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# THE LEGALITY OF CANING IN SINGAPORE

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## ABSTRACT

Caning, also known as flogging and whipping, is a form of corporal punishment that is exclusively practised in Singapore, Brunei, and Malaysia. There has been an ongoing discussion over whether caning falls within the definition of 'torture' under various international treaties. This article intends to look into the history of caning and further analyse the arguments for the legality of caning in Singapore. It mentios the reasons for and problems of the present form of caning in these three nations. After analysing the international law and position of caning, the article affirms the reasons for not changing the existing caning laws. The efficacy of caning as punishment can be demonstrated by statistics from various reports that showed low crime rates in Singapore, Brunei, and Malaysia. Caning is among the few punishments that are retributive, deterring, as well as disciplining. The findings revealed that the offenders may not be able to walk or even sit comfortably for the first few weeks after being subjected to caning

as punishment. Furthermore, the humiliation, fear, and suffering leave a permanent psychological scar on the offenders. Hence achieving the objective of judicial punishments. Nevertheless, given the lack of literature, caning has not been highlighted previously. In the final analysis, this article concluded that despite the severity and humiliation, caning still contributes to the overall aversion to crime in Singapore and thus should not be abolished and should continue to be inflicted on offenders.

**Keywords**: Caning, Singapore, Malaysia, Brunei, International Law.

## INTRODUCTION

Singapore, Brunei, and Malaysia are those countries where corporal punishment is practised in the form of 'caning'. There are a number of offences in Singapore that are punishable by caning.[1] This corporal punishment is administered with a rattan with a diameter of no more than 1.27 cm.[2] Proceeding in stages is forbidden and the punishments need to be inflicted in one sitting,[3] no more than 24 strokes for adults and 10 strokes for juveniles,[4] which are to be caused on the buttocks.[5] Caning is possibly carried out if a medical officer is present and certifies that the offender has a fit condition of wellbeing.[6] Caning as a punishment is prohibited for women, men over the age of 50, and

1 The following offences (mentioned in various Statutes of Singapore) attract the punishment of caning:
The Penal Code: Culpable homicide (Section 304), voluntarily causing grievous hurt (Section 325), kidnapping and abduction (Section 363, Section 363A), rape (Section 375(2)), robbery (Section 392), etc.
The Arms Offences Act: Unlawful possession (Section 3), trafficking (Section 6).
The Immigration Act: Entry without valid permit (Section 6(3)(a)) or over-staying upon revocation of permit (Section 15(3)(b)).
The Vandalism Act: Not less than 3, not more than 8 strokes (Section 3).
The Prisons Act: Punishment for aggravated offences (Section 71(a)) including escape, assault, destruction of property or "any other act of gross misconduct or insubordination" (Section 73).
The SAF Act: Disobedience, desertion (Section 118(5)) or "aggravated disciplinary barrack offences" (Section 119).

2 Section 329(3), Criminal Procedure Code, 2010 (Singapore).

3 Section 330(1), Criminal Procedure Code, 2010 (Singapore).

4 Section 330(2), Criminal Procedure Code, 2010 (Singapore).

5 Section 139(1), Prisons Regulations (Singapore).

6 Section 331(1), Criminal Procedure Code, 2010 (Singapore).

men sentenced to death who had not had their sentences commuted.[7] The following crimes could attract the punishment of caning (*Caning in Singapore*, 2021):

a. Aggravated forms of theft
b. Burglary
c. Robbery
d. Assault with the intent of sexual abuse
e. When a crime is a second or subsequent of prostitution.
f. When a crime is a second or subsequent crime in relation to the rape conviction.

In 1871, corporal punishment of caning was codified under the '*Straits Settlements Penal Code Ordinance IV*.'
After independence, the Parliament of Singapore passed legislation that not only increased the number of hits or strokes a criminal will receive, but also the number of crimes for which caning is used as a punishment.
At present, the law of Singapore can order punishment of caning for 35 offences, which include:

a. Gang robbery with murder
b. Kidnapping or hostage-taking.
c. Robbery
d. Extortion
e. Rioting
f. Unlawful possession of weapons
g. Drug abuse
h. Molestation
i. Rape
j. Causing grievous hurt
k. Sexual abuse
l. Drug trafficking
m. Vandalism
n. Voyeurism
o. Illegal moneylending
p. Foreigners overstaying for more than 90 days (to prevent illegal immigration)

This paper will look at caning laws in Singapore and their legality. The author intends to investigate how this punishment took birth,

[7] Section 325(1), Criminal Procedure Code, 2010 (Singapore).

how it has evolved over the years, rules and regulations related to caning in Singapore, Brunei, and Malaysia, whether the punishment is legal, what are the issues and arguments against caning, what is the impact of caning on offenders and how it is effective in reducing the crime rate in these countries, the international law and organisations' stand, and the rationale and arguments as to why the practice should be continued.

