

## Neglecting Child Neglect: Selected Legal Issues Encountered in Malaysia

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### Introduction

Child abuse is a common social phenomenon in almost all the countries.<sup>2</sup> Children have been subjected to various types of abuse by those who are close to them such as their father, mother or guardian. In the early days, child abuse was regarded as a family issue even if it resulted in physical abuse or death. Children are also generally regarded as second class citizens and as a result, the treatment that they received is very harsh.<sup>3</sup> Child abuse was also considered a socially acceptable behaviour in the early days.<sup>4</sup> Parents, especially the father, has control over the child and can do whatever they want to the child even to kill them for a number of 'practical' reasons.<sup>5</sup> However, today, in most countries, child abuse is an offence.<sup>6</sup> In this article, the writers attempt to discuss the issue of child neglect which forms an instance of child abuse. The World Health Organization (WHO) has defined child abuse as:<sup>7</sup>

Child abuse or maltreatment constitutes all forms of physical and/or emotional, ill treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power.

'Child neglect' is defined as the omission to care or other acts that create a threat to the health and well being of a child.<sup>8</sup> In *R v Sheppard*,<sup>9</sup> Lord Denning said:

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<sup>2</sup> See [http://www.violencestudy.org/IMG/pdf/4\\_World\\_Report\\_on\\_Violence\\_against\\_Children.pdf](http://www.violencestudy.org/IMG/pdf/4_World_Report_on_Violence_against_Children.pdf)

<sup>3</sup> Denise Kindschi Gosselin, *Heavy Hands: An Introduction to the Crimes of Domestic Violence*, Prentice Hall Contemporary Justice Series, New Jersey, 2000 at page 42.

<sup>4</sup> See Sagatun, Inger J and Leonard P. Edward, 1995 *Child Abuse and The Legal System*, Chicago , Nelson Hall Publishers cited in Denise Kindshi Gosselin, note 3.

<sup>5</sup> Denise Kindschi Gosselin at page 43. According to Cynthia Crosson – Tower, children also be regarded as the property of their family especially of their father whom had the right not only to determine the manner in which their child was cared for but if the child were to live or die. See Cynthia Crosson – Tower, *Understanding Child Abuse and Neglect*, 4th Edition, (United States, Allyn and Bacon, 1999) at page 1.

<sup>6</sup> For example, in Singapore, the offence of child abuse is provided under section 5 of the Children and Young Persons Act 2001, in New Zealand it is an offence under section 195 of the Crimes Act 1961 and in Malaysia, it falls under section 31 of the Child Act 2001.

<sup>7</sup> 'Report of the Consultation on Child Abuse Prevention', 29-31 March 1999, World Health Organisation cited by Preventing Child Maltreatment: A Guide to Taking Action and Generating Evidence, World Health Organization and International Society For Prevention of Child Abuse and Neglect, 2006. 5 April 2007. < [http://whqlibdoc.who.int/publications/2006/9241594365\\_eng.pdf](http://whqlibdoc.who.int/publications/2006/9241594365_eng.pdf)>.

<sup>8</sup> John R. Luzker et.al, "Child Abuse and Neglect: Behavioral, Research, Treatment and Theory", (1998) 3 *Aggression and Violent Behaviour* 181 – 196 at page 182.

To neglect a child is to omit to act, fail to provide adequately for its needs; and, in the context of section 1 of the Children and Young Persons Act 1933, its physical needs rather than its spiritual, educational, moral or emotional needs. These are dealt with by other legislation.

According to Julie A. Schumacher, Amy M. Smith Slep and Richard E. Heyman:<sup>10</sup>

Child neglect differs from child physical, emotional, and sexual abuse, in that it involves the omission, rather than a commission, of behaviour. That is, neglect occurs when there is a deficiency in appropriate parenting behaviour, rather than when an inappropriate parenting behaviour occurs. Generally, child neglect is defined as the failure by a parent or other guardian to provide necessary care to a child, resulting in harm or threat of harm to the child. Necessary care includes provision of age-appropriate levels of supervision, education, medical care, and necessities (e.g., food, shelter, and clothing). Thus, neglect is typically categorized into types and subtypes. For example, the Second National Incidence Survey (NIS-2) categorized children as physically or educationally neglected; physical neglect was further broken down to include refusal of health care, delay in health care, abandonment, expulsion, other custody issues, inadequate supervision, and inattention to physical needs (Sedlak, 1997). Zuravin and Taylor (1987) used a different operationalization of neglect.

