences (such as aggression, depression or anti-social behaviour) which outweigh short-term compliance; (b) the right of children to dignity and physical integrity just like any adult; (c) wrongly teaching children that using violence to solve problems is acceptable; (d) using of one form of corporal punishment will eventually lead to other and more severe forms as its effectiveness decreases with use; and (e) the fact that condonation of corporal punishment in some situations undermines the efforts to protect children from abuse.

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3 See the Global Initiative to End All Corporal Punishment of Children website, available at <www.endcorporalpunishment.org>. For an examination of the paradigm shift, see *Global Pathways to Abolishing Physical Punishment: Realizing Children's Rights* (Joan E Durrant & Anne B Smith eds) (Routledge, 2011).

4 *Eg*, one Singaporean parent was quoted as saying, "[if] I don't cane, who will? I am their father", while another was quoted saying, "[caning] can nip the problem in the bud – the behaviour doesn't have the opportunity to repeat": Chai Hung Yin, "How Can They Take Away My Girl?" *The New Paper* (19 February 2011). Some media celebrities have also endorsed the use of corporal punishment on their own children. See, *eg*, Zoe Tay, who was featured on the cover of *8 Days* magazine on 3 March 2011 holding a feather duster with the words, "[excuse] me, are you a Tiger Mum"? Another example is newspaper columnist Irene Tham, "Use the Rod, Love the Child" *The Straits Times* (11 September 2011). This account of her parenting led to a strong reaction by a reader, Leona Wong, "Wrong Lesson in Spanking" *The Straits Times* (17 September 2011).

4 The purpose of this article is to show that corporal punishment of children under 16 years old by parents at home and those who act *in loco parentis* is in fact *implicitly* forbidden by the law in Singapore.[5] Corporal punishment of children raise different issues from corporal punishment of adults. It is beyond the scope of this article to discuss whether caning as a form of punishment imposed by the criminal justice system on adult offenders can be justified.[6]

5 The definition of "corporal punishment" adopted in this article is the one used by the Committee on the Rights of the Child ("CRC Committee"). It is used interchangeably with "physical punishment" to mean:[7]

> [Any] punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light.

6 This definition does not require any physical injury to be caused so long as physical force is used to cause pain. It will thus encompass any acts which cause "bodily pain"[8] as well as the more serious acts such as:[9]

> [Hitting] ('smacking', 'slapping', 'spanking') children, with the hand or with an implement – whip, stick, belt, shoe, wooden spoon, etc … kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices) …

5 Children and Young Persons Act (Cap 38, 2001 Rev Ed) only applies to those under 16 years old. The term "children" used in this article will include both children (defined as those under 14 years old) and young persons (defined as those who are 14 years old or above, but under 16 years old) under this Act.

6 Reviews by those who have studied this issue include *Report of the Departmental Committee on Corporal Punishment* (Her Majesty's Stationery Office, 1938), *Report of the Advisory Council on the Treatment of Offenders* (Her Majesty's Stationery Office, 1959), and Committee to Examine the Law and Practice Relating to Corporal Punishment in Hong Kong, *Report of the Committee to Examine the Law and Practice Relating to Corporal Punishment in Hong Kong* (Government Printer, 1966).

7 Committee on the Rights of the Child, *General Comment No 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts 19; 28, para 2; and 37, Inter Alia)*, CRC/C/GC/8 (2 March 2007) at para 11.

8 See the offence of "voluntarily causing hurt" in ss 319 and 321 of the Penal Code (Cap 224, 2008 Rev Ed).

9 Committee on the Rights of the Child, *General Comment No 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts 19; 28, para 2; and 37, Inter Alia)*, CRC/C/GC/8 (2 March 2007) at para 11.

II. Resistance to change

7 Considering the number of scientific studies that have been conducted on this subject, there is no doubt about the detrimental effects of corporal punishment or its lack of effectiveness. However, these points are perhaps the hardest for parents to accept because the harmful effects may take a long time to surface and it is counter-intuitive to think that corporal punishment may not "work".

8 Elizabeth T Gershoff and Andrew Grogan-Kaylor performed a review of studies done over a period of about 50 years involving more than 160,000 children on the effect of spanking children. The type of physical punishment studied by the authors were ones which are non-injurious in nature, such as hitting a child with an open hand with the intention of modifying behaviour. It excluded punishments involving the use of objects or methods which will cause serious harm such as burning or choking a child which would no doubt attract the attention of the child protection officers in Singapore. The review therefore focused on the types of physical punishments which are typically used by Singaporean parents which cause fleeting or momentary pain. The study found:[10]

> [No] evidence that spanking is associated with improved child behavior and rather found that spanking to be associated with increased risk of 13 detrimental outcomes … there is no evidence that spanking does any good for children and all evidence points to the risk of it doing harm.

9 A local study has also confirmed the association between either witnessing or experiencing violence as a child and the perpetuation of violence as an adult.[11] The impact of corporal punishment therefore goes beyond the physical, mental and emotional effects on the child – there could be far-reaching consequences later on in life which affect others as well.

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10 Elizabeth T Gershoff & Andrew Grogan-Kaylor, "Spanking and Child Outcomes: Old Controversies and New Meta-Analyses" (2016) 30 *Journal of Family Psychology* 453 at 465; see also Joan Durrant & Ron Ensom, "Physical Punishment of Children: Lessons from 20 Years of Research" (2012) 184(12) CMAJ 1373.

11 See Brigitte Bouhours, Chan Wing Cheong, Benny Bong & Suzanne Anderson, *International Violence against Women Survey: Final Report on Singapore* (June 2013) ch 6, available at <http://ssrn.com/abstract=2337291>. Lady Hale, in a different context in *Re B (A Child)* [2013] 1 WLR 1911 at [143], expressed it best by describing the "normal and natural tendency of children to grow up to be and behave like their parents". But, of course, this is not to say that *all* children will be affected or will behave in a certain way as an adult.

10 If this is the case, how is it that many people still support the use of corporal punishment on children?[12] This could be due to a dissonance in messages being sent out because its use is not explicitly condemned and may even be argued to be approved of by some Singapore laws. Furthermore, statements can be found equating caning as a form of judicial punishment with caning in the home, even though the two are vastly different:[13] convicted offenders are referred to as "adult delinquents" and the caning ordered by the court described as "the punishment which would normally be meted out to children".[14] Former Minister for Home Affairs, Wong Kan Seng, when defending the caning of American Michael Fay for vandalism, said:[15]

> We do not think it is 'unusual' or 'cruel'. Parents cane their children from time to time, and school headmasters are also allowed to cane under specified conditions to discipline serious delinquents.

12 See the results of the surveys conducted by the Singapore Children's Society described below in the text accompanying n 105 at para 68. A survey of parents attending the Child Guidance Clinic showed that only 31.7% used caning as a form of discipline on their children: Yi Ping Lee *et al*, "Between the Rod and Reason: A Study on Asian Parental Disciplinary Methods and Child Emotional/Behavioural Outcomes" (2004) 33(5) *Annals, Academy of Medicine* (Supplement) S27. This figure seems low as compared to estimates in other parts of the world. *Eg*, it was estimated that about 50% of American parents use corporal punishments to discipline their children (and this could be a conservative estimate): Murray A Straus & Denise A Donnelly, "Corporal Punishment of Adolescents by American Parents" (1993) 24(4) *Youth & Society* 419. See also Global Initiative to End All Corporal Punishment of Children, *What Children Say: Results of Comparative Research on the Physical and Emotional Punishment of Children in Southeast Asia and the Pacific* (2006), which asked children in different countries about their experiences.

13 See "Caning – What It Means When a Court Orders" [1974] 2 MLJ xxiv for a description of caning meted out by the criminal justice system given by Quek Shi Lek, the former Director of Prisons.