The paper is structured into thirteen main sections. Section 1 includes the introduction and framework of the paper. In Section 2, the history of caning is explored and discussed. This is followed by Section 3, which examines the legality of caning. Section 4 and the forthcoming sections (Sections 5 and 6) analyses the caning laws in Singapore, Brunei, and Malaysia, respectively. Section 7 describes the rationale and issues with the current form of caning. Section 8 discusses the landmark cases in these countries. Whether the punishment of caning is retributive or restorative in nature, this is answered in Section 9. Section 10 investigates the international convention or treaties that contradict the corporal punishment of caning, their reasoning, and whether these countries are parties to such convention. Since all these three countries are a part of ASEAN, therefore Section 11 specifically deals with the views of ASEAN on inflicting corporal punishment on offenders, especially children. Section 12 provides the rationale and arguments as to why the practice should be continued. The accounts of those who have been caned and the impact of the punishment on offenders are detailed in Section 13. The conclusion ties together the previous sections, presents the research findings, proposes how this paper contributes to research, and ends by offering suggestions for future research.

## HISTORY OF CANING

In the European colonial era, the colonisers did not change the social conditions related to criminal choices but instead relied on the punishment imposed by the state as the primary response to crime. Traditionally, this punishment was intended to cause physical pain and inclined to take the form of corporal punishment (such as caning, whipping, and flogging). The purpose behind inflicting such capital punishments was to cause suffering before death. In Singapore, the Straits Settlements Penal Code of 1871 had detailed regulations on corporal punishment and dealt with whipping as a punishment for rape, assault, and robbery.

Caning began during colonial times and was inflicted on hardened and violent criminals. They were unequivocally individuals who were not Europeans and subsequently not worthy of similar humanity (Ping, 2015a; 2015b). Caning as a punishment is being incurred for a wide scope of offences that have practically little or no relationship to one another; however, there possibly were and are social issues and caning was viewed to be the most effective deterrent.

Until it was banned in 1954, the colonial authorities practised flogging (cat-o-nine-tails). A few years later it could have been banned, however, in 1959, the People's Action Party (PAP) took over the Government and expressed a strong demand for pragmatism. Therefore, it decided to keep the prevalent effective practices (*Caning in Singapore*, 2021). It existed for 50 years, and with the pace of time, several other different nations restricted the remnants of the past few centuries, yet Singapore, on the contrary, had added more non-violent crimes for which caning would be a penalty.

Historically, "whipping" was alluded to being struck across the shoulder bones; it was gradually eliminated for strapping or birching, which intended to hit the bottom with a hard rod or leather implement (Farrell, 2019). The offenders would be held in a British prison flogging frame; a comparable variation is utilised today to cane wrongdoers. After the Second World War, the Singapore Criminal Justice (Punishment Amendment) Ordinance of 1954 clearly stipulated that only "strokes of a rattan" could be used to impose Judicial Corporal Punishment (JCP) (Farrell, 2019). After independence, many amendments were made. This punishment is called "caning", in which the cane is a direct translation of the Malay "*rattan*".

## LEGALITY OF CANING IN SINGAPORE

The Constitution of Singapore and the domestic criminal laws authorise the practice of corporal punishment – caning to punish. The Criminal Procedure Code 2010 of Singapore stipulates the procedures that govern caning under Section 325–332. They are as follows (Bahrampour, 1995, p. 1087):

a. Only a male offender between the age of 18–50 years is liable to be caned, provided that the medical officer certifies that he is in a fit state of health.

b. Regardless of the total number of crimes, a man cannot be subjected to more than 24 strokes in a trial. Only if the sentences were given in separate trials, he could get more than 24 strokes.
c. The age group of 16–18 years may receive up to 10 hits from a lighter cane. If a man is under the age of 16 years, then, in that case, only the High Court has the power to sentence that person for caning as a punishment, and not the State Courts.
d. If any criminal is sentenced to death, he is not to be given corporal punishment of caning, i.e., he cannot be canned.
e. Caning needs to be done all at once and not in periods, even if the full sentence of caning could not be administered due to medical reasons.
f. The diameter of the rattan cane to be used must not exceed 1.27 cm (0.50 inches).
g. The man can also be administered the corporal punishment of caning in prison in case he commits an offence while serving a sentence in prison, irrespective of whether he was sentenced to caning or not.