Although various definitions of child neglect have been laid down by researchers, it (the meaning of 'child neglect') should not be exhaustive, the reason being what amounts to abuse and neglect is subject to the standard of care that has been established by the society about child care.<sup>11</sup> To one society, a particular act or omission may amount to child neglect. However to another society, the same act is permissible. In the United States of America, for example, the definition of child neglect varies from one state to another.<sup>12</sup> To most people, child neglect is perceived as less serious when compared to sexual or serious physical abuse. It is understandable why the public perceive child neglect as less serious. One of the reasons is that child neglect is difficult to substantiate.<sup>13</sup> According to Richard Gelles, "the unique feature of neglect is locus of responsibility. It is often unclear whether neglect is due to a parent's omissions or due to absence of social, economic, or psychological resources."<sup>14</sup> Apart from the difficulty to substantiate, evidence of child neglect also needs to be gathered over a period of time unlike in serious physical cases where reference can be made to a specific incident.<sup>15</sup> Although child neglect may be perceived as less serious but previous researches show that the consequences of child neglect are as serious as any other type of abuse. Among the consequences of child neglect to infants are poor muscle tone and an inability to support

<sup>9</sup> [1981] AC 394. *Lexis.com Research System* 11 April 2007. <<http://www.lexis.com>>.

<sup>10</sup> Julie A. Schumacher, Amy M. Smith Slep and Richard E., Heyman, *Risk Factors For Child Neglect*, 6 (2001) *Aggression and Violent Behavior*, 231-254 at page 232.

<sup>11</sup> Kathleen Malley-Morrison and Denise A. Hines, *Family Violence in A Cultural Perspective: Defining, Understanding and Combating Abuse*, (California, Sage Publications, 2004) at page 37

<sup>12</sup> Dominic McSherry, Understanding and addressing the "neglect of neglect": Why are we making a mole-hill out of a mountain?, 31 (2007) *Child Abuse & Neglect*, 607-614 at page 608.

<sup>13</sup> *Ibid.*

<sup>14</sup> See Gelles, 1999 R.J. Gelles, Policy issues in child neglect. In: H. Dubowitz, Editor, *Neglected children: Research, practice and policy*, Sage Publications, Inc., Thousand Oaks, CA (1999), pp. 278-298 cited by Dominic McSherry, *Ibid* note 12.

<sup>15</sup> See the discussion in Dominic McSherry, *Ibid* note 12.

their own weight, poor motor skills and language development. In addition, their health will also be affected.<sup>16</sup>

### **Child Neglect in Malaysia**

In Malaysia, the liability of a parent who fails to maintain his child is provided in section 31(4) of the Child Act 2001 (hereafter referred to as Act 611) as follows:

(4) A parent or guardian or other person legally liable to maintain a child shall be deemed to have neglected him in a manner likely to cause him physical or emotional injury if, being able to so provide from his own resources, he fails to provide adequate food, clothing, medical or dental treatment, lodging or care for the child.

Section 31(1) of Act 611 provides for the penalty as follows:

Section 31. Ill-treatment, neglect, abandonment or exposure of children.

(1) Any person who, being a person having the care of a child

(a) abuses, neglects, abandons or exposes the child in a manner likely to cause him physical or emotional injury or causes or permits him to be so abused, neglected, abandoned or exposed; or

(b) sexually abuses the child or causes or permits him to be so abused, commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

The position in Malaysia is clear as to the issue of child neglect. This is because if a parents being able to provide adequate food, clothing, medical or dental treatment, lodging or care for the child but failed to do so, he has committed an offence according to section 31. The purpose of this paper is to highlight three issues pertaining to child neglect in Malaysia, *ie*, the duty to maintain children, the public perception of child neglect and mandatory reporting of child abuse cases.

### **Duty to Maintain Children**

Parents have a duty, both legally and morally, to maintain their children. Apart from imposing the duty to maintain their children, the law also imposes punishments for the failure to do so. However, due to certain loopholes in the law, certain parents are relieved from such duty and therefore escape from being punished if they refuse or neglect to maintain their children. There are three pieces of legislation in Malaysia that provide for the duty to maintain children, that is:

- a) Married Women and Children (Maintenance) Act 1950;
- b) Law Reform (Marriage and Divorce) Act 1976; and
- c) Child Act 2001.

<sup>16</sup> Cynthia Crosson – Tower, note 5 at page 72.

The duty to maintain children would be examined under each of the above Acts. A comparison will be made among the provisions of the three Acts to see which Act best protects a child's right to maintenance.

#### a) *Married Women and Children (Maintenance) Act 1950*

Section 3(1) of the Married Women and Children (Maintenance) Act 1950 (hereafter referred to as the 1950 Act) provides as follows:

If any person neglects or refuses to maintain his wife or a legitimate child of his which is unable to maintain itself, a court, upon due proof thereof, may order such person to make a monthly allowance for the maintenance of his wife or such child, in proportion to the means of such person, as to the court seems reasonable.

