

Gender Roles have Changed – The Law on Maintenance Should Too*

I. Introduction

1. The Women’s Charter marked a significant swing for gender equality in Singapore. Its founders wanted to foster the principle of equality between women and men through its enactment.¹ Under the Charter, both spouses are regarded as equal beings capable of cooperating with each other to promote the interests of the marriage.
2. Recently, the debate on issues relating to gender equality has received much attention in the public forum. On 20 September 2020, Law and Home Affairs Minister K. Shanmugam has announced that the Singapore government will review crucial issues on gender equality which will culminate in a White Paper by the first half of next year.
3. One commonly overlooked area of gender equality is the law on maintenance. The law adopts a seemingly asymmetric stance that only allows capable husbands to provide maintenance for their wives. This paper argues that in keeping with the tenor of the Charter, as well as embracing progressive norms, both spouses should be entitled to make a claim for maintenance based on needs, rather than gender.
4. This paper will first examine what the Women’s Charter means by “the equal cooperative partnership of different efforts”.² Then, it will examine the history of maintenance in Singapore and explain why it was justified to adopt a one-sided approach which only allowed women to claim for maintenance at that time. Next, this paper will examine the current socioeconomic landscape to determine whether this one-sided approach is still justifiable today. Finally, this paper will make suggestions as to how the Charter can be adapted to better reflect the view that marriage is a “equal cooperative partnership”.

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¹ Announced by PAP Chairman at special Party Congress on 25th April 1959, See *The Tasks Ahead Part 1* (Singapore: Petir, 1959) (“*The tasks ahead*”) at 7-8 and 11.

² See Women’s Charter (Cap 353, rev ed 2009) (“**Women’s Charter**”), s 113.

II. What does the equal cooperative partnership of different efforts mean?

5. The Women's Charter entered into force in 1961,³ and it serves as the governing legislation for family law.⁴ Interestingly, the statute's name is a misnomer. Despite its name, the Women's Charter was meant to govern family law, rather than protect the rights of women alone.⁵ One of its key purposes was to advocate for the mutual cooperation of spouses in marriage.⁶ This objective has been explicitly endorsed in s 46(1) of the Charter, which states that both husband and wife "shall be mutually bound to co-operate with each other in safeguarding the interests of the union and in caring and providing for the children."⁷
6. Hence, the gender equality which the Charter seeks to propagate is the equality of duties between husband and wife.⁸ In other words, spouses are seen as equal partners in matrimony. Both are reminded that by entering into marriage, they have committed to join hands and discharge different duties for the mutual benefit of their marriage.⁹ Such duties can exist in a myriad of forms, and can include both the kind which benefits the marriage financially, or the kind related to domestic affairs, such as childcare and homemaking.¹⁰ What remains crucial is that both husband and wife must strive to share the burden of these duties in order to cultivate the marriage.¹¹

III. A quick background of maintenance in Singapore

7. Prior to the Charter, the law favoured men over women through the "unity of personality" doctrine.¹² Under this doctrine, only a husband's legal personality would survive after marriage. This meant that a woman could no longer deal with property

³ Leong Wai Kum, "The Next Fifty Years of the Women's Charter – Ripples of Change" in Singapore Journal of Legal Studies [2011] 152 – 177. See also Leong Wai Kum, *Principles of Family Law in Singapore* (Singapore Butterworths Asia, 1997) at 38-44.

⁴ Leong Wai Kum, *The Singapore Women's Charter: 50 Questions*. Singapore: Institute of Southeast Asian studies ("50 questions") at p 5.

⁵ Singapore Parliamentary Debates, Official Report (29 February 2016) vol 94 (Mr Tan Chuan-Jin, Minister for Social and Family Development).

⁶ Women's Charter, *supra* n 2 at s 46(1).

⁷ Institute of Southeast Asian Studies, & Devasahayam, T. (2011). *Singapore Women's Charter: Roles, Responsibilities and Rights in Marriage*. Iseas Publishing ("Roles, Responsibilities and Rights in Marriage") at p 91.

⁸ *Id* at p 92.

⁹ *50 questions, supra* n 4 at p 30.