As mentioned earlier, women, men over 50 years of age, and men who have been sentenced to death are exempted from this corporal punishment.

In the case of *Yong Vui Kong v Public Prosecutor*, Chief Justice Sundaresh Menon (Bahrampour, 1995) noted that there is a common law prohibition on torture, which was incorporated into domestic law through what is now Article 162. This act of caning was solely intended to extract evidence or confessions from criminal suspects and witnesses through torture, and it does not extend to offenders who have been convicted or found guilty. Therefore, the restriction of the common law against torture remains silent in terms of convicts being tormented. There is a distinction made in Singapore that represents the contrast between convicts and suspects: caning constitutes torture for suspects, whereas it is the only punishment for convicts (Bahrampour, 1995; Lum, 2015).

Even though the United Nations Convention against Torture includes caning, Singapore is not a signatory to the convention. Singapore's dualist framework was reaffirmed in the *Yong Vui Kong* case. The case also pointed out that "a domestic law mandating caning cannot be impugned by reason alone of its incompatibility with international

law" (Bahrampour, 1995; Lum, 2015). The judgment also questioned whether the evidence supporting the prohibition of caning came from customary international law, treaty law, or *jus cogens* norms. No one has been deprived of life or personal liberty as a result of constitutionally enacted laws, according to Chief Justice Menon (Bahrampour, 1995; Lum, 2015). It is up to the courts to liberally interpret Article 9(1).[8] It can only be achieved by carefully reviewing legislation that deprives a person of life or freedom.

## CANING IN SINGAPORE

The punishment of caning in Singapore does not violate any of Singapore's Constitutional provisions. Nevertheless, it does violate the international human rights laws. The existing human tights treaties prohibit the practice of such corporal punishment, though Singapore is not a signatory to any of such bilateral and multilateral treaties and agreements. There are no specific treaties or agreements that bind Singapore to obey non-practice of such corporal punishments, yet the internationally recognised customs and legal principles bind every country to protect the General Human Rights Principles.

In 1965, the first Parliament of Singapore delegated a Constitutional Commission with an aim to protect the multi-racial characters of the country and to ensure equality for all. The Commission recommended certain fundamental rights and stated the right to freedom from cruel, inhuman, and degrading corporal punishment. The Parliament, despite such a suggestion, failed to accommodate this in their Constitution. The only provision that even attempts to regulate criminal justice is Article 11. Article 11 states that a person will be protected against retrospective criminal laws and repeated trials. Otherwise, the torture by Western Standard is still legally sound according to the Constitution of Singapore.

The two neighbouring states of Singapore too practise the punishment of caning. There are certain differences in the practices followed in these three countries, though all the arguments for caning as a punishment remain similar.

Unlike what is practised in Singapore, the local courts of Malaysia and Brunei can sentence boys who are below the age of 16 years for

[8] *Ong Ah Chuan v Public Prosecutor* [1980–1981] SLR 48.

caning as punishment. In Malaysia, a male above the age of 50 years can be sentenced to caning if the crime is regarding sexual offences (Ghafar, 2014). The terminology used officially in these two countries is whipping.

As previously stated, in addition to Singapore, Malaysia and Brunei are the only two Southeast Asian countries that practise caning and the origin of this punishment in all of these countries is also the same, i.e., colonial rule. Consequently, it is critical to examine the legal frameworks of these two countries as well. It provides a vivid picture for the readers to understand the difference between the provisions.