There are a few issues that arise from the above provision. First, the meaning of 'child' is not defined in the 1950 Act. This was discussed in *Kulasingam v Rasammah*.<sup>17</sup> In this case, when the mother applied for maintenance from the court, the child was above 20 years of age. Justice Hashim Yeop Sani stated that section 3(1) of the 1950 Act should be read as follows:

'... the construction of that statutory provision covers only children who have not yet attained the age of majority would seem to be the more correct construction.'<sup>18</sup>

The above interpretation by the learned judge was criticised as he should have been guided by the qualifying phrase following the term 'child', that is, 'which is unable to maintain itself' to rule that a child is anyone who is unable to maintain itself, irrespective of age. He, of course, has to be a child of the person who has been issued the maintenance order. Hence, if the child is aged 30 years and is mentally retarded, and therefore unable to maintain itself, the child should be eligible to be maintained. Similarly, a child who is mentally sound and who is pursuing tertiary education, and is unable to maintain itself, should be eligible to be maintained.<sup>19</sup>

The second issue that arises is whether the term 'any person' in section 3(1) includes a mother. In other words is the mother of a child equally liable under section 3(1) to provide maintenance for her child. It could be argued that since section 3(1) uses the qualifying words 'his' in relation to the child as well as the wife, it implies that 'any person' could only refer to a man. However, the Interpretation Acts 1948 and 1967<sup>20</sup> provide that the word and expression importing the masculine gender includes female.<sup>21</sup>

Section 3(2) of the 1950 Act provides that:

If any person neglects or refuses to maintain an illegitimate child of his which is unable to maintain itself, a court, upon due proof, thereof, may order such person to

<sup>17</sup> [1981] 2 MLJ 36

<sup>18</sup> *Ibid* at page 38. The Age of Majority Act 1971 provides that the age of majority is 18 years of age.

<sup>19</sup> See Mimi Kamariah Majid, Family Law in Malaysia, (Kuala Lumpur, Malayan Law Journal, 1999) at page 312.

<sup>20</sup> Act 388

<sup>21</sup> *Ibid* section 4(2)

make such monthly allowance, not exceeding fifty ringgit, as the court seems reasonable.

Hence, the duty to maintain an illegitimate child is expressly provided for in the above section. The argument on whether 'any person' includes the mother of the child, as discussed above, may apply to this section as well. At this juncture, it is pertinent to note that the words 'not exceeding fifty ringgit' in the above provision have been repealed by the Law Reform (Marriage and Divorce) Act 1976<sup>22</sup>. Therefore, there is no maximum limit to the maintenance amount that may be ordered by the court.

The phrase 'neglects or refuses to maintain' in both section 3(1) and (2) of the 1950 Act has been explained in *Marimuthu v Thiruchitambalam*<sup>23</sup>. The court held that a husband is said to neglect or refuse to maintain his wife if he fails to provide a peaceful place to stay for his wife. Although the issue in this case was about maintenance for the wife, the same interpretation could be applied to maintenance for children.

The next issue that arises is about the recovery of arrears for maintenance. Section 3(3) of the 1950 Act provides that:

Such allowance shall be payable from the date of such neglect or refusal or from such later date as may be specified in the order.

At a glance, it would appear that a child could claim maintenance from the parent from the date of neglect or refusal, even if that date went back to five or even twenty years. The courts however seem to interpret otherwise. In *Amrick Lall v Sombaiavati*<sup>24</sup>, the court followed an English decision<sup>25</sup> and held that the court can issue a retrospective maintenance order or a maintenance order in arrears for not more than a year backwards. This was followed in a later case *Gangagharan v Sathiabama*<sup>26</sup>, where his Lordship Abdul Razak J stated that 'the rationale behind this lies in the fact that the court treats the payment as a fund for maintenance and not as property.'<sup>27</sup>

However Peh Swee Chin J in *Lee Yu Lan v Lim Thain Chye*<sup>28</sup> was of the following view, 'the court would not be precluded in the absence of an express provision to that effect, from making any order for past maintenance by virtue of the Married Women and Children (Maintenance) Act 1950, from an antecedent date of neglect or refusal to maintain'.<sup>29</sup>

Section 4 of the 1950 Act provides for the penalty in the case of non-compliance with a maintenance order. If any person wilfully neglects to comply with any order made under this Act, the court, which makes such order, for every breach thereof, by warrant, direct the amount due to be levied in the manner by law provided for levying fines imposed by such court, or may sentence him to imprisonment for a term which may extend to one month for

<sup>22</sup> Act 164. See section 109 and the Schedule to the Law Reform (Marriage and Divorce) Act 1976.

<sup>23</sup> [1966] 1 MLJ 203.

<sup>24</sup> [1973] 2 MLJ 191

<sup>25</sup> *Pilcher v Pilcher* [1956] 1 WLR 298

<sup>26</sup> [1979] 2 MLJ 77

<sup>27</sup> *Ibid* at page 78

<sup>28</sup> [1984] 1 MLJ 56.

<sup>29</sup> *Ibid* at page 58.

each month's allowance remaining unpalpable. In *Yap Ki Swee v Phua Tham Lai*<sup>30</sup>, the wife applied to the court to request the court to sentence the husband to imprisonment for failing to pay her the maintenance for three months. The court rejected her application and said that in enforcing section 4 of the 1950 Act, it should give an opportunity to the husband to explain the reasons for his refusal to pay the maintenance. Only after all the above actions have been taken would the court enforce its powers under section 4 to sentence the husband to imprisonment. Therefore, in order for the court to enforce its powers under section 4, three matters have to be proven, that is:

- a) the respondent was ordered to pay maintenance;
- b) he has failed to comply with that order; and
- c) it was a wilful non-compliance.