¹⁰ *50 questions, supra* n 4 at p 29.

¹¹ *50 questions, supra* n 4 at p 28.

¹² *Roles, Responsibilities and Rights in Marriage, supra* n 7 at p 82.

and all that she owned prior to the marriage now belonged to her husband.¹³ If a woman had opted for divorce, her financial state would be tantamount to restarting from square one.¹⁴ Without any legal protection, female divorcees were left in great financial precarity.

8. Thus, there was a need to safeguard the financial welfare of women. In addition to removing the “unity of personality” doctrine, the government encouraged greater economic participation of women by implementing, *inter alia*, various maternity benefit schemes and flexible arrangements¹⁵ As a result, Singapore’s traditional breadwinner-homemaker family model started to shift towards a dual-income one.¹⁶
9. Lawmakers also further supported improving the financial health of women, especially divorcees.¹⁷ This was done via section 113 of the Women’s Charter which states:

“(1) The court may order a man to pay maintenance to his wife or former wife, or order a woman to pay maintenance to her incapacitated husband or incapacitated former husband —

 - (a) during the course of any matrimonial proceedings; or
 - (b) when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage.

(2) The court may make an order under this section regardless when the marriage was solemnized, whether before, on or after the date of commencement of section 23 of the Women’s Charter (Amendment) Act 2016.”¹⁸
10. Pursuant to s 113, the court is empowered to order a husband to pay maintenance to his ex-wife after their divorce.”¹⁹ Maintenance serves to safeguard a woman’s financial

¹³ *Roles, Responsibilities and Rights in Marriage*, *supra* n 7 at p 7.

¹⁴ *Ibid.*

¹⁵ Tai, J. (2017, March 13th) *Growing number of women in the workforce*, The Straits Times. <Retrieved from <https://www.straitstimes.com/singapore/manpower/growing-number-of-women-in-the-workforce>> .

¹⁶ Jean Yeung, W., & Hu, S. (2018). *Family and population changes in Singapore: A unique case in the global family changes* (pp. 1–208) at p 53.

¹⁷ Singapore Parliamentary Debates, Official Report (6 April 1960) vol 12 at cols 452 (Dr Lee Siew Choh, Queenstown).

¹⁸ *Women’s Charter*, *supra* n 2 at s 113.

¹⁹ Although incapacitated husbands or formers husbands may receive maintenance, this allowance was only granted recently in the 2016 amendment of the Women’s Charter.

health, especially if she is in a worse-off position than her husband after divorce.²⁰ Indeed, studies have shown that female divorcees face a larger decrease in household income as compared to male ones.²¹ This arises from the fact that women faced greater difficulties in re-entering the workforce after having children, and that higher paying jobs were male dominated.²² Hence, the husband was obligated to financially support his wife, even after their marriage ended.

IV. The changing socioeconomic landscape in Singapore

11. However, this paper argues that the Women's Charter has failed to account for the changes in our socioeconomic landscape. In general, the participation of women in the labour force has doubled from 28% in 1970 to 58% in 2016.²³ Additionally, more women are entering managerial positions. For instance, according to a global Credit Suisse study, which revealed that Singapore is ranked first with 15% of its companies led by a female CEO.²⁴
12. The inclusion of women in the labour force has also helped many women achieve greater financial security as compared to their pre-Charter progenitors. Notably, the difference in the average Central Provident Fund balance between genders has narrowed from 16% to 11% in the last decade.²⁵ As a result, more women are seen to have greater access to retirement funding, healthcare, and housing needs.²⁶
13. Economic changes have also influenced our view on what the "model family" is. The number of dual-earner income homes have nearly doubled, from 27% to 53.8% in the

²⁰ Sharanjit Kaur, *Is maintenance for wives still necessary*, Asia Law network (25 July 2018) <<https://learn.asialawnetwork.com/2018/07/25/is-maintenance-for-wives-still-necessary/>> (Accessed 2 November 2020).

²¹ Leopold, T. (2018). *Gender Differences in the Consequences of Divorce: A Study of Multiple Outcomes. Demography*, 55(3), 769–797.