## CANING IN BRUNEI

Brunei is a country with a strong Islamic faith. The country has severe punishment, especially whipping and execution by hanging (no execution by hanging since 1996). In 2004, the judicial corporal punishment in Brunei, i.e., the caning of illegal immigrants, was introduced. The number of whippings depends on the severity of the crime, no more than 24 strokes (*The Penalties by Whipping and Execution in Brunei*, 2011). For example, in the case of rape, the offender can get up to 24 strokes on any one occasion (the offender will have a 15-second interval after each hit). Considering the whipping wound, there will be several bruises, and the cut caused by the whipping will be inflamed after one month. In addition, most criminals will have a fever and acute pain; therefore, it is considered that this contributes to the peace in Brunei and also reduces crime (*The Penalties by Whipping and Execution in Brunei*, 2011).

In Brunei, punishments can be imposed under the Syariah Penal Code Order; however, many punishments are physical in nature. In some cases, severe corporal punishments are imposed, that include whipping, death by stoning, and amputation. Whipping as a punishment is allowed for an enormous number of offences, including children under 15 years of age.[9] Under the law, those who reach puberty are alluded to as *baligh*. The punishment includes stoning, whipping, and imprisonment. *Mumaiyiz* refers to children who are considered old enough to know the difference between right and wrong and

[9] Sections 63, 65, 66 and 69, Syariah Penal Code.

traditionally interpreted as being about 7 years old under the Islamic law and may be punished, including by whipping. Even Section 22[10] of the Common Gaming Houses Act 1920 made specific provisions for whipping young boys. The Unlawful Carnal Knowledge Act of 1938 provides punishment for young offenders of whipping up to 12 strokes who have extramarital carnal knowledge of a girl under 16.[11]

Brunei's Criminal Procedure Code regulates and manages corporal punishment. Individuals aged 8–17 may be whipped 18 times.[12] The whipping should be inflicted in accordance with the instructions of the Permanent Secretary, Office of the Prime Minister. Young offenders or criminals ought to be punished with a light rattan "in the way of school discipline".[13] Under no circumstances should women be flogged.[14] A medical staff or hospital assistant must be present and should ensure that the offender is fit to be punished.[15] Currently, whipping as a sentence is dispensed for a wide range of offences.[16]

## CANING IN MALAYSIA

In Malaysia, Section 286–291 of the Criminal Penal Code 1936 (Revised in 1997) states the guidelines governing caning, though it is referred to as 'whipping' in the provision. The caning laws in Malaysia are almost similar to that of Singapore and Brunei.

In 2010, three Muslim women were caned in Malaysia for the first time for the offence of adultery. The Malaysian Bar Council stated

[10] "Any male person appearing to be of such tender years as to require punishment rather in the way of school discipline than of ordinary criminal justice convicted of an offence under this Act may in lieu of any other punishment hereby provided be sentenced to corporal punishment with a light rattan or cane not exceeding 10 strokes on the bare buttocks".

[11] Section 2, Unlawful Carnal Knowledge Act, 1938 (Revised in 1984) (Brunei).

[12] Section 257(1), Criminal Procedure Code, 1952 (Revised in 2016) (Brunei).

[13] Section 257(4), Criminal Procedure Code, 1952 (Revised in 2016) (Brunei).

[14] Section 258, Criminal Procedure Code, 1952 (Revised in 2016) (Brunei).

[15] Section 259, Criminal Procedure Code, 1952 (Revised in 2016) (Brunei).

[16] Sections 53, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 344, 347, 348, 354, 355, 356, 357, 365, 366, 366A, 366B, 367, 369, 370, 371, 372, 373, 376, 382, 384, 385, 386, 387, 388, 389, 392, 393, 394, 395, 397, 398, 399, 400, 401, 402, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 437, 439, 440, 450, 452, 453, 454, 455, 456, 457, 458, 459, 461, 462 and 511 of Penal Code, 1952 (Revised in 2016) (Brunei).

that this violated federal civil laws because it prohibits using caning as a punishment on women (Bureau of Democracy, Human Rights, and Labour, 2010b).

Historically, Malaysia's current punishment of whipping is a remnant of British colonial rule dating back to the late 19th century. Since the 1990s, the Civil Law has expanded the scope of criminal caning to some forms of white-collar crime (1994) and immigration offences (1996, 2002) (Ismail & Sulong, 2018; Kwang et al., 2017).