14 *Parliamentary Debates, Official Report* (26 August 1966) vol 25 at col 293 (Mr Wee Toon Boon, Minister of State of Defence).

15 "Kan Seng Defends Cane as Penalty" *The Sunday Times* (24 April 1994).

III. Reasonable limits

11 It has long been the stance of the common law that corporal punishment of children is not unlawful so long as certain limits are followed. In the case of *R v Hopley*,[16] it was said:[17]

> By the law of England, a parent or a schoolmaster … may for the purpose of correcting what is evil in the child inflict moderate and reasonable corporal punishment, always, however, with this condition, that it is moderate and reasonable. If it be administered for the gratification of passion or rage, or if it be immoderate or excessive in its nature or degree, or if it be protracted beyond the child's powers of endurance, or with an instrument unfitted for the purpose and calculated to produce danger to life and limb; in all such cases the punishment is excessive, the violence is unlawful, and if evil consequences to life or limb ensue, then the person inflicting it is answerable to the law, and if death ensues it will be manslaughter.

12 In other words, in deciding on whether the corporal punishment amounts to a criminal offence, the court must consider the nature and context of the defendant's behaviour, its duration, its physical and mental consequences in relation to the child, the age and personal characteristics of the child and the reasons given by the defendant for administering punishment.[18] What is considered as reasonable depends on the standards prevailing in society with regard to the physical punishment of children.[19]

16 (1860) 2 F & F 202. This was described as the "long-standing common law position" in *R v H* [2002] 1 Cr App R 59 at 64. William Blackstone, *Commentaries on the Laws of England* (Clarendon Press, 1765) at p 440 states:

> The ancient Roman laws gave the father a power of life and death over his children … The power of a parent under English laws is much more moderate; but still sufficient to keep the child in order and obedience. He may lawfully correct his child, being under age, in a reasonable manner; for this is for the benefit of his education.

17 (1860) 2 F & F 202 at 206.

18 Although these directions in *R v H* [2002] 1 Cr App R 59 were worded in the light of the European Court of Human Rights' decision in *A v United Kingdom* (1999) 27 EHRR 611, where it was conceded by the UK government that the common law's concept of reasonable chastisement was in breach of Art 3 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (4 November 1950) 213 UNTS 221 by not giving adequate guidance, it was pointed out in *R v H*, at 67, that these considerations were implicit in *R v Hopley* (1860) 2 F & F 202. For the text of Art 3, see para 61, n 83 below.

19 *A v United Kingdom* (1999) 27 EHRR 611; *R v H* [2002] 1 Cr App R 59.

13 In *Public Prosecutor v AFR*,[20] where the accused was convicted of culpable homicide not amounting to murder for the death of his two-year-old daughter, the Singapore Court of Appeal said:[21]

> The measure of discipline imposed by a parent or caregiver on a child must be *commensurate* with the age and the extent of understanding of that child. What the respondent did … went well *beyond* what any sensible person would have done by way of discipline. [emphasis added]

14 This suggests that corporal punishment is not against the law so long as it was within certain limits. Support for this case-by-case approach in Singapore law for determining if the boundary of acceptable punishment is breached can also be seen in the following cases and the definition of "family violence" in the Women's Charter.[22]

A. BHR v Child Protector[23]

15 This case involved an application by the Child Protective Service of the Ministry of Social and Family Development ("CPS") for a care and protection order for a boy against his mother. The parents were divorced and the mother had sole custody, care and control of the child. The relationship between the boy's parents was acrimonious and there were allegations of family violence by the father against the mother. The father was not involved at all in the upbringing of the boy.

16 The boy was found to have cane and punch marks on his back. The mother was reported to have taken a chopper and threatened to kill him and then to commit suicide. The boy reported that he could not bear the mother's beating and had attempted suicide several times. The mother denied the accusations and said that some of his injuries were self-inflicted. While she did admit to inflicting the other injuries, she

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20 [2011] 3 SLR 833; see also *Public Prosecutor v AEV* [2009] SGDC 513, where a father pleaded guilty to voluntarily causing hurt by a heated substance to his nine-year-old daughter by causing burn injuries to her cheek, waist, arm and body by splashing hot water on her as a punishment for lying to him. He also caned her on her hand and back when he found out that she stole two cash cards from him. The injuries were so serious that it resulted in a 17-day stay in hospital. In sentencing the accused, the judge was clear that his acts were beyond what can be considered as moderate and reasonable acts of discipline. The judge said (at [33]):

> [He] ought to have realised that he cannot used [*sic*] hot water to discipline his 9 year old daughter regardless of whatever misdemeanour she has committed …

This suggests that the father might not be guilty of the offence if his acts were less serious.

21 *Public Prosecutor v AFR* [2011] 3 SLR 833 at [33].

22 Cap 353, 2009 Rev Ed.

23 [2013] SGJC 2.

said that she did so in order to discipline him, for example, for stealing $50 from her wallet, for not attending school and for going to a gaming centre.

17 In deciding this case, the judge drew the following line between what is acceptable discipline and what would amount to ill-treatment (which is one of the grounds for a care and protection order):[24]

> [Disciplining] a child is necessarily a part of parenthood and there is a line to be drawn between reasonable discipline and 'acts which result in unnecessary physical pain, suffering or injury' … To me, the number and extent of the cane marks is clearly beyond disciplining … punching is beyond the act of disciplining …

B. BJJ v Child Protector[25]

18 This was also an application by CPS for a care and protection order for a girl against her mother who was her caregiver. The father left the family when the daughter was still young. There were concerns raised about the physical abuse of the child: kicking of the child's head and body, hitting of the child's head with a bunch of keys which resulted in stitches being required, slapping her, pulling her hair, and throwing of objects such as a pair of slippers and a book at her. The mother had even taken a knife and told the girl to stab her with it.

19 The judge found that:[26]

> In this case … acts such as kicking the child's head and body, hitting the child's head with a bunch of keys, hitting the child's face and thereby causing a nose bleed, slapping the child … and pulling her hair would go beyond reasonable disciplining and would tantamount [be] to 'acts which result in unnecessary physical pain, suffering or injury' …

C. Public Prosecutor v AQF[27]

20 In this case, the accused pleaded guilty to ill-treating two children, aged nine and 11 years old, who were living with him under his care. He devised a strict daily regime for them stipulating what time they should wake up, do their homework, eat their meals, go to bed and

24 *BHR v Child Protector* [2013] SGJC 2 at [50].
25 [2013] SGJC 3.
26 *BJJ v Child Protector* [2013] SGJC 3 at [39]. The judge also found that a case of emotional abuse was made out by the mother's always telling the child she was disobedient and not allowing the child to attend school as a form of punishment, nagging at the child, and locking the child at home when the mother went out.
27 [2011] SGDC 75.

so on, as well as recording down what they were doing every 20 minutes. When he found them dozing off while studying one day, he caned the younger boy 30 times on the back of his neck, his back, and the back of the leg and buttocks, while the older boy was caned 20 times on his back, buttocks and leg. The reason why the younger boy was caned more times was because he jumped about when the strokes were inflicted on him.