#### **b) Law Reform (Marriage and Divorce) Act 1976**

The Law Reform (Marriage and Divorce) Act 1976 (hereafter referred to as the 'LRA') also has provisions on the duty to maintain children. This could be seen in Part VIII of the LRA, in particular, section 87 and from section 92 to section 102. The LRA has defined the meaning of 'child' in section 87 as a child of marriage who is below the age of 18 years. 'Child of marriage' is defined in section 2(1) of the LRA as a child to both the parties to marriage or to one party to the marriage, who has been accepted as a member of the family, by the other party; and 'child' in this context includes an illegitimate child of, and a child adopted by either of the parties to the marriage in pursuance of an adoption order made under any written law relating to adoption.<sup>31</sup> Therefore, since a child under the LRA includes a child of one party to a marriage who has been accepted as a family member by the other party, it would appear that a man has a duty to maintain a lot more of his 'children' under the LRA than under the 1950 Act.

Section 92 of the LRA expressly provides that parents have a duty to maintain their children. A comparison could be made between this provision with section 3 of the 1950 Act, where the former uses the word 'his or her' denoting that a mother is also under a duty to maintain her child whereas the latter merely states 'his'. Section 92 reads as follows:

Except where an agreement or order of a court otherwise provides, it shall be the duty of a parent to maintain or contribute to the maintenance of his or her children, whether they are in his or her custody or the custody of any other person, either by providing them with such accommodation, clothing, food and education as may be reasonable having regard to his or her means and station in life or by paying the cost thereof.

The court's power to order the payment of maintenance is provided for under section 93(1) where it is stated that:

- (1) The court may at any time order a man to pay maintenance for the benefit of his child:

<sup>30</sup> [1975] 1 MLJ 39.

<sup>31</sup> Compare the meaning of 'child' under the LRA and the interpretation given to the meaning of 'child' under the 1950 Act in the case of *Kulasingam v Rasammah* (discussed earlier).

- (a) if he has refused or neglected reasonably to provide for the child;
- (b) if he has deserted his wife and the child in her charge;
- (c) during the pendency of any matrimonial proceedings; or
- (d) when making or subsequent to the making of an order placing the child in the custody of any other person.

The four situations mentioned above show that the court's power to order a man to maintain his child is wider when compared to the power prescribed under the 1950 Act, which limits it to a situation where a person neglects or refuses to maintain. As mentioned earlier, a woman could also be ordered by the court to maintain her child. This is provided in section 93(2) which states that the court would make such an order upon being satisfied, having regards to her means that it is reasonable so to order. Two cases could be cited in support of this argument, that is, *Leow Kooi Wah v Ng Kok Seng Philip*<sup>32</sup> and *Wong Kim Foong v Teau Ah Kan*<sup>33</sup>. In both cases, the court ruled that where both parents are earning, both have a liability to maintain their children, each according to his or her means. In this respect, a child has better rights to maintenance under the LRA when compared to the 1950 Act as he or she can claim maintenance from both his parents.

Further thereto, section 94 provides for secured maintenance for children. Thus the court may, in its discretion, when ordering the payment of maintenance for the benefit of any child, order the person liable to pay such maintenance to secure the whole or any part thereof out of the income from such property, and subject thereto, in trust for the settler.

A child is entitled to maintenance from his parents until the child attains the age of 18 years or where the child is under physical or mental disability, on the ceasing of such disability, whichever is later.<sup>34</sup> This provision is an improvement over the 1950 Act as it takes into account children over the age of 18 years but who are physically or mentally disabled. However, it is still lacking as it assumes that children above the age of 18 years and who are not disabled are able to fend for themselves. At an age where tertiary education or higher studies is the aim of many youngsters, the law should provide the support by requiring the mother or father to provide maintenance in suitable cases even though the child may have reached 18 years.<sup>35</sup>

The above issue was discussed in two cases, *Ching Seng Woah v Lim Shook Lin*<sup>36</sup> and *Punithambigai a/p Ponniah v Karunairajah a/l Rasiah*<sup>37</sup>. In the first case, the Court of Appeal held that in appropriate cases, involuntary financial dependence is a physical disability under section 95 of the LRA. Shankar JCA, on behalf of the Court of Appeal aptly made the following statement:

An 18 year old computer whiz kid who is a wheel chair case and is therefore well able to earn a living at that age could here be contrasted with another 18 year old who

<sup>32</sup> [1995] 1 MLJ 582.

<sup>33</sup> [1998] 1 MLJ 359

<sup>34</sup> Section 95 of the LRA.

<sup>35</sup> *Supra* note 19 at page 336.