The legal provisions of whipping in Malaysia can also be found in the Syariah Criminal Procedure (Federal Territories) Act 1997, which is applicable only in the Federal Territories of Kuala Lumpur, Labuan[17], and Putrajaya.[18] The law provides for provisions relating to whipping. The whip used must be of smooth or uniform skin rattan, and the length must not exceed 1.22 m, and the diameter must not exceed 1.25 cm.[19] It also stipulates other guidelines[20] to be followed in the execution of whipping punishment, such as:

- Before whipping, the criminal must be medically examined by a certified medical staff.[21] The officer should also be present when the punishment is imposed.[22]
- If the convict is a pregnant woman, the flogging ought to be deferred to another date, that is, until two months after delivery or miscarriage.[23]
- Flogging should be performed on a standing male convict or a sitting female convict.[24]
- The whipping must be performed by a competent performer, who should be fair and mature.[25] The performer must avoid any pulling action to avoid unnecessary damage to the skin and body.[26]

17 Section 1(2), Syariah Criminal Procedure Act 1997 (Malaysia).

18 Section 1, Syariah Criminal Procedure Act 1997 (Malaysia); Federal Territory of Putrajaya (Extension and Modification of Syariah Criminal Procedure (Federal Territories) Act 1997) Order 2002- P.U.(A) 248/2002.

19 Section 125(2), Syariah Criminal Procedure Act 1997 (Malaysia).

20 Section 125(3), Syariah Criminal Procedure Act 1997 (Malaysia).

21 Section 125(3)(a), Syariah Criminal Procedure Act 1997 (Malaysia).

22 Section 125(3)(c), Syariah Criminal Procedure Act 1997 (Malaysia).

23 Section 125(3)(b), Syariah Criminal Procedure Act 1997 (Malaysia).

24 Section 125(3)(i), Syariah Criminal Procedure Act 1997 (Malaysia).

25 Section 125(3)(d), Syariah Criminal Procedure Act 1997 (Malaysia).

26 Section 125(3)(f), Syariah Criminal Procedure Act 1997 (Malaysia).

- Every blow of the whip must be moderate.[27]
- The whipping should be evenly distributed to the entire convict's body in order to avoid unnecessary harm to any specific part.[28]

For the abovementioned laws and regulations on whipping to have such a fair and effective effect, their application must strictly abide by the basic principles of Syariah (Mahdzir et al., 2016). The objective of inflicting such a punishment in Malaysia is to fulfil their objectives, i.e., "punishing the convict, reforming him, and deterring the public from committing the crime" (Shariff et al., 2012).

## THE RATIONALE AND ISSUES WITH THE CURRENT FORM OF CANING

Caning is used for a variety of reasons, which include discipline, deterrence, retribution, and rehabilitation. Caning is inflicted in the following circumstances (Lim, 1994):

1. Usually, an offence of a violent nature or involving serious harm to the public.
2. In prisons, detention centres, as well as in the armed forces, caning is used as a disciplinary measure.
3. Other crimes, such as illegal immigration, MDA, vandalism.

Caning can be related to retribution because it is a 'just dessert' for offenders and shows the public's aversion to illegal behaviour. This is one of the reasons for caning to be inflicted in cases of violent crimes such as rape and armed robbery involving serious personal injury (Lim, 1994). However, the theory of retribution has decreased in relevance to later miscellaneous offences (Lim, 1994). It is necessary to distinguish between caning for serious offences and other types of criminal acts like property destruction, unauthorised visa stayers, and so on (Ping, 2015a). It is reasonable to distinguish between different types of crimes when caning is such a physically painful punishment. For certain offences, the increase of a fine and potentially flagellation, which is not considered as dangerous as caning, could be presented as an alternative to caning.

[27] Section 125(3)(e), Syariah Criminal Procedure Act 1997 (Malaysia).
[28] Section 125(3)(g), Syariah Criminal Procedure Act 1997 (Malaysia).

The use of caning as a punishment for certain offences is primarily for the purpose of *deterrence*. Lee Kwan Yew, former Prime Minister of Singapore who instituted mandatory caning for vandalism in 1966, is one of the reasons for its continued use:

> But if he knows he is going to get three of the best, he will lose a great deal of enthusiasm, because there is little glory attached to the rather humiliating experience of being caned.
> - *PM Lee Kuan Yew, Parliamentary Debate, Vandalism Bill.*

In Singapore, the general norm is that punishment should be commensurate to the gravity of the offence committed. According to the utilitarian argument, the threat of punishment serves as a universal deterrent. When a crime of exceptional proportions is perceived, this norm is shelved. When the situation that caused the abnormality is no longer urgent, people are strongly opposed to returning to the norm because it is believed that this return may cause the problem to reappear (Hor, 2010).