21 The accused explained that the strict regime was implemented in order to instil discipline and good behaviour. The judge responded:

> [The] regime is too harsh and strict for the young victims and is not an appropriate method to instil good behaviour especially when it is to be re-enforced [*sic*] with ferocious caning.[28]
>
> …
>
> the accused should not have in the first instance resorted to such punishment …[29]
>
> …
>
> the victims … were made to follow a daily regime which, among other things, required them to rise as early as 4.30am every morning despite the fact that they went to bed at 11pm. In my view, this is a very harsh regime and not appropriate for young children who should be treated with more love and tender care. To aggravate the situation, the accused resorted to excessive and forceful caning of the victims for dozing off while studying. Such abusive conduct must be deterred. I also cannot accept the submission that all these punishments and caning were done out of love for the victims and without any ill intention on the part of the accused. I think no loving and caring parents would commit such acts done by the accused.[30]
>
> …
>
> I am also mindful of the psychological trauma that the victims had undergone as a result of the ill-treatment by the accused … characterizing the abuses as disciplinary methods designed to deal with bad behaviour has led to the victims developing feelings of self-blame. I therefore reject the allegation that the victims were not placed under serious emotional distress … the treatment they underwent is not treatment they should ever expect from any person who professes to love and protect them …[31]

28 *Public Prosecutor v AQF* [2011] SGDC 75 at [13].
29 *Public Prosecutor v AQF* [2011] SGDC 75 at [15].
30 *Public Prosecutor v AQF* [2011] SGDC 75 at [29].
31 *Public Prosecutor v AQF* [2011] SGDC 75 at [33].

22 These three cases demonstrate a distinction being drawn between "acceptable" and "unacceptable" forms of punishment. Although some more serious acts (such as punching) would be automatically unlawful without more, lesser forms of injury will need to be assessed in terms of its repetition, their severity, and what a reasonable parent would have done in the same situation considering the age and other aspects of the child and the misbehaviour shown.

D. Women's Charter

23 The express exclusion of what amounts to "family violence" in s 64 of the Women's Charter also supports the argument that use of corporal punishment by parents in certain situations is accepted. Force which is (a) "lawfully used", (b) "by way of correction", and (c) with respect to "a child below 21 years of age" is excluded from the definition of "family violence".

24 Two comments may be made. First, the use of the word "correction" shows how narrow this exception is. If the force is not used by way of correction, it will not be shielded from the definition of family violence. This obviously reflects the common law's position that force used "for the gratification of passion or rage" will not be lawful. An example is the case of *TCV v TCU*,[32] where a father applied for a protection order on behalf of his 12-year-old daughter against the mother. The facts showed that the mother was involved in an altercation with her own father (that is, the child's grandfather) and she had lashed out at the child by slapping and caning her. The use of force there was obviously not for the purposes of discipline in the sense of benefitting the child and therefore amounted to family violence.

25 However, use of force to *protect* a child or others from harm will also not be within the exception since it is not used "by way of correction". Examples of the use of protective force include pulling a child's hand away from a boiling pot, forcefully restraining a child from running into the path of an oncoming vehicle, or holding on to a child who has hurt another to prevent him from doing so again.[33]

32 [2015] SGFC 3. In *AOU v AOV* [2010] SGDC 525, a father applied for a protection order against his wife on behalf of his second and third children for alleged caning by the mother. The application was dismissed as there was insufficient evidence to support the allegations.

33 Such acts will probably be covered under the defences of necessity or slight harm (ss 81 and 95 of the Penal Code (Cap 224, 2008 Rev Ed) respectively) if the person using force is charged with a criminal offence.

26 Secondly, the use of the word "lawfully" shows that it is not every instance of use of force that will be excluded, even if the force is "by way of correction". An example can be seen in *AVF v AVH*,[34] where a protection order was granted against the children's mother because the corporal punishment inflicted was not commensurate with the perceived misbehaviour of the children.

27 Hence, even acts meant to correct a child's behaviour must fall within certain limits. This is clear from the judge's reference to "judicious and responsible" manner in disciplining a child in *TCV v TCU*. The judge said:[35]

> [Unless] and until such time the law is changed, parental discipline is sanctioned under … the Women's Charter. However, an act will only fall within the 'correction' exception if delivered in a judicious and responsible manner for the child's benefit …

28 There must therefore be an assessment of all the circumstances of the case and the parties involved in determining if the correction is reasonable or "judicious and responsible".

29 A case which involved an act done more out of anger than for purposes of correcting a child as well as being a disproportionate response is *Lau Siao Hwee Rosana v Wong Chew Kong*.[36] A protection order was granted for a child in that case based on a single incident where the father beat the child with his hand after the child called him a bad father. He carried on beating the child with a toy violin until it broke, and then took out his belt to threaten the child.

IV. Implicit rejection

30 There are various provisions in Singapore law which condone the use of corporal punishment outside the home even on children under 16 years old. It may be used to regulate poor behaviour in schools (for boys only),[37] in juvenile institutions (for boys and girls),[38] and as a

34 [2011] SGDC 363 at [30].

35 [2015] SGFC 3 at [70].

36 SS 218/1998, District Court (unreported). See the summary in Khoo Oon Soo *et al*, *Practitioner's Library: Family and Juvenile Court Practice* (LexisNexis, 2008) at pp 78–79.

37 Regulation 88(2) of the Education (Schools) Regulations (Cap 87, Rg 1, 2013 Rev Ed) states:

> (2) 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.

There have been periodic calls for teachers to be allowed greater use of the cane in other to counter cases of ill-discipline, see, *eg*, *Parliamentary Debates, Official*

(*cont'd on the next page*)

sentence imposed by the High Court (for boys only).[39] If that is the case, how can it be argued that corporal punishment by parents is nevertheless implicitly against Singapore law?

A. Deletion of illustration (i) to s 350 of Penal Code[40]

31 The first piece of evidence is the removal of illustration (*i*) to s 350 of the Penal Code. A person who uses "criminal force" on another commits a criminal offence.[41] What amounts to "criminal force" is defined as:[42]

> Whoever intentionally uses force to any person, without that person's consent, in order to cause the committing of any offence, or intending by the use of such force illegally to cause, or knowing it likely that by the use of such force he will illegally cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

32 Illustration (*i*) to this section, which was deleted in 2007,[43] provided the following:

> *A*, a schoolmaster, in the reasonable exercise of his discretion as master, flogs *Z*, one of his scholars. *A* does not use criminal force to *Z* because, although *A* intends to cause fear and annoyance, he does not use force illegally.

Report (26 March 1975) vol 34 at cols 1013 (Mr Tay Boon Too) and 1015 (Mr Ho Kah Leong) and *Parliamentary Debates, Official Report* (16 March 1995) vol 64 at cols 456 (Mr Peh Chin Hua), 463 (Mr Koo Tsai Kee) and 464 (Mr Choo Wee Khiang).

38 Section 68(2)(*d*) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) allows a manager of a juvenile rehabilitation centre, a place of safety, a remand home or a place of detention to "use such force as is reasonable and necessary" in certain situations.

39 See s 37(3) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed). The number of strokes is limited to ten and only "a light rattan" can be used on those under 16 years old: see ss 328(6) and 329(4) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed). Caning cannot be imposed on women: see s 325(1)(*a*) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed). From 2003 to June 2007, 76 persons under 16 years old were sentenced to be caned with a light rattan: see Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention – Second and Third Periodic Reports of States Parties Due in 2007 – Singapore*, CRC/C/SGP/2-3 (26 July 2010) at para 184.