<sup>36</sup> [1997] 1 MLJ 109

<sup>37</sup> [2003] 2 MLJ 529 (COA); [2004] 2 MLJ 401 (FC).

is physically and mentally fit but is otherwise unable to fend for himself on the job market.<sup>38</sup>

The court then ordered the father to pay for the children's educational expenses until each of them has obtained their first university degree. This decision is welcomed as it has considered the plight of children who have attained the age of 18, especially those from broken homes, who wish to pursue their tertiary education. This decision was later followed and applied by the Court of Appeal in the case of *Punithambigai*. Unfortunately when *Punithambigai's* case went on appeal to the Federal Court, the Federal Court overruled the Court of Appeal's decision and said that the phrase 'physical or mental disability' in section 95 should be given a literal meaning and therefore involuntary financial dependence cannot be brought within the meaning of physical disability. It is disheartening to note that we are back to square one after the Federal Court's decision. The Federal Court had a very good opportunity to affirm the decision of the Court of Appeal, but did not do so and on the other hand overruled both the decisions.<sup>39</sup>

The next issue is on the recovery of arrears of maintenance. Section 98 of the LRA provides that the arrears for maintenance may go back up to three years from the date of the suit or claim. In this respect, the LRA clearly states the duration of arrears as three years whereas the 1950 Act, as mentioned earlier, was interpreted by the cases to mean up to one year only. Therefore, a child will be able to claim arrears of maintenance for a slightly longer period under the LRA when compared to the 1950 Act.

Lastly, reference could be made to an interesting provision in the LRA, that is, section 99, which provides for the maintenance of a child who is not the child of a man but who is accepted by the man as a member of his family. It shall be his duty to maintain such child while he or she remains a child, so far as the father or mother of the child fail to do so, and the court may make such orders as may be necessary to ensure the welfare of the child. The duty of the man ceases if the child is taken away by his or her father or mother. Any sums spent by the man maintaining such child shall be recoverable as a debt from the father or mother of the child.

The above section does not refer to a 'child of a marriage' as this child would fall within the meaning of 'child' in section 93(1). Thus it refers to other children accepted as members of the family, such as foster children or children adopted in accordance with custom, and whose adoptions may be registered under the Registration of Adoptions Act 1952. This provision obviously seeks to protect such children and to provide for their maintenance.<sup>40</sup>

Therefore, having examined provisions under the LRA concerning provision for maintenance for children, it appears that the rights of children to maintenance are better protected under the LRA when compared to the 1950 Act.

<sup>38</sup> *Supra* note 36 at page 120.

<sup>39</sup> For further discussion on this issue, see Sridevi Thambapillay, *Karunairajah a/l Rasiah v Punithambigai a/p Ponniah: The Need to Amend Section 95 of the Law Reform (Marriage and Divorce) Act?*, Journal of Malaysian and Comparative Law, Vol. 32, 2005, Faculty of Law, University of Malaya, page 109.

<sup>40</sup> *Supra* note 19 at page .337-338.



c) **Child Act 2001**

The Child Act provides for strict penalties for parents or guardians or any person who has the care of a child for failing to maintain the child properly. This emphasizes the importance of the duty to maintain a child.

The relevant provisions are in Part V, Chapter 3 of the Act. As mentioned earlier, section 31(1)(a) provides that if any person, having the care of a child, (*inter alia*) neglects the child in a manner likely to cause him physical or emotional injury or causes or permits him to be so neglected commits an offence and shall on conviction be liable to a fine not exceeding RM20,000 or to imprisonment for a term not exceeding 10 years or both.

'Neglect a child' is explained in section 31(4), which states that a parent or guardian or other person legally liable to maintain a child shall be deemed to have neglected him in a manner likely to cause him physical or emotional injury if being able to so provide from his own resources, he failed to provide adequate food, clothing, medical or dental treatment, lodging or care for the child. Hence, it could be noted that the phrase 'neglect a child' is clearly explained in this Act when compared to section 3(1) of the 1950 Act which does not explain the meaning of 'neglects or refuses to maintain'.

Apart from the penalty mentioned in section 31(1) of the Child Act, subsection (2) states that in addition to the punishment imposed under subsection (1), the court may order the person convicted to execute a bond with sureties to be of good behaviour for such period as the court thinks fit and may include in the bond executed such conditions as the court thinks fit. If the person ordered to execute the abovementioned bond fails to comply with any of the conditions of such bond, he shall be liable to a further fine not exceeding RM10,000 or to a further imprisonment not exceeding five years or to both.

Section 31(5) further provides that a person may be convicted of an offence against this section notwithstanding that suffering or injury to the health of the child in question or the likelihood of such suffering and injury was avoided by the action of another person, or the child in question had died. This shows the seriousness of the offence because though the suffering or injury was indeed avoided by some other person, the court can still convict the person (having the care of the child) of an offence.<sup>41</sup>

Therefore, it could be summarized that both the Child Act and the 1950 Act have penalty provisions when a parent neglects to maintain a child. The LRA, however, does not contain similar penalty provisions. It is submitted that although the LRA is silent on the penalty for failure to comply with a maintenance order, it would amount to a contempt of court if such an order which was issued by the court was not obeyed.

