

**Public Consultation on Child Custody and Access:
Whether to Implement the “Joint Parental Responsibility Model”
By Legislative Means
Response and Views from Family Service, Caritas – Hong Kong**

1. “Joint Parental Responsibility Model”

Caritas Family Service has provided preventive, supportive and treatment services to families in Hong Kong for over half a century. We have seen how the divorce rate surged and continued to increase since the seventies. In working with couples with different types of difficulties, including marital conflict, family violence, and extra-marital affairs, we are convinced that the earlier they sought help the better the chance of reconciliation. For couples that unfortunately have to turn to dissolution of marriage, the sense of failure and loss definitely leaves mark on their self-image and inter-personal relationship. While marital problems are between two adults, children who live under the shadow of their parents’ conflict definitely cannot stay unaffected. Worse still, such conflict can continue even after their divorce, and the children might be caught amidst these emotional dynamics.

Theoretically the joint parental responsibility model works in the best interest of the child and should be promoted. The model emphasises on the continuing responsibilities of both parents and the child can be assured of attention from both father and mother even when they are no long husband and wife. On the other hand, the parents do not have to compete for custody of their children, thus reducing hostility and ill-feelings.

Nonetheless, we do not see so many peaceful and rational separations in our work setting. Many couples decided on divorce only after long history of conflicts, violence or infidelity. In some, one of the parties was forced to accept divorce due to desertion by or sole application by the other party. Custody of the child becomes a means of revenge or manipulation. Changing the nomenclature will not improve the situation. Quite the contrary, sharing responsibility might mean prolonging the conflict and hostility. Under such circumstances, the child only suffers more.

The Joint Parental Responsibility Model can be an ideal model providing a direction to work towards. However, without basic changes in the traditional concepts of children being possessions for parents, and without proper support for couples, premature implementation through legislative means can be futile, if not disastrous.

The concept of the joint parental responsibility model should be promoted, but this is not the right moment to implement the model by legislative means.

2. Promoting the concept of the joint parental responsibility model

- Education is of paramount importance. To achieve a paradigm shift from parental rights to parental responsibility, there should be more proactive publicity and public education through mass media, community based campaign, and educational programmes. Target audience should not be restricted to couples planning for divorce, but should start from adolescents and young adults. The concept of parental responsibility should infiltrate in sex education curriculum, pre-marital and ante-natal programmes, parenting courses, and other family life education programmes.

- The importance of early intervention cannot be over-emphasised. Marriage dissolution does not happen overnight. The earlier the couple face their problems and seek help the better the chance of preventing irretrievable damages. It is therefore equally important to promote the importance of marital enrichment and marital counselling.
- The process of petitioning for divorce can trigger further conflicts and ill feelings between the couple. Mediation Service has been proven to be a more amicable alternative to help separating couple settle custody, support and division of property in a peaceful way. More resources should be allocated to encourage divorcing couples to use mediation service.

3. Supporting and applying the concept of joint parental responsibility model through improvement in existing services

- Strengthen mediation service. To encourage use of mediation service, government should consider providing free mediation service to those petitioning for divorce.
- Set up divorce education and services centre with one stop services in divorce education, reconciliation service, divorce counselling and mediation service. Couples with children should be required to attend divorce education sessions on parental responsibility for their children after divorce before they can file for divorce.
- Improve visitation and child support arrangement. Set up visitation and child support centre to help coordinate and supervise visitation and payment of child support for divorced couples with disputes and tension in these areas.
- As the joint parental responsibility model emphasises the best interest of the child, voices of children should be represented and heard during the divorce process. There should be a child consultant to represent the child in issues concerning their welfare.
- As divorced men expressed much difficulty over their adjustment, child care issues as single parents, and relationship with their children as non-custodial parents, there should be special service targeted at supporting divorced men.

4. Review and research on need of legislative amendments

There should be on-going research and review over the effectiveness and impact of the measures suggested in para. 3 and 4. The research findings can help the administration consider the need and readiness of the public for legislative amendments in support of the joint parental responsibility model. Public consultation can then be conducted again.

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