40 Cap 224, 2008 Rev Ed.

41 See s 352 of the Penal Code (Cap 224, 2008 Rev Ed).

42 See s 350 of the Penal Code (Cap 224, 2008 Rev Ed).

43 Penal Code (Amendment) Act 2007 (Act 51 of 2007). There was no explanation given for the deletion.

33 How is it that the schoolmaster "does not use force illegally"? This must be because of its "reasonable" use.[44] A parent would stand in the same position since the schoolmaster acts *in loco parentis* while the child is in school. The content of the illustration no doubt reflects the common law position at the time.[45]

34 The deletion of illustration (*i*) suggests, at the minimum, that consideration must now be given to whether a parent who uses corporal punishment can be said to "illegally cause injury".[46] With the deletion of illustration (*i*), an argument can be made that Singapore no longer abides by the common law which allows for reasonable chastisement.[47]

35 A further query concerns other Penal Code offences such as voluntarily causing hurt, which is not qualified by the term "illegally". Voluntarily causing hurt is simply doing any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person.[48]

B. Prohibition in child care centres

36 Another piece of evidence is in the clear stand taken that corporal punishment is not allowed in child care centres – with no exceptions – as a disciplinary measure on children below seven years old. Regulation 17(1) of the Child Care Centres Regulations[49] ("CCCR") states:[50]

44 Although use of the word "flog" does appear extreme.

45 Curiously, this illustration was not in the original draft of the Indian Penal Code by Macaulay (and therefore does not exist in the present Indian Penal Code (Act 45 of 1860), but was part of the Straits Settlements Penal Code (Ordinance 4 of 1871) when it was passed into law in 1871. Other 19th-century criminal codes also contained provisions allowing the use of reasonable force for the discipline of children: see, *eg*, the codes of Queensland (s 280 of the Criminal Code Act 1899), Western Australia (s 257 of the Criminal Code Compilation Act 1913) and Canada (s 43 of the Criminal Code).

46 The same applies to teachers with respect to female students since this is not covered by r 88(2) of the Education (Schools) Regulations (Cap 87, Rg 1, 2013 Rev Ed).

47 The common law is retained only so far as it is not inconsistent with "the circumstances of Singapore and its inhabitants" according to s 3 of the Application of English Law Act (Cap 7A, 1994 Rev Ed).

48 See s 323 of the Penal Code (Cap 224, 2008 Rev Ed).

49 Cap 37A, Rg 1, 2012 Rev Ed.

50 A child care centre is defined in the Child Care Centres Act (Cap 37A, 2012 Rev Ed) as "any premises at which 5 or more children who are under the age of 7 years are habitually received for purposes of care and supervision during part of the day or for longer periods".

> Every licensee shall cause to ensure that the staff shall not administer the following disciplinary measures:
>
> (*a*) any form of corporal punishment, including the following:
>
> (i) striking a child, directly or with any physical objects;
>
> (ii) shaking, shoving, spanking or other forms of aggressive contact; and
>
> (iii) requiring or forcing the child to repeat physical movements;
>
> (*b*) harsh, humiliating, belittling or degrading responses of any kind, including verbal, emotional and physical;
>
> (*c*) deprivation of meals; or
>
> (*d*) isolation and physical restrictions of movements.

37 If that is the case, how can it be right to say that the law still allows the same child to be hit by his parent as a form of discipline when the child goes home? A child care teacher acts *in loco parentis*. It can therefore be argued that implicitly, at a minimum, the law has accepted that corporal punishment is unlawful for children under seven years old.[51]

C. Children and Young Persons Act[52] *("CYPA")*

38 Under s 5(1) of the CYPA, it is an offence for any person who has the custody, charge or care of a child or young person to "ill-treat" him. "Ill-treatment" is defined in s 5(2) to mean *inter alia*:[53]

> (*b*) wilfully or unreasonably does … any act … 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 …

51 Recognition of this point will go a long way towards tackling all forms of violence towards young children. It was reported that 38% of the child abuse cases investigated by the authorities from 2014 to 2016 involved children under the age of seven: Priscilla Goy, "Nearly 40% of children in abuse cases under age seven" *The Straits Times* (19 September 2017).

52 Cap 38, 2001 Rev Ed.

53 The definition of ill-treatment is also applicable to care and protection orders, see s 4(*d*) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed).

39 Considerations of what is wrongful conduct has therefore extended beyond just the physical well-being of a child. A parent has a responsibility to ensure that not only a child's physical needs are taken care of, but also his mental and emotional needs, and the latter is unfortunately easily overlooked.

40 The same approach can be seen in the CCCR, where "harsh, humiliating, belittling or degrading responses of any kind" is treated the same way as physically hurting a child.

41 In a very different context, Andrew Phang Boon Leong JA has said:[54]

> [One] cannot – and indeed, must not – underestimate the severe harm that can befall someone in the mental and psychological sphere. Put crudely, mental abuse can be as bad as – if not worse than – physical abuse. That such abuse cannot be perceived from a material or physical perspective does not mean it does not exist and, on the contrary, may … prove as (or even more) debilitating (or even crippling) than physical abuse.

42 It must be noted that there is no defence or exception to the definition of "ill-treatment" unlike in the common law and the Women's Charter where consideration is given to the extent of the harm, the nature of the misbehaviour, and the motivation behind the acts. A person who has custody, charge or care of a child who "wilfully" inflicts corporal punishment could come within s 5(2)(*b*) of the CYPA, even if it is not "unreasonable" to do so. What acting "wilfully" means in law exactly is not clear but it can be taken to be synonymous with acting "deliberately" for our purposes here.[55] In other words, "ill-treatment" in s 5(2)(*b*) of the CYPA is defined in terms of its *effect* on the victim. Hence, acts which cause "unnecessary physical pain, suffering or injury", "emotional injury", or "injury to health or development" would be unlawful even if they were done with a good intention of correcting misbehaviour.[56]

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54 *ADF v Public Prosecutor* [2010] 1 SLR 874 at [223]. This case concerned the abuse of a domestic helper in a systematic pattern which escalated over time. Psychological abuse is specifically a matter which a court will consider in sentencing, see *Tay Wee Kiat v Public Prosecutor* [2018] SGHC 42.

55 *R v Sheppard* [1981] AC 394. This is clearest in the concurring speech of Lord Keith: at 418. The leading speech by Lord Diplock added an alternative interpretation of acting recklessly, which is now interpreted in the subjective sense, see *Attorney-General's Reference (No 3 of 2003)* [2005] QB 73 at [27].

56 An argument could be made that corporal punishment is not "unnecessary" physical pain, suffering or injury if it were done for purposes of correction, but this would not take us very far since "emotional injury" and "injury to health and development" are not similarly qualified.

43 As mentioned at the beginning of this article, there is now clear evidence of the impact of corporal punishment on a child which could persuade a judge to consider it as causing "injury to health or development".[57] If that is so, it will certainly not be in the welfare and best interests of the child to condone corporal punishment. Section 3A of the CYPA mandates this approach:

> The following principles apply for the purposes of this Act:
>
> (*a*) 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*; and
>
> (*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.*
>
> [emphasis added]

44 The courts have also given a wide definition to "emotional injury". In *BGC (Parent of B) v Child Protector*,[58] "emotional injury" was defined as:[59]

> [Anything] that causes damage to the behavioural, social, cognitive, affective functioning of the child … However, such an injury must be one that is properly benchmarked against an objective standard and the only way to do that is to rely on the reports by psychiatrists/psychologists. And cases of emotional injuries should include cases where medical evidence show that a child or a young

57 In *TCV v TCU* [2015] SGFC 3 at [69], the judge said:

> The literature on family violence is replete with studies showing that the impact of domestic violence on children is far reaching and can affect many aspects of their individual functioning, including cognitive, behavioural, psychological, developmental, educational and social …

58 [2013] SGJC 1. The term was defined in the context of s 4 of the Children and Young Persons Act (Cap 38, 2001 Rev Ed), where the court may make an order if the child or young person is in need of care or protection. Under s 4(*g*), the order may be made if:

> (*g*) there is such a serious and persistent conflict between the child or young person and his parent or guardian, or between his parents or guardians, that family relationships are seriously disrupted, thereby causing the child or young person emotional injury …

In *Ministry of Social and Family Development (MSF) v GCC and GCD* [2017] SGYC 2 at [79], "emotional injury" in ss 4(*g*) and 5(2)(*b*)(ii) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) were interpreted the same way.