²² *Ibid.*

²³ McKinsey Global Institute, *The power of parity: advancing women's equality in Asia Pacific* (April 2018) at p 187. <<https://www.mckinsey.com/featured-insights/gender-equality/the-power-of-parity-advancing-womens-equality-in-asia-pacific#>> (Accessed 2 November 2020).

²⁴ Credit Suisse, *Gender Diversity is good for business*, (10 October 2019) <<https://www.credit-suisse.com/about-us-news/en/articles/news-and-expertise/cs-gender-3000-report-2019-201910.html>> (Accessed 2 November 2020)

²⁵ SPS Faishal reaffirms more progress and support for women in Singapore (26 October 2017), Ministry of Social and Family Development at [34]. <[http://www.nas.gov.sg/archivesonline/data/pdfdoc/20171026009/CEDAW 2017 - Post-presentation Media Release.pdf](http://www.nas.gov.sg/archivesonline/data/pdfdoc/20171026009/CEDAW%202017%20-%20Post-presentation%20Media%20Release.pdf)> (Accessed 2 November 2020).

²⁶ *Ibid.*

last 35 years.²⁷ The increase in purchasing power grants many couples the option to hire a domestic worker who can fill in the homemaker role that was traditionally held by the wife.²⁸ The number of Singaporean households which employ at least one domestic workers has seen a rapid growth from 4,123 in 1980²⁹ to 261,800 in 2019.³⁰ This has allowed more women to shift away from the traditional homemaker role to support the family financially.³¹

14. To recognize the change in our socioeconomic landscape, the Women’s Charter has seen its fair share of amendments. Particularly, maintenance is no longer confined to women, as ill and disabled husbands can now make a claim against their former wives.³² In *ADB v ADC*,³³ the High Court noted that a wife’s right to maintenance is no longer unreserved as the idea that women are financially dependent on their husbands might “lead to the suppression of women in the name of chivalry”.³⁴ Thus, the judge denied the wife’s claim for maintenance as she was already drawing a lofty annual income of \$200,000 and had twice the amount of assets as compared to her husband.³⁵ In making a financial assessment of both parties, the court did not think it was necessary for the richer wife to claim maintenance from her poorer husband.
15. Now, the courts will consider a multitude of factors regarding the financial standing between both parties in deciding whether the wife should succeed in her claim for maintenance.³⁶ This includes factors like the division of the matrimonial assets³⁷ or the capability of her children to support her.³⁸

²⁷ Jean Yeung, W., & Hu, S. (2018). *Family and population changes in Singapore: A unique case in the global family changes* (pp. 1–208) at p 53.

²⁸ Lim, L. (2015). *BEYOND GENDER: THE IMPACT OF AGE, ETHNICITY, NATIONALITY AND ECONOMIC GROWTH ON WOMEN IN THE SINGAPORE ECONOMY*. The Singapore Economic Review, 60(2), 1550020–1550021–1550020–16.

²⁹ 4,123 Singaporean non-residents were employed in domestic service out of a total working population of 1,077,090 in 1980 (Singaporean Census of Population 1980).

³⁰ Ministry of Manpower website, Foreign workforce numbers <<https://www.mom.gov.sg/documents-and-publications/foreign-workforce-numbers>> (Accessed 2 November 2020).

³¹ *Ibid.*

³² *Women’s Charter*, *supra* n 2 at s 69.

³³ [2014] SGHC 76.

³⁴ *Ibid.*, at [11].

³⁵ *Ibid.*, at [3].

³⁶ *Roles, Responsibilities and Rights in Marriage*, *supra* n 7 at p 137.

³⁷ *UEB v UEC* [2018] SGHCF 5at [8].

³⁸ *UBM v UBN* [2017] 4 SLR 921 at [74].