<sup>41</sup> Sridevi Thambapillay, *Child Act 2001: Selected Family Law Issues in Siti Zaharah, Norchaya and Jal Zabdi (eds), Siri Mimi Kamariah, (Kuala Lumpur, University of Malaya Press, 2002) at page 195-196.*

## Public Perception of Child Neglect

The issue of neglecting child neglect is nothing new as was raised by Wolock and Horowitz in their article titled 'Child maltreatment as a social problem: the neglect of neglect' in 1984.<sup>42</sup> Research and data collected in the United States show that cases of neglect is the highest in number when compared to physical, sexual or psychological abuse.<sup>43</sup> This phenomenon does not only exist in the United States, but also in other countries, including Malaysia where the number of child neglect cases reported is relatively high.<sup>44</sup> Though the figures show that the number of reported neglect cases is high, previous researches also show that child neglect cases received the least attention compared to cases concerning sexual or serious physical abuse.

The punishment for physical, sexual and emotional abuse in Malaysia is the same as the punishment for child neglect. This is because the punishment provided in section 31 as mentioned above is the same for all the abovementioned offences, that is, a fine not exceeding twenty thousand ringgit or imprisonment for a term not exceeding ten years or both. Thus, this implies that the Malaysian government considers all types of abuse against a child whether physical, sexual, emotional abuse or neglect as equally serious. However, the question that arises is whether the authority's actions and public perception reflect the government's intention?

Thus, in this article, the writers attempt to discuss, amongst others, the perception of certain chosen members of the public (hereafter referred to as the respondents) with regard to child neglect. In discussing this issue, questionnaires were distributed to 200 respondents from the District of Petaling in Selangor and the District of Dungun in Terengganu. One of the objectives of the questionnaires distributed is to gauge the respondent's perception about child abuse and neglect. In Table 1, five scenarios were posed to the respondents. First, whether the act of a parent or guardian who kicked their children in the stomach amounts to abuse or neglect? The second scenario is whether the act or omission of a parent or guardian who is able to provide food and clothing to their child but failed to do so amounts to abuse or neglect? The third scenario is whether the failure of a parent or guardian to get medical treatment for their children due to their busy schedules an abuse or neglect? The fourth scenario is whether the act of a parent or guardian who leave their child unattended at home and locked the door amounted to abuse or neglect and lastly, whether the act of a parent or guardian having sexual intercourse with their child an abuse or neglect?

Based on Table 1, the majority of the respondents (85%-86%) responded that the act of a parent or guardian who kicked their child in the stomach is an abuse or neglect. Between 9% - 10% of the respondents responded that it 'may be abuse or neglect'. While between 2% - 4% of the respondents opined in the opposite or that it is 'not abuse or neglect' and 1% - 3% of the respondents were not sure. Around 66.7%-71.7% of the respondents considered that the failure of a parent or guardian to provide food and shelter to their children as abuse or neglect.

<sup>42</sup> See I. Wolock and B. Horowitz, Child maltreatment as a social problem: the neglect of neglect. 54 (1984) *American Journal of Orthopsychiatry*, 530-543.

<sup>43</sup> See Kathryn L. Hildyard and David A. Wolfe, Child Neglect: Developmental Issues and Outcomes. 26 (2002) 679 - 695 at page 680.

<sup>44</sup> In 2005 there were 601 reported cases of child neglect in Malaysia, followed by 566 cases of sexual abuse, 431 cases of physical abuse, 77 cases of emotional abuse, 68 cases of abandoned babies and 57 cases of incest. See Statistical Profile, Malaysian Social Welfare Department, 2005.

While 20.2% - 22.2% of the respondents considered it as may be neglect, 3%-4% rated it as not abuse or neglect and 3%-9.1% of the respondents were not sure. As for the act of a parent or guardian who failed to get medical treatment for their children as they were too busy, 70% - 73% of the respondents rated it as child abuse or neglect, 21% - 24% of the respondents considered it may be child abuse or neglect, 1% - 2% of the respondents thought that it does not amount to child neglect and 4% - 5% of the respondents were not sure. Between 57% - 60% of the respondents were of the opinion that the act of a parent and guardian who left their child unattended at home and locked the door amounts to child neglect. 22% - 27% of the respondents thought that it may be abuse or neglect; 4%-9% of the respondents thought that it was not abuse or neglect and 9%-12% of the respondents were not sure. For the last scenario, 92%-95% of the respondents rated the act of a parent or guardian having sexual intercourse with their child as abuse or neglect, 3% - 4% of the respondents thought that it may be abuse or neglect, 0% - 3% of the respondents thought that it was not abuse or neglect and 1% - 2% of the respondents were not sure whether it was abuse or neglect or not.