59 [2013] SGJC 1 at [52]. This definition was used in subsequent cases: see *BHR v Child Protector* [2013] SGJC 2 at [56], *BJJ v Child Protector* [2013] SGJC 3 at [45] and *Ministry of Social and Family Development (MSF) v GCC and GCD* [2017] SGYC 2 at [68].

> person has suffered damage to his/her behavioural, psychological and emotional functioning.

45 The court agreed with the wide definition given to "emotional and psychological abuse" by the then Minister for Community Development, Youth and Sports, Vivian Balakrishnan, at the Second Reading of the Children and Young Persons (Amendment) Bill in 2011.[60] The Minister gave the examples that "terrorising a child, rejecting or degrading a child, isolating, exploiting or corrupting a child would amount to emotional or [psychological] abuse".[61] In two other cases, the examples of depression and anxiety were given as "emotional injury".[62]

46 If "emotional injury" is recognised as a form of ill-treatment, does it not contradict the stand that use of corporal punishment against children is not against the law? The inherent contradiction in s 5(2) of the CYPA was noted by a Nominated Member of Parliament, Claire Chiang, in 2001. She said:[63]

> [If] caning is accepted by some parents and school teachers who believe that it is a positive child disciplinary measure, is it consistent that we now introduce a 'softer' standard of 'emotional abuse', stating verbal abuse as an offence under the Act, whilst the affliction of physical punishment by the cane on the body of a child is not?
>
> I seek the Minister's views on how he reconciles the use of the cane against the sanction of a foul or harsh word that upsets the child …

60 *Parliamentary Debates, Official Report* (10 January 2011) vol 87 at col 2130 (Dr Vivian Balakrishnan, Minister for Community Development, Youth and Sports): "anything that causes damage to the behavioural, social, cognitive, affective or physical functioning of a child". [Postscript: This article was finalised before the written judgment in *UNB v Child Protector* [2018] SGHCF 10 was released on 26 July 2018. In that case, Debbie Ong J was of the opinion that "emotional injury" in ss 4(*g*) and 5(2)(*b*)(ii) of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) should not be given a broad reading because "Parliament could not have intended to confer on CPS such an exceedingly wide ambit to intervene in the parenting of children" (at [33]).]

61 *Parliamentary Debates, Official Report* (10 January 2011) vol 87 at col 2130 (Dr Vivian Balakrishnan, Minister for Community Development, Youth and Sports). The actual words used in this quote were "emotional or physical abuse" but the Minister must have meant "emotional or psychological abuse" because that was the issue he was dealing with.

62 *BHR v Child Protector* [2013] SGJC 2 at [57]; *BJJ v Child Protector* [2013] SGJC 3 at [46]. In *BHR (The Natural Mother of B) v Child Protector* [2014] SGJC 1, the child suffered from post-traumatic stress disorder.

63 *Parliamentary Debates, Official Repor*t (20 April 2001) vol 73 at col 1625 (Mdm Claire Chiang See Ngoh).

47 The then Minister for Community Development and Sports, Abdullah Tarmugi, did not answer the point directly but said that a line between abuse and discipline had to be drawn, with the help of external experts if needed.[64] This was not the only time when the point was made in Parliament that it is simply not possible to draw a line in any meaningful way between acceptable and unacceptable physical punishment of a child. In 2004, the following question was posed by another Member of Parliament, Sin Boon Ann:[65]

> I would like to ask [the Minister of State for Community Development and Sports, Chan Soo Sen] whether the Minister has a handbook for parents to educate them on where the Government draws its line on physical child abuse. Because, very often, it is not uncommon to have parents giving a spank on the buttock of a child for mischievous behaviour. Will that, in the eyes of the Government, be considered as abuse? … If we are going to have a law that punishes parents for child abuse, there is obviously some concern on the part of parents that if one resorts to physically punishing a child, he may have crossed the line and broken the law. If the Government's policy is really one of concern of child abuse, then where does chastising a child end before it begins at abusing a child? …

48 The reply given missed the point entirely because it is those cases that are unclear and claimed to be used for disciplining children which causes the greatest concern:[66]

> Sir, I would say that every family is different. The question of whether corporal punishment is allowed is also a matter of opinion. But if we are talking about causing serious injury, it is a clear case of abuse. For rational parents, I think they would know what constitutes an abuse, if that is what Mr Sin is talking about.

49 In passing, it is submitted that the definition of "emotional injury" given in *BGC (Parent of B) v Child Protector* may be too narrow in saying that the "only way" in which this can be substantiated is through "reports by psychiatrists/psychologists". Whether a child is experiencing "emotional injury" is a determination to be made by the

64 *Parliamentary Debates, Official Report* (20 April 2001) vol 73 at cols 1633–1634 (Mr Abdullah Tarmugi, Minister for Community Development and Sports and Minister-in-Charge of Muslim Affairs).

65 *Parliamentary Debates, Official Report* (27 February 2004) vol 77 at col 436 (Question was raised by Mr Wee Siew Kim and answered by Mr Chan Soo Sen, Minister for Community, Development and Sports).

66 *Parliamentary Debates, Official Report* (27 February 2004) vol at col 436 (Question was raised by Mr Wee Siew Kim and answered by Mr Chan Soo Sen, Minister for Community, Development and Sports).

court. There is also no suggestion in Balakrishnan's speech that a medical diagnosis of some mental disorder is required.[67]

D. International stance

50 The following contradictory statements were presented by Singapore at its combined second and third periodic reports to the CRC Committee:[68]

> 187. Singapore is of the view that the regulated use of corporal punishment is an acceptable mode of discipline, and does not constitute violence against children …
>
> …
>
> 265. Legislation, guidelines and public education programmes exist to promote appropriate discipline and discourage the use of corporal punishment as a means of child discipline. MCYS' [now renamed the Ministry of Social and Family Development] brochures on child discipline, 'Love our Children, Discipline, Not Abuse', clearly exclude spanking as an option and instead highlights other forms of discipline.

51 How can corporal punishment be "acceptable" on the one hand, and yet be discouraged and excluded on the other hand? Surely, it is only unacceptable practices that should be discouraged.

52 Articles 19(1) and 37(a) of the Convention on the Rights of the Child[69] ("CRC") (which Singapore acceded to in 1995) state:

> Article 19
>
> 1. State Parties shall … protect the child from all forms of physical or mental violence, injury or abuse … while in the care of

67 The judge may have been influenced by the Child Act 2001 (Act 611) in Malaysia, where s 17(2)(*b*) refers to medical conditions. It defines a child as emotionally injured "if there is substantial and observable impairment of the child's mental or emotional functioning that is evidenced by, amongst other things, a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development". Note that even in the Malaysian legislation, a medical report of the mental or behavioural disorder is not required. In *Ananda Dharmalingam v Chantella Honeybee Sargon (p)* [2007] 2 MLJ 1, the Malaysian Court of Appeal considered the reports submitted by the child psychiatrist because they were available to the court and were not challenged. They were not required by the court.

68 Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention – Second and Third Periodic Reports of States Parties Due in 2007 – Singapore*, CRC/C/SGP/2-3 (26 July 2010) at paras 187 and 265.

69 (20 November 1989) 1577 UNTS 3.