V. Paving the way forward

16. While these go towards promoting the underlying purposes of the Charter, more can be done in this respect. Specifically, the present Charter imposes an unequal duty of maintenance between spouses.³⁹ This is problematic, as it does not consider the rising trend of women with greater financial capabilities than their spouses. While the gender wealth gap still exists, a blanket approach which *only* allows for females to claim maintenance may no longer be justifiable.
17. If marriage is seen as a mutually cooperative enterprise,⁴⁰ and maintenance is meant to protect the more financially vulnerable spouse,⁴¹ then both spouses should be equally entitled to make a claim for maintenance upon divorce. A better way forward would thus be to focus on the comparative financial standing of both divorcees.
18. This suggestion has been considered before in Parliament but was rejected. Mr Abdullah Tarmugi, the Acting Minister for Community Development, reasoned, “Call me old-fashioned if you will; call me a male chauvinist if you must, but my upbringing and my background tell me that it is the duty of the husband to maintain the wife. And I think I speak for most, if not all, the husbands of this house.”⁴² However, his reply has received much criticism. Dr Kanwaljit Soin, then nominated member of Parliament, retorted that personal feelings ought to be set aside. Rather, our socioeconomic context should be used as the governing factor for our public policy.⁴³
19. Further, the Select Committee had raised their concerns that such a provision would have an impact on family values and the significance of the marriage vows to couples.⁴⁴ The issue of maintenance to husbands was postponed to a later time when the disparity between men and women is less marked.⁴⁵

³⁹ As mentioned earlier, s 69 of the Women’s Charter only allows for ill and disabled husbands or ex-husbands to claim alimony from their wives.

⁴⁰ *Women’s Charter*, *supra* n 2 at s 46(1).

⁴¹ *Roles, Responsibilities and Rights in Marriage*, *supra* n 7 at p XXI.

⁴² Singapore Parliamentary Debates, Official Report (2 May 1996) vol 66 at cols 95 (Mr Abdullah Tarmugi, Acting Minister for Community Development).

⁴³ *Id.*, at Columns 96–97.

⁴⁴ Report of the Select Committee of Parliament on the Women’s Charter (Amendment) Bill [Bill No. 5/96] at [5.4.6].

⁴⁵ *Ibid.*

20. Given that 24 years has passed, and significant changes have arisen in our socioeconomic landscape, it is time to reconsider whether change is warranted. The argument that longstanding traditions should be the governing force of legislative enactments is ironic considering the purpose of the Charter. The Charter was meant to combat outdated doctrines like the “unity of personality” and treat both spouses equally when considering whether they have discharged their marital duties.⁴⁶ The Charter started out as a progressive piece of legislation, and we should not allow it to stagnate. With the increase in dual-income households, it is now common for both spouses to simultaneously act as breadwinners and homemakers.⁴⁷ To reflect the change in what constitutes a “model family”, the Charter should be updated to reflect the underlying principles of the Women’s Charter, as well as the changes in our socioeconomic landscape.
21. Thus, the word “*wife*” should be changed to “*spouse*” in s 113 of the Charter to ensure that both husband and wives can make a claim for maintenance. In line with the view that marriage is a mutually cooperative enterprise,⁴⁸ the key factor which underpins the court’s decision should be the effort both spouses have devoted to their marriage. In more specific terms, the court can consider the financial needs of the parties, as well as their material and immaterial contributions to the marriage.
22. This position recognises that there are many women out there who still require financial support from maintenance yet simultaneously acknowledges that men may find themselves in a similar predicament. Further, it acknowledges that both men and women can contribute to the marriage in a myriad of ways. This gender-neutral approach upholds the equality of duties espoused by the Charter.

VI. Conclusion

23. In conclusion, the Women’s Charter should be a reflection of the socio-economic landscape of the present day. Given the enormous shift in our milieu since the enactment of the Women’s Charter, the time has come to reconsider, and re-examine the rules pertaining to spousal maintenance. All the more so given the focus on gender

⁴⁶ *Roles, Responsibilities and Rights in Marriage*, *supra* n 7 at p xxi.

⁴⁷ See above at IV.

⁴⁸ *The tasks ahead*, *Supra* n 1 at p 7-8 and 11.

equality - if both genders are to be treated equally, it begs the question as to why both sexes cannot both claim for maintenance, regardless of their gender. The upcoming review of women's issues in Singapore is an opportune time for Parliament to revisit this issue.

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