

# SINGAPORE WOMEN'S CHARTER

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# SINGAPORE WOMEN'S CHARTER

*Roles, Responsibilities and  
Rights in Marriage*

EDITED BY

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## Foreword

I thank the Director of the Institute of Southeast Asian Studies (ISEAS), Ambassador K. Kesavapany, for inviting me to contribute the Foreword to this volume which contains the papers submitted to the symposium “Revisiting the Singapore Women’s Charter”. The symposium was organized by Dr Theresa W. Devasahayam, the coordinator of the gender studies programme at ISEAS.

First, I am very pleased that ISEAS has a programme on gender policies and issues in Southeast Asia. I consider the emancipation of women and the recognition that women are entitled to equal rights with men as one of the greatest achievements of the twentieth century. The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), of which Singapore is a party, is one of the most important treaties in public international law. It seeks to put an end to a shameful period in human history, lasting thousands of years, during which women were treated as chattels and having no rights or as inferior human beings and discriminated against in a myriad of ways. It is, of course, true that CEDAW has not been fully implemented by all the state parties or by all the member states of the UN. However, those who invoke culture or religion to justify discrimination against women know that theirs is a losing battle. They are on the wrong side of history.

I am convinced that one day, in this century, the dream that women will enjoy the same rights as men will come true for all womenkind.

Second, in Singapore the enactment of the Women's Charter in 1961 was a revolutionary act. It put an end to polygamy for all Singaporeans, except for Muslims. Section 46 of the Charter, *inter alia*, gives the wife the right to use her surname and name; to have equal rights with her husband in running the matrimonial household; and the right to engage in any trade or profession or social activities. Compared to the situation prior to 1961, these were transformative propositions. A member of the Singapore Legislative Assembly was right when he described the Women's Charter as a bill of rights for Singapore women. There is a disagreement in this book between Dr Kanwaljit Soin and Professor Leong Wai Kum on whether the title of the legislation, "Women's Charter", should be retained or changed to "Family Charter". I agree with Professor Leong that, for historical reasons, it is better to retain the name. I agree with her that it would be unfortunate if future generations of Singaporeans, especially women, were to forget the struggles of women over many decades which eventually led to the enactment of this landmark legislation.

Third, I am disappointed to learn from the book that divorce has been on the rise looking at marriage trends in the past decade and more. The Ministry of Community Development, Youth and Sports (MCYS) has been campaigning to encourage young Singaporeans to marry and to have children. I think MCYS should also focus on why such a high percentage of our marriages break down

and, whether, when children are involved, there is anything which our counsellors can do to prevent the dissolution of such marriages. I am also appalled to read accounts of the shabby treatment given to children in families which have broken down because of domestic violence. If the father is violent and harms his family, why should the law require the victimized child to undergo counselling? There is obviously also a need to re-think the existing law and practice regarding the treatment of an erring husband who refuses to pay maintenance. Why is there a hesitation to apply to the court to impose attachment? The law should also be amended to allow a member of the victim's family to apply to court for a protective order. The victim may be too fearful or traumatized to do so.

## **Conclusion**

Singapore has come a long way since the Women's Charter came into force in 1962. Women have attained equality with men in education at all levels. Women have also achieved equality with men in employment. Some discriminatory practices, such as the quota on women in the medical school, have been swept away. However, the discrimination against female civil servants, regarding the entitlement of their family members to medical benefits, has not been fully abolished. The principle of equal pay for equal work is part of our norms and practices. We have many female chief executive officers, several female permanent secretaries in our civil service and one female minister. There are still too few women in our parliament and on our boards and in decision-making positions in

both our public and private sectors. However, the march of our women towards full equality is an unstoppable one. The progress of Singapore has benefited enormously from the contributions of our educated and empowered women. Let us break every remaining glass ceiling impeding the rise of women to the top in Singapore.

*Professor Tommy Koh*  
*Chairman*  
*Centre for International Law*  
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# **Keynote Address “Women’s Charter to Family Charter”**

**Dr Kanwaljit Soin  
ISEAS Symposium  
“Revisiting the Singapore Women’s Charter”  
10 June 2009**

## **Introduction**

I feel very privileged to be given this honour as I see so many distinguished people in the audience who are more qualified than me to fill this role. Nevertheless, I must confess that I readily accepted the invitation when I was asked as this sort of an opportunity seldom comes my way. Now that I am standing here, I am shamelessly going to take advantage of my position. Instead of an overview as might be expected of me, I am only going to speak on issues that I have some knowledge of and am passionate about. This means that I am going to leave the field wide open to the other speakers whom I think are really the substantive part of the forum and whom I salute as the real experts.