> parent(s), legal guardian(s) or any other persons who has the care of the child.
>
> …
>
> Article 37
>
> State Parties shall ensure that:
>
> (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment …

53 Even though Singapore has made a "declaration" in relation to these two articles, it should be noted that Singapore accepts that there must be limits on the use of corporal punishment. The declaration states that Arts 19 and 37 "do not prohibit … the *judicious application* of corporal punishment in the *best interests of the child*" [emphasis added].[70]

54 Can it be argued that minor acts of physical force used to discipline a child are considered "judicious application" of corporal punishment? The CRC Committee was clear that even such minor acts are to be prohibited. On both occasions when the CRC Committee examined Singapore's report on the implementation of the CRC, it recommended that Singapore amend its legislation to prohibit corporal punishment. In the 2011 recommendations, it recommended that Singapore "[prohibit] unequivocally by law, without any further delay, all forms of corporal punishment, including caning, in all settings".[71]

55 Can it be argued that minor acts of physical force can be used in the "best interests of the child"? It is the clear view of the CRC Committee that acts which conflict with the child's human dignity and right to physical integrity cannot be justified as being in the "best interests of the child".[72] The interpretation of what "best interests" means must be consistent with the whole Convention, including the obligation

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70 Singapore has also made a general declaration that "a child's rights … shall … be exercised with respect for the authority of parents … in the best interests of the child and in accordance with the customs, values and religions of Singapore's multi-racial and multi-religious society regarding the place of the child within and outside the family".

71 Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention – Concluding Observations: Singapore*, CRC/C/SGP/CO/2-3 (4 May 2011) at para 40(a); see also Committee on the Rights of the Child, *Considerations of Reports Submitted by States Parties under Article 44 of the Convention – Concluding Observations: Singapore*, CRC/C/15/Add.220 (27 October 2003) at para 33.

72 Committee on the Rights of the Child, *General Comment No 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts 19; 28, para 2; and 37, Inter Alia)*, CRC/C/GC/8 (2 March 2007) at para 26.

to protect children from all forms of violence and the requirement to give due weight to the child's views.[73] In particular, the CRC Committee pointed out that "eliminating violent and humiliating punishment of children … is an immediate and unqualified obligation of State parties".[74]

56 The CRC Committee recommended nothing less than explicit prohibition of corporal punishment in civil or criminal legislation to make it clear that it is unlawful to hit a child in the same manner as it is unlawful to hit an adult, and that the criminal law on assault applies equally to such violence, regardless of whether it is termed "discipline" or "reasonable correction".[75]

57 However, the CRC Committee noted that not all acts of corporal punishment will result in criminal prosecution because of the *de minimis* principle[76] and the use of prosecutorial discretion. Prosecution of the perpetrator or the removal of the child is only necessary when needed to protect the child from significant harm and if

73 Committee on the Rights of the Child, *General Comment No 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts 19; 28, para 2; and 37, Inter Alia)*, CRC/C/GC/8 (2 March 2007) at para 26.

74 Committee on the Rights of the Child, *General Comment No 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts 19; 28, para 2; and 37, Inter Alia)*, CRC/C/GC/8 (2 March 2007) at para 22.

75 Committee on the Rights of the Child, *General Comment No 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts 19; 28, para 2; and 37, Inter Alia)*, CRC/C/GC/8 (2 March 2007) at para 34.

76 Committee on the Rights of the Child, *General Comment No 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts 19; 28, para 2; and 37, Inter Alia)*, CRC/C/GC/8 (2 March 2007) at para 40. The common law principle of *de minimis non curat lex* (the law does not take account of trivialities) has been said to be "enshrined" in s 95 of the Penal Code (Cap 224, 2008 Rev Ed) (acts causing slight harm): *Teo Geok Fong v Lim Eng Hock* [1996] 2 SLR(R) 957 at [48]. This provision reads:

> Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

it is in the best interests of the affected child.[77] It noted that prosecuting parents is in most cases unlikely to be in their children's best interests.[78]

58 Even within the Association of Southeast Asian Nations ("ASEAN"), the Regional Plan of Action on the Elimination of Violence against Children in 2014 is clear that corporal punishment as used by parents is also to be prohibited.[79] This document states:

> **b) Definition of the word 'violence'**
>
> [The] term violence represents any act on children which causes harm, injury, abuse, neglect or negligent treatment, maltreatment and/or exploitation whether accepted as 'tradition' or disguised as 'discipline' …[80]
>
> …
>
> **ACTION 3: Legal Framework, Prosecution and Justice System**
>
> **a) Law Reform**
>
> …
>
> [ASEAN states are encouraged] to enact legislation to promote the implementation of positive discipline for children and to prohibit violence against children, including corporal punishment within the family, schools, and other settings including in the juvenile justice system …[81]

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77 Committee on the Rights of the Child, *General Comment No 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts 19; 28, para 2; and 37, Inter Alia)*, CRC/C/GC/8 (2 March 2007) at para 41. Due weight, according to the child's age and maturity, must also be given to the child's views.

78 Committee on the Rights of the Child, *General Comment No 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts 19; 28, para 2; and 37, Inter Alia)*, CRC/C/GC/8 (2 March 2007) at para 41.

79 "ASEAN Regional Plan of Action on the Elimination of Violence against Children Adopted" *Children Rights Coalition Asia* (18 April 2016), available at http://crcasia.org/asean-regional-plan-of-action-on-the-elimination-of-violence-against-children-adopted/ (accessed 22 May 2018). This implements The Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN from 2013. The Regional Plan of Action was adopted by the 27th ASEAN Summit of Heads of State and Government on 21 November 2015 held in Kuala Lumpur, Malaysia. The Chairman's statement described the Regional Plan of Action as reflecting the "zero tolerance of ASEAN on all forms of violence against … children", at para 76, available at <http://asean.org/chairmans-statement-of-the-27th-asean-summit/> (accessed 22 May 2018).

80 *Regional Plan of Action on the Elimination of Violence against Children* (The ASEAN Secretariat, 2016).

81 *Regional Plan of Action on the Elimination of Violence against Children* (The ASEAN Secretariat, 2016), at para 23.

59 The approach taken by the CRC Committee is therefore consistent with the aspirations of ASEAN countries, including Singapore.

60 Singapore's clearest commitment to prohibiting corporal punishment can be seen in its ratification of the Convention on the Rights of Persons with Disabilities ("CRPD") in 2013. Article 15(1) of this CRPD states, "[no] one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment", while Art 16(1) states, "State Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse". Unlike the CRC, Singapore has not made any reservation or declaration under either Arts 15 or 16 of the CRPD even though Art 37(a) in the former and Art 15(1) in the latter are virtually identical.[82]

61 Can it be argued that corporal punishment of a child is inherently "degrading" punishment? The case law from the European Court of Human Rights is disappointing.[83] In *Costello-Roberts v United Kingdom*,[84] it was held that punishment must meet a certain minimum severity to be considered as degrading.[85] Hence, considerations of the circumstances of the case, the nature and context of the punishment and the manner and method of its execution are to be considered.[86] In *A v United Kingdom*,[87] the facts of which are the most apposite to this discussion, concerned a stepfather charged with committing assault occasioning actual bodily harm on his nine-year-old stepson by hitting him with a garden cane, causing various bruises on his legs and other parts of the body. The European Court of Human Rights affirmed its earlier decision on the requirement of minimum severity for it to be

82 However, since Singapore subscribes to the "dualist" approach to international law, a Singapore court will still apply the domestic law even in the face of any inconsistency with international treaties or norms, *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129. It was also noted in *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489 that there is no constitutional prohibition against torture or inhuman or degrading punishment or treatment in Singapore. However, not having a constitutional prohibition against cruel, inhuman or degrading punishment has not stopped Tonga from considering corporal punishment unconstitutional although no "decided view" was expressed: *Fangupo v R* [2010] TOCA 17; [2011] 1 LRC 620.

83 Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) 213 UNTS 221 states, "[no] one shall be subjected to torture or to inhuman or degrading treatment or punishment".

84 (1995) 19 EHRR 112.