Scenario	Abuse or Neglect	May be Abuse or Neglect	Not Abuse or Neglect	Not Sure
Scenario 1: A parent or guardian who failed to get medical treatment for their children as they were too busy.	70-73%	21-24%	1-2%	4-5%
Scenario 2: A parent and guardian who left their child unattended at home and locked the door.	57-60%	22-27%	4-9%	9-12%
Scenario 3: A parent or guardian having sexual intercourse with their child.	92-95%	3-4%	0-3%	1-2%

**Table 1**  
**Responses of the Respondents Regarding Child Abuse and Neglect**

Type of Act	Abuse/ Neglect		Maybe Abuse/Neglect		Not Abuse/Neglect		Not Sure		Total	
	Petaling	Dungun	Petaling	Dungun	Petaling	Dungun	Petaling	Dungun	Petaling	Dungun
Parents or guardian who kicked their children in the stomach	85	86	10	9	4	2	1	3	100	100
	85.0%	86.0%	10.0%	9.0%	4.0%	2.0%	1.0%	3.0%	100%	100%
Parent or guardian who failed to provide food and clothing to their children even though they are capable of doing so *	71	66	22	20	3	4	3	9	99	99
	71.7%	66.7%	22.2%	20.2%	3.0%	4.0%	3.0%	9.1%	100%	100%
Parent or guardian who failed to get medical treatment for their children because they are too busy	70	73	24	21	2	1	4	5	100	100
	70.0%	73.0%	24.0%	21.0%	2.0%	1.0%	4.0%	5.0%	100%	100%
Parent or guardian who left their child unattended at home and locked the door **	60	57	27	22	4	9	9	12	100	100
	60.0%	57.0%	27.0%	22.0%	4.0%	9.0%	9.0%	12.0%	100%	100%
Parent or guardian who have sexual intercourse with their child *	95	91	4	3	0	3	1	2	100	99
	95.0%	92%	4.0%	3.0%	.0%	3.0%	1.0%	2.0%	100%	100%

\*One of the respondents did not respond to the scenario.

## Mandatory Reporting of Child Neglect Cases

One of the main features in Act 611 is the mandatory reporting provision, where it imposes a statutory duty on the three categories of people to report to the authority if they have reasonable grounds to believe that a child has been abused. Prior to the introduction of Act 611, only doctors were required by law to report cases that are suspected to be child abuse and neglect.<sup>165</sup> However, with the introduction of Act 611, the duty has been extended to family members<sup>166</sup> and also child care providers.<sup>167</sup> Mandatory reporting means a person is required to report to the Protector if they have reasonable ground to believe that a child has been abused. Thus, with the introduction of provisions, doctors, family members and child care providers are required to report to the Protector if they have reasonable grounds to believe that the child they are treating, a child in their family and the child under their care is a victim of abuse or neglect.

Since mandatory reporting is one of the mechanisms to address the issue of child abuse and neglect, the next question that needs to be addressed is whether the respondents will report to the authorities if they have reasonable grounds to believe that a child has been abused? To answer this question, relevant scenarios were posed to the respondents in both districts as mentioned earlier. Table 2 is the findings based on the respondents from the District of Petaling and Table 3 is the findings based on the respondents from the District of Dungun. The first scenario in Table 1 shows that 83% of the respondents in District of Petaling are of the opinion that the act of a parent or guardian who kicked their child in the stomach should be reported to the authority. Only 3.3% of the respondents said that they do not have to report while 13.6% of the respondents were not sure. In the second scenario, 35.7% of the respondents were of the opinion that the act or omission of the parent or guardian, who are able to provide food and clothing to their child but failed to do so, should be reported. 19.8% of the respondents thought that it should not be reported and 44.5% of the respondents were not sure. As for the third scenario, 46.9% of the respondents were of the opinion that the failure of the parent or guardian to get medical treatment for their child as they were too busy should be reported, 17.5% of the respondents thought that it should not be reported and 35.6% of the respondents were not sure. Meanwhile for the fourth scenario, 35.9% of the respondents were of the opinion that the act of the parent or guardian to leave their children unattended and locked in the house should be reported, 26.7% of the respondents thought that it should not be reported and 37.4% of the respondents were not sure. Lastly, 95% of the respondents were of the opinion that the act of a parent or guardian having sexual intercourse with their child should be reported. 3% of the respondents thought that it should not be reported and 2% of the respondents were not sure.

<sup>165</sup> As provided in the Child Protection Act 1991. When Act 611 was introduced, doctors are still required to report cases that are suspected to be abuse or neglect involving children. See section 27 Act 611.

<sup>166</sup> Section 28 of the Act 611

<sup>167</sup> Section 29 of the Act 611

Table 2

Type of Act	District	District of Petaling					
		Report		Need not report		Not Sure	
		n=	%	n=	%	n=	%
Parent or guardian who kicked his child in the stomach		72	72	8	8	20	20
Parent or guardian who failed to provide food and clothing to his child even though he is capable of doing so *		31	31	24	24	45	45
Parent or guardian who failed to get medical attention for his child because he is too busy *		39	39	29	29	32	32
Parent or guardian who left his child unattended at home and locked the door *		52	52	16	16	32	32
Parent or guardian who has sexual intercourse with his child *		95	95	3	3	2	2