## **Enactment of the Charter — 1961**

The PAP government enacted the Women’s Charter as part of an election promise in 1959. At the second reading of the

Women's Charter Bill in 1960, Minister K.M. Byrne revealed that the statute really proposed to regulate the formation of marriage and family life, but had been given the grandiose name of the "Women's Charter" because the bill was making a very great change in the personal lives of many women. We must remember that at that time polygamy was the order of the day and the bill was primarily aimed at legislating monogamy for all non-Muslims. The Women's Charter took effect on 15 September 1961. It ensured equal rights for married women *vis-à-vis* their husbands. In the early 1960s, this legislation was ahead of its time in promulgating the idea of marriage as an "equal cooperative partnership of different efforts".

### **Shortcomings — The Need For A Family Charter**

In 2011, the Women's Charter will see its golden anniversary, an age when some things need a makeover. At present, many people think that the Women's Charter is not an appropriate name for this legislation as it does not reflect the spirit of the legislation. The name gives the impression that men are being denied something that is reserved only for women. The Women's Charter actually deals with family law. This becomes even more obvious when we look at the amendments to the Women's Charter in 1996 — those dealing with family violence, including elder abuse, and the marriage of transsexuals. Do these concern only women? Of course not. They concern the family. Therefore, what we should do is incorporate the present Women's Charter and other legislation dealing with the family, for example, the Maintenance of Parents Act, and make it one big piece

of legislation and call it the “Family Charter”. However, we will first have to remove Part XI from the Women’s Charter because this section deals mainly with offences relating to prostitution and, therefore, rightfully belongs to the Penal Code.

I would like to suggest that in drafting this new “Family Charter”, we should include the five core family values that have been accepted as ideals by us in Singapore. Thus, the Family Charter will not only be the law to regulate family relationships and behaviour, but will also promote values and beliefs that we hold dear. We should draft the legislation in ordinary understandable English and translate it into all the official languages so that it becomes familiar to all of us.

## **Amendments to Women’s Charter 1996**

The Women’s Charter has undergone various amendments in the last fifty years and these were especially significant in 1996. There were four main areas that were affected:

- (i) Protection of family members from violence;
- (ii) Maintenance of wife and children and enforcement of maintenance orders;
- (iii) Division of matrimonial assets on termination of marriage; and,
- (iv) Marriage for persons who have undergone sex reassignment surgery.

## ***Protection From Family Violence***

I will only touch on two of these areas — family violence and maintenance. I moved a Family Violence Bill when I was in parliament in November 1995. Unfortunately, the bill was defeated, but some good things did come about from this aborted bill. Firstly, it generated a great deal of media attention and this brought the subject of family violence very much into the public consciousness. Here I have to acknowledge with pride that it was entirely due to AWARE (Association of Women for Action and Research) and my association with it as a founder member and then as President of AWARE (1991–93), that I was sensitized to the issue of family violence. AWARE has a long history of doing research and advocacy on domestic violence and deserves a lot of credit for bringing this issue to the forefront.

Secondly, some important legislative and practice changes were implemented as a result of the Family Violence Bill. At the second reading of the bill on 1 November 1995, Mr Wong Kan Seng (at that time Minister for Home Affairs) said the following:

Since April last year, an interagency Work Group on Spousal Violence was formed by my Ministry to recommend measures to improve and co-ordinate the management of spousal violence cases and to find innovative ways of dealing with them. Here I would give credit to Dr Soin for the impetus in setting up this Work Group ...

After the bill was defeated, the Women's Charter (Amendment) Bill was moved in May 1996 and sent to a Select Committee and finally the amendments were passed



in Parliament in August 1996. Many of the provisions of the Family Violence Bill were incorporated into the amended Women's Charter 1996.

### ***Comparison: Women's Charter and the Family Violence Bill***

So at this juncture, I would like to compare the aborted bill with the amended Women's Charter in four areas that I think fall short in the Women's Charter.