85 *Costello-Roberts v United Kingdom* (1995) 19 EHRR 112 at [30]; see also *Tyrer v United Kingdom* (1979–1980) 2 EHRR 1 at [30].

86 *Costello-Roberts v United Kingdom* (1995) 19 EHRR 112 at [30].

87 (1999) 27 EHRR 611.

degrading punishment and found that the caning met this threshold.[88] On the other hand, the CRC Committee was clear in its view that corporal punishment need not reach a degree of severity and such punishment is "invariably degrading".[89]

62 However, even if corporal punishment does not meet the requirement of being inherently "degrading" punishment as required in Art 15(1) of the CRPD, Art 16(1) commits Singapore to "protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse". Although the wording of Art 16(1) relates to "persons with disabilities", Singapore's 2016 initial report[90] submitted to the Committee on the Rights of Persons with Disabilities monitoring implementation of this Convention was clear that the commitment in these two articles extend to *all persons*, not just persons with disabilities. The report states:[91]

> 10.1 The Singapore Government is committed to preventing and condemning torture and other cruel, inhuman or degrading treatment or punishment in its various forms against all persons including person with disabilities …
>
> …
>
> 11.1 All persons in Singapore are entitled to protection against exploitation, violence and abuse in Singapore, including persons with disabilities …

88 *A v United Kingdom* (1999) 27 EHRR 611 at [20] and [21]. In any case, the UK government accepted that there was a violation of Art 3 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (4 November 1950) 213 UNTS 221: at [18].

89 Committee on the Rights of the Child, *General Comment No 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts 19; 28, para 2; and 37, Inter Alia)*, CRC/C/GC/8 (2 March 2007) at para 11. The definition of "corporal" or "physical" punishment used by the Committee on the Rights of the Child is reproduced in the text accompanying para 5, n 7 above.

90 Committee on the Rights of Persons with Disabilities, *Implementation of the Convention on the Rights of Persons with Disabilities – Initial Report Submitted by States Parties under Article 35 of the Convention: Singapore*, CRPD/C/SGP/1 (30 June 2016).

91 Committee on the Rights of Persons with Disabilities, *Implementation of the Convention on the Rights of Persons with Disabilities – Initial Report Submitted by States Parties under Article 35 of the Convention: Singapore*, CRPD/C/SGP/1 (30 June 2016) at paras 10.1 and 11.1.

V. Conclusion

63 The issue of when corporal punishment of children by their parents is shielded from the law is an important and topical one[92] with implications on the parent–child relationship. The areas affected include not only criminal liability and care and protection orders, but even custody disputes. A parent who uses excessive discipline or physically abuses a child may not be granted care and control[93] or joint custody[94] of the child.

64 This issue is also a pressing one in view of the alarming increase in the number of child abuse cases investigated by the authorities (see chart below). The statistics show a steady increase: there were a total of 894 cases in 2017, as compared to 873 in 2016 and 551 in 2015.[95] The higher number of cases since 2015 was attributed to greater awareness of family violence and willingness of the public to report child abuse,[96] but it should be noted that the average number of cases investigated between 2009 and 2016 is still three times more than the average number investigated between 2003 and 2007.[97] Furthermore, the majority of investigations comprised allegations of physical abuse (45% of all investigations between 2009 and 2017, reaching a high of 51% of investigations in 2016).[98] The number of child protection orders issued by the courts have also increased dramatically from 80 in 2015 to 219 in 2016, an increase of 174%.[99]

92 See the recent articles by Debbie Ong Siew Ling, "The Quest For Optimal State Intervention in Parenting Children: Navigating within the Thick Grey Line" [2011] Sing JLS 61 (which warns against excessive intervention by the State) and Leong Wai Kum, "Prohibiting Parental Physical Discipline of Child in Singapore" (2014) 26 SAcLJ 499 (which argues for a soft law approach to achieving prohibition).

93 See, *eg*, *ACV v ACW* [2009] SGDC 434 and *AVF v AVH* [2011] SGDC 363.

94 *CX v CY* [2005] 3 SLR(R) 690 at [38].

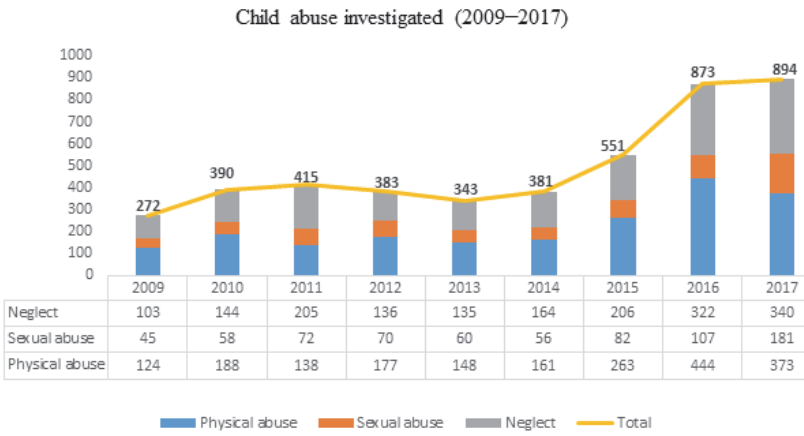
95 The data was extracted from Ministry of Social and Family Development, "Child Abuse Investigations", available at <https://www.msf.gov.sg/research-and-data/Research-and-Statistics/Pages/Child-Abuse-Investigations.aspx> (accessed 22 May 2018).

96 Prisca Ang, "Protection Orders for Children Nearly Triple" *The Straits Times* (28 May 2017); Rahimah Rashith, "Spike in Child Sex Abuse Cases over Last Three Years" *The Straits Times* (16 April 2018).

97 From 2004 to 2007, the number of child abuse cases ranged between 150 and 170, well below the 205 cases in 2003: see *Consideration of Reports Submitted by States Parties under Article 44 of the Convention – Second and Third Periodic Reports of States Parties Due in 2007 – Singapore*, CRC/C/SGP/2-3 (26 July 2010) Table 17.

98 The laws relating to child abuse are being reviewed in response to several cases being reported in the media: Kelly Ng, "Laws Being Reviewed to Further Curb Family Violence: Tan Chuan-Jin" *Today* (20 July 2016).

99 Prisca Ang, "Protection Orders for Children Nearly Triple" *The Straits Times* (28 May 2017).



	2009	2010	2011	2012	2013	2014	2015	2016	2017
Neglect	103	144	205	136	135	164	206	322	340
Sexual abuse	45	58	72	70	60	56	82	107	181
Physical abuse	124	188	138	177	148	161	263	444	373

65 It is argued in this article that when the various pieces of evidence outlined in Part IV[100] are considered, a strong case can be made that Singapore actually does not condone parental corporal punishment despite the recognition in the Women's Charter and some case law that its reasonable use is not unlawful. Use of physical force must be judged not by the good intention to teach proper behaviour, but from its *impact* on the child. When deciding on its impact, we must not focus on the visible injuries only: the mental, emotional and long-term effects of violence on a child must also be considered.

66 The common law in the past allowed physical force to be used on wives and servants as well in order to correct misbehaviour,[101] but no one would accept this today even if the chastisement were minor.[102] Even if it is possible to draw a line between what is or is not excessive in

100 See paras 30–62 above.

101 William Blackstone, *Commentaries on the Laws of England* (Clarendon Press, 1765) at pp 432–433:

> The husband also (by the old law) might give his wife moderate correction. For, as he is to answer for her misbehaviour, the law thought it reasonable to entrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his servants or children; for whom the master or parent is also liable in some cases to answer … But, with us, in the politer reign of Charles the Second, this power of correction began to be doubted: and a wife may now have security of peace against her husband; or, in return, a husband against his wife. Yet the lower rank of people, who were always fond of the old common law, still claim and exert their ancient privilege: and the courts of law will still permit a husband to restrain a wife of her liberty, in case of any gross misbehaviour.