\* One of the respondents did not respond to the scenario

For the District of Dungun, the findings in Table 3 for the first scenario show that 75.7% of the respondents were of the opinion that the act of the parent or guardian who kicked his child in the stomach should be reported. 6.9% of the respondents thought that it should not be reported and 17.4% of the respondents were not sure. While for the second scenario, 31.2% of the respondents were of the opinion that the failure of the parent or guardian to provide food and clothing to his child though he is able to do so should be reported, 30.2% of the respondents thought that it should not be reported and 38.6% of the respondents were not sure. As for the third scenario, 37% of the respondents were of the opinion that the failure of the parent or guardian to get medical treatment for his child as he is busy should be reported, 26.6% of the respondents thought that it should not be reported and 36.3% of the respondents were not sure. As for the fourth scenario, 37.8% of the respondents were of the opinion that a parent or guardian who left his child unattended and locked in the house should be reported, 25% of the respondents thought that it should not be reported and 37.2% of the respondents were not sure. Meanwhile, 96% of the respondents were of the opinion that the act of a parent or guardian having sexual intercourse with his child should be reported, 2% of the respondents thought that it should not be reported, while another 2% of the respondents were not sure.

Table 3

Type of Act	District		District of Petaling					
			Report		Need not report		Not Sure	
	n=	%	n=	%	n=	%		
Parent or guardian kicked his child in the stomach	70	70.7	12	12.1	17	17.2		
Parent or guardian failed to provide food and clothing to his child even though he is capable of doing so *	23	23.7	46	47.4	28	28.9		
Parent or guardian failed to get medical attention for his child because he is too busy *	27	27.3	32	32.3	40	40.4		
Parent or guardian left their child unattended at their house and locked the door	38	38	31	31	31	31		
Parent or guardian have sexual intercourse with their child *	95	96	2	2	2	2		

\* One of the respondents did not respond to the scenario

## Discussion

The findings in Table 1 above show that the majority of the respondents in both districts perceived as serious physical acts against a child and the act of a parent or guardian using his child to satisfy the his lust as abuse or neglect. The findings also suggested that respondents perceived sexual abuse more serious as more respondents were of the opinion that it is an act of abuse or neglect. However, when the respondents were posed with scenarios 2, 3 and 4, the percentage of respondents that thought that it was child abuse or neglect decreased. At the same time, more respondents were not sure whether scenarios 2, 3 and 4 amounted to abuse or neglect or otherwise.

As for Table 2 and 3, the findings show that not all the respondents who were of the opinion that scenario one amounts to abuse or neglect felt that it should be reported. This is because only 70.7% to 72% of the respondents thought that it should be reported. As for the second, third and fourth-scenarios, the percentage of the respondents who thought that it should be reported reduced substantially to between 31% to 46% in both districts. In contrast, the percentage of respondents who were of the opinion that it should not be reported increased from 6.7% in the first scenario to 30.2% in the second scenario. The findings in both the districts also shows that the percentage of respondents who were not sure whether to report or otherwise to the authorities increased when scenarios 2, 3 and 4 were posed to them. These findings also seem to suggest that the scenario whether the respondents will report the incidents of child neglect will depend on their perception about the particular act or omission.

If the respondents perceived that it is not abuse or neglect, they will not report the incident to the authorities. However the findings also show that even if the respondents were of the opinion that it was an act of abuse or neglect, it does not necessarily mean that they will report the incident to the authorities. These findings are supported by previous researches that showed that certain quarters in the society may feel that they are encroaching in other people business if they reported what had happened in another family. Previous research in Singapore showed that child neglect was listed as the last type of child abuse that would be reported. According to Tong Chee Kiong, John M. Elliot and Patricia M.E.H. Tan:<sup>168</sup>

The results revealed that respondents were more inclined to think that some types of child abuse and neglect should be reported as compared to others. Respondents thought that physical abuse should be reported, followed by sexual abuse, then emotional maltreatment, and lastly physical neglect. These patterns were similar to the actual patterns of reporting - sexual and physical abuses are the two main types of abuse that are reported (see Chapter 4 "Cases of Child abuse and Neglect"). It seems that the public might be more concerned with the types of child abuse and neglect which are more visible or more "serious" or more obviously criminal.

## Conclusion

In conclusion, it could be summed up that the time has come to highlight to the society that child neglect is as serious as any other type of child abuse. At the same time, the authorities, especially the Social Welfare Department should also seriously view child neglect. The burden of preventing child abuse and neglect should not be shouldered by only one party but it is a common responsibility. Hence, society should change its perception about child abuse and neglect. It is submitted that the authorities will also have to do the same. Previous research shows that child protection services in the United States and the United Kingdom have also considered child neglect as less serious when compared to abuse.<sup>169</sup> However, as has been discussed earlier, the consequences of child neglect are as serious as any other type of child abuse. Although the effect of child neglect cannot normally be seen immediately, it does not necessarily mean that it is less serious. Therefore, it is submitted that, it is the duty of everybody in the society to put our hands together to reduce, if not to eliminate child abuse and neglect.

<sup>168</sup> Tong Chee Kiong, John M. Elliot and Patricia M.E.H. Tan, *Public Perceptions of Child Abuse and Neglect in Singapore*, Research Monograph Number 2, Singapore Children's Society, Disember 1996

<sup>169</sup> Dominic McSherry, see note 12 at page 610.