- (i) *The range of persons protected in the amended Women's Charter:* As in the Family Violence Bill, this includes spouse, former spouse, child, stepchild, adopted child, parents, parents-in-law, and any other relative or incapacitated person who is regarded by the court as a member of the family. However, unmarried couples who are living together are excluded. The message appears to be that if they are not married, they do not deserve to be protected. The solution proposed by the Family Violence Bill would have allowed the courts to consider even *de facto* or what lawyers call common law husbands and wives, and not exclude them altogether as is now the case in the Women's Charter. However, such relations outside registered marriages are subtly on the increase and sometimes reach parenthood status. The illegitimate status of the couple, if you want to call it that, is not the issue here — protection from an abusive relationship is the issue and this is not recognized under the Charter.

- (ii) *The person who may apply for a Protection Order:* In the amended Women's Charter where violence between spouses is concerned, only the victim can apply for a protection order. This provision has not taken into account that in cases of spousal violence, the victim often believes that she cannot help herself, and often fails to take any action to end the abusive relationship because of this sense of learned helplessness. Those who work in the area of domestic violence are well aware of this syndrome. Therefore in the Family Violence Bill, the relevant provision states that any person who has reason to believe that family violence (including spousal violence) is being committed or has been committed, can inform an enforcement officer who will then provide assistance to the victim and can even apply for a protection order for her. This is also the legislation in various Australian states.
- (iii) *Type of harm to be prevented:* In the Family Violence Bill, it is an offence to "compel a family member by force to engage in any sexual act or misconduct", but in the amended Women's Charter this has been omitted. Representations by AWARE and the Association of Women Lawyers were made at the Select Committee hearing of the Women's Charter in 1996 to include unconsented sexual acts or conduct in the definition of family violence, but these were rejected. This means that at present, a forced sexual act or misconduct by an abuser on a family member can only come under the provision of the Penal Code or the Children and Young Persons Act. This process is difficult and

complicated. Let me give you an example — if a brother is molesting his sister, then the family may not be averse to the sister applying for a protection order and the brother being sent for mandatory counselling. In this scenario, there will be no criminal record for the brother. However, if the Penal Code were to be invoked, then the process becomes adversarial and lengthy, and the family may stop the sister from taking any action for fear of shameful publicity and that the brother may end up with a criminal record. If a forced sexual act or misconduct between spouses or family members was recognized as an offence in the amended Women's Charter as it was in the Family Violence Bill, then a clear message would be sent to all family members and spouses that this type of conduct is not just a private matter, but a violation of a person's body, and family members can resort to protection orders. This procedure is more conducive to the victim making a report in the hope of ending the violence, than leaving it to legislation in the Penal Code because the victim and family concerned often avoid this route.

- (iv) *Counselling*: In the amended Women's Charter, mandatory counselling can be imposed not only on the abuser, but also on the victim and her children, while in the Family Violence Bill, mandatory counselling is reserved only for the abuser. I feel that the victim can be offered voluntary support and counselling, but to make it mandatory sends a wrong message to the abuser — he may interpret this as the victim is also at fault as both get mandatory counselling.

### ***Removing Discrimination: Need for Maintenance of Husband***

I will now turn to the issue of maintenance of husbands. When the Women's Charter was first passed in 1961, it was hailed as a very progressive piece of legislation mainly because of the way the rights and duties of the husband and wife were framed. I shall read Section 46 to refresh our memories:

- (i) Upon the solemnization of marriage, the husband and wife shall be mutually bound to cooperate with each other in safeguarding the interests of the union and in caring and providing for the children.
- (ii) The husband and the wife shall have the right separately to engage in any trade and profession or in social activities.
- (iii) The wife shall have the right to use her own surname and name separately.
- (iv) The husband and wife shall have equal rights in the running of the matrimonial household.

Thus as far back as 1961, the Women's Charter clearly propounded the idea of marriage as an equal partnership between a man and a woman. Yet nearly fifty years later, Section 69 of the Charter grants only the wife the right to claim maintenance from her husband and not the other way around. Here I would like to quote Professor Leong Wai Kum on the subject of maintenance:

A wife does not owe a similar obligation and can ignore the subsistence needs of her husband even if she were fully capable of meeting them. This cannot

be right. So while this obligation is not likely to be enforced often, it should be part of the law.