102 See, *eg*, *Public Prosecutor v N* [1999] 3 SLR(R) 499 at [23] for condemnation of a husband's mistreatment of his wife, and *ADF v Public Prosecutor* [2010] 1 SLR 874 at [159], [177] and [220] for similar condemnation of mistreatment of a domestic maid by her employer.

the abstract, things can quickly escalate in practice. In a case reported in the media, a father wanted to cane his nine-year-old daughter for not completing her homework. He hit her twice on her palms but she put her hands behind her back, so he caned her legs instead. But when he beat her legs, she covered her cheeks with her palms. He wanted to hit the back of her palms, but accidentally left a cane mark on her cheek.[103]

67 What would be the consequences of recognising that it is not lawful for Singaporean parents to cane their children? Would it mean that they would grow up to be more unruly with greater anti-social behaviour? Sweden was the first country in the world to have abolished all forms of corporal punishment in 1979. This gives a sufficient passage of time to be able to compare between cohorts of children who grew up before and after the practice was banned. It was found that the cohort who grew up as adolescents after the ban had lower levels of youth crime, used less alcohol and drugs, and had fewer suicides than the cohort before the ban. Although youth violence increased, this could be explained on the basis of a change in enforcement policies.[104] Hence, far from "spoiling the child" by "sparing the rod", giving up corporal punishment may in fact result in improved functioning of youths. There will be more data on the effect of changing child-rearing practices as more and more countries decide to prohibit physical punishment in the home.

68 There are signs too that members of the public and professionals in Singapore increasingly do not agree with physical punishment of children. The Singapore Children's Society conducted two public surveys in 1994 and 2010 on whether various methods of physical punishment amounted to child abuse and neglect.[105] Representatives from various professions were also surveyed in 2011.[106] The results are presented in the following tables.

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103 Chai Hung Yin, "How Can They Take Away My Girl?" *The New Paper* (19 February 2011).

104 Joan E Durrant, "Trends in Youth Crime and Well-Being Since the Abolition of Corporal Punishment in Sweden" (2000) 31(4) *Youth & Society* 437.

105 Jacky Tan Chin Gee, John M Elliott & Cuthbert Teo Eng Swee, *Changing Public Perceptions of Child Abuse and Neglect in Singapore (Revised)* (Research Monograph No 10R) (Singapore Children's Society, 2016). Although the 2010 survey included those who lived in private housing, only those who lived in public housing were used to compare with the results of the 1994 survey because the latter only surveyed residents in public housing.

106 They were drawn from the fields of social services, education, healthcare and law. They included child protection officers, social workers, medical social workers, counsellors, school counsellors, social service support staff, childcare educators, kindergarten educators, teachers, general practitioners, family physicians, paediatricians, nurses, psychiatrists, psychologists, police officers and lawyers.

Perception of the public

	Is not **child abuse and neglect**	***Can be*** **child abuse and neglect**	***Is*** **child abuse and neglect**
1994 survey (n = 401)			
Slapping child on the face	20.2%	38.1%	41.7%
Shaking child hard	19.4%	32.4%	48.2%
Caning child	29.4%	42.7%	27.9%
Tying child up	2.5%	12.8%	84.7%
Burning child with cigarettes, hot water or other hot things	0.5%	0.5%	99.0%
2010 survey (n = 400)			
Slapping child on the face	9.0%	43.5%	47.5%
Shaking child hard	9.8%	33.8%	56.5%
Caning child	19.0%	59.3%	21.8%
Tying child up	4.0%	16.8%	79.3%
Burning child with cigarettes, hot water or other hot things	0.0%	0.5%	99.5%

Perception of professionals

	Is not child abuse and neglect	**Can be child abuse and neglect**	**Is child abuse and neglect**
2011 survey (n = 1155)			
Slapping child on the face	5.4%	45.9%	48.7%
Shaking child hard	2.5%	23.0%	74.5%
Caning child	9.3%	61.5%	29.2%
Tying child up	0.7%	8.2%	91.7%
Burning child with cigarettes, hot water or other hot things	0.9%	0.8%	98.3%

69 These results show that fewer members of the public will consider physical punishment as *not* being child abuse and neglect in 2010 as compared to 1994. Taking caning of a child as an example, even though this was the most ambiguous form of behaviour among the various forms of physical abuse perhaps owing to its prevalence, there was a decrease of 10.4% in the number who thought that caning a child was not abusive in 2010 than in 1994. Moreover, there was an increase of

16.6% in the number who thought that it "can be" child abuse and neglect.

70 The results also show a need for the law to set clear standards. Taking caning of a child again as an example, about 60% of the public and professionals were not certain if this is or is not child abuse and neglect. In addition, the uncertainty felt by the public is compounded by the gap between them and the perception by the professionals: generally more professionals hold a clear opinion on what forms of physical punishment constitute child abuse and neglect.

71 The points made in this article can be summarised briefly. Rather than Singapore law implicitly accepting the social practice of parents using physical punishment on their children as a form of discipline and only intervening when the use of force is excessive, this article argues that:

(a) Under the CCCR, corporal punishment of children under seven years of age is unlawful when administered by a staff member in a child care centre. This prohibition should be seen to apply equally to a parent at home or anyone *in loco parentis*.

(b) The CYPA (which applies to children under 16 years of age) and developments in case law which recognise emotional maltreatment tell us that parents cannot shield their acts by claiming that their intention was not to hurt the child but to correct misbehaviour. It is the effect of the punishment on the child that must be assessed.

(c) Prohibiting physical punishment of children by parents is consistent with Singapore's international commitments to act in the best interests of the child.

(d) The Women's Charter should be amended such that ill-treatment of children by parents is unlawful even if it is for the purposes of correcting a child.

(e) However, the law may not intervene in every case where a parent inflicts corporal punishment on his child. Police and prosecutorial discretion can be relied on to divert cases to more suitable ways to achieve compliance such as using warnings or tapping on social service agencies to provide parenting education, counselling and support.[107]

107 In assessing each case, considerations of the severity of the harm, the relationship between the parties, the circumstances which led to the infliction of harm, and the intention of the conduct are still relevant, but only for purposes of assessing how the case should be dealt with, not whether the physical punishment is lawful or not.

(f) The more severe forms of intervention through a care and protection order or criminal sanction can be used if the parent is not responsive. Even criminal sanctions need not necessarily result in imprisonment. There are a range of community sentences[108] available under our present law to differentiate the appropriate penalty for each case.

(g) Parents who are charged for an offence in court, may plead the defence of slight harm found in s 95 of the Penal Code, but the burden of proof is on them to show that the defence is made out.[109]

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108 See Pt XVII of the Criminal Procedure Code (Cap 68, 2012 Rev Ed).

109 See, *eg*, *Teo Geok Fong v Lim Eng Hock* [1996] 2 SLR(R) 957, *Balbir Singh s/o Amar Singh v Public Prosecutor* [2010] 3 SLR 784 and *Lim Hean Nerng v Lim Ee Choo* [1998] 2 SLR(R) 320. The defence of consent in the Penal Code (Cap 224, 2008 Rev Ed) will not apply since a parent can only consent on behalf of a child if he is below 12 years old (s 89 of the Penal Code (Cap 224, 2008 Rev Ed)). Once the child is 12 years old or above, he has the same right to physical integrity as any adult. Even in the case of a child under 12 years old, a parent can only consent to limited use of force if it is "for the benefit" of the child. As argued in this article, the required benefit cannot be satisfied in the light of the scientific evidence available now on the detrimental effects of physical punishment on a child.