I completely agree with this view. It is only fair and equitable that a wife should maintain her husband if this is necessary. Many wives nowadays earn as much and even more than their husbands. In this era, maintenance should be on the basis of need and not on the basis of sex. Some men may not be able to find work or may be incapacitated by a chronic illness. If an ex-husband develops chronic kidney failure and cannot work, should an ex-wife who is a high earner be absolved from supporting him while the financial burden fall on other family members or the community and the taxpayer? If this woman does not voluntarily want to support her ill ex-husband, why should she get away scot-free and not shoulder her rightful responsibility stemming from the former union?

The unilateral character of maintenance where only husbands maintain wives was inherited from common law because in bygone times a married woman lost her capacity to own property when she married her husband who would then automatically own her property. Therefore to compensate the woman for this loss, the husband had to maintain her. As this practice no longer holds, we have to change the legislation so that we will have mutual maintenance and this will reflect the guiding principle of the Women's Charter that marriage is an "equal cooperative partnership of different efforts".

The existing anomaly violates the spirit of the Charter and puts women in a difficult position. It allows some men to articulate that women cannot ask for equal rights if they do not want to shoulder equal responsibilities in matters

such as maintenance. In this provision if we simply change the word “wife” to “spouse”, we will dispel the belief that the Charter discriminates against men. During the Select Committee hearing in 1996, five women representing women’s groups expressed the view that maintenance to husbands, especially in appropriate cases, should be allowed, but unfortunately this plea failed.

Here, I would like to quote the then Acting Minister for Community Development’s reply when I raised this matter of maintenance for husbands in May 1996 in parliament. This was part of his reply:

As for allowing maintenance for husbands, I am of the view that existing provisions of allowing only women to claim for maintenance should be maintained, at least for the present. 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.

I am afraid that the Minister was not spared a rebuttal in parliament for expressing this view. This is what I had to say in reply, which had to be framed as a point of clarification to fit in with the rules of parliamentary procedure:

I respect the Minister’s view. He wants to be old-fashioned or male chauvinist. But I would like to clarify that when we are making a public policy we will have to leave aside our personal feelings and look at what the social context is. So I would like the Minister to clarify this point about maintenance in view of the statistics that I quoted that [show] many women are marrying downwards now and earning as

much as [their husbands], if not more. In that type of a social milieu, Sir, would the Minister reconsider that husbands can be entitled to maintenance under appropriate circumstances because in the end it is the welfare of the family that may be compromised if in appropriate circumstances we do not award maintenance to the husband?

Unfortunately, even this repeat plea did not move the Minister to change his mind. Maynard Keynes had this to say once and it applies aptly to the occasion at hand: “When circumstances change, I change my view. What do you do, Sir?”

In these days of financial upheaval where husbands have lost jobs and the wife continues to be fruitfully employed, it is necessary to have in place a reassuring law that does not make a husband destitute. There is, therefore, a need for a complete change of heart and mind towards this issue of mutual maintenance. To come back to Keynes again who was ruthless in discarding ideas (including his own) if they failed to act as a guide to change circumstances: “The difficulty lies not so much in developing new ideas”, he argued, “as in escaping old ones.” The Women’s Charter started out being a progressive piece of legislation. We should not now allow it to stagnate.

I would like to make a further point. It is interesting to note that in India a provision for maintenance exists in all matrimonial laws, with the difference that under the Hindu Marriage Act, either party — wife or husband — can claim maintenance, while under the Muslim Personal Law or the Indian Christian Marriage Act, it is only the wife who can claim maintenance.

## Constitutional Issue

There have been some local legal thinkers who have questioned whether the provision in the Women's Charter regarding maintenance being available only to women and not to men violates Article 12(1) of the Constitution of the Republic of Singapore, which provides that "all persons are equal before the law and entitled to the equal protection of the law". It will be interesting if the constitutionality of this maintenance provision is brought before the Supreme Court to be tested.

## Conclusion

Here I am going to quote Professor Leong Wai Kum once more, who, in my opinion, is the foremost expert on marriage and family law: "We respect a family law more when it mirrors our lives and hopes."

I end on this note in the hope that this is the direction that family law will continue to take in Singapore.

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