Caning has been done privately within prison walls in the past. However, if the motive for caning is humiliation and a deterrent effect, public caning may be more effective because it may augment both the deterrent effect and the humiliation component.

Chief Justice Chan Sek Keong stated in the case of *Mohammad Faizal bin Sabtu v Public Prosecutor*[29] that Parliament has the authority to impose a mandatory minimum caning.[30] Nevertheless, there is no need to impose a minimum caning requirement, and caning should be entirely optional to enable the judiciary the freedom in sentencing. Such an issue can be addressed through sentencing frameworks and guidelines. The question that needs to be considered is whether

[29] *Mohammad Faizal bin Sabtu v Public Prosecutor* [2012] 4 SLR 947; [2012] SGHC 163.

[30] "…judicial discretion to determine the sentence to impose on an offender is a relatively modern legislative development ... Historically, the sentencing power was neither inherent nor integral to the judicial function. The power to enact offences and to prescribe the punishment for their commission was a legislative, and not judicial, power... it must follow that no written law of general application prescribing any kind of punishment for an offence, whether such punishment be mandatory or discretionary and whether it be fixed or within a prescribed range, can trespass onto the judicial power".

mandatory caning has other deterrent effects. Caning is frequently enforced in particular offences, according to a common norm of the judiciary. It should be able to send a clear signal and deter crime if there are no mitigating conditions. A certain amount of judicial discretion and flexibility is needed to resolve the aggravated and alleviated situations.

## LANDMARK CASES OF CANING

### 1. Michael Fay

He was an 18-year-old American teenager. He pleaded guilty for two charges, which were vandalism (Singapore's Vandalism Act) and mischief. For this, he was sentenced to four months of prison time, six hits of cane, and a fine of $3,500 (Singaporean dollars) (Bahrampour, 1995, p. 1080). After an appeal from the United States President, Bill Clinton, the hits were reduced to four from six. As stated in the Vandalism Act, the maximum legal sentence that could be given for each count of vandalism consisted of a $2,000 (Singaporean dollars) fine or a prison sentence of three years and punishment of caning, which involved 3–8 hits. Therefore, according to the Singaporean regulations, four strokes for two counts of vandalism seemed reasonable and acceptable to them (Bahrampour, 1995).

Before this punishment was executed, there was a public outcry, fierce strikes for changes in legislation, and, as stated earlier, a personal petition from the President as well after the sentence was passed. Once executed, there was a diplomatic collapse between the United States (US) and Singapore (Wu, 2019).

Michael Fay described his experience as "a deep burning sensation throughout my body, real pain. My flesh was ripped open" (Wu, 2019).

### 2. Shiu Chi Ho

He was a Hong Kong native but had the citizenship of Singapore (Bahrampour, 1995, p. 1081). He was sentenced to six strokes under the Vandalism Act. Since 1989, 12 citizens of Singapore and two foreign citizens, with the age range between 18–21 years, have received caning as a punishment for vandalism (Bahrampour, 1995). The Vandalism Act provides safeguards to protect the citizens. The

Act does not allow for caning as a punishment for a first-time convict (Bahrampour, 1995, p. 1081).

### 3. Ye Ming Yuen

Ye Ming Yuen was a 29-year-old British citizen. This case is of the year 2019. In 2016, Ye Ming Yuen was guilty of seven drug trafficking offences that attracted him to a punishment of 20-year imprisonment and 24 strokes of caning. After this incident, the foreign relations between the United Kingdom and Singapore, too, saw a diplomatic breakdown (Wright, 2019).

There were many non-governmental organisations (NGOs) that came out in protest of such corporal punishment (caning), stating that it amounts to 'an act of torture' (Wright, 2019).

### 4. Selwyn Hirini Kahukura, Hugh Gordon Clark, and Tony Alfred Gordon

These three were New Zealand soldiers. They were guilty of selling cannabis in their camp. In 1981, they were sentenced to imprisonment for three years and the punishment of caning – three strokes of the cane (Wellington Evening Post, 1981; The Straits Times, 1981).
They had appealed to the President of Singapore for mercy, yet all their appeals were rejected (The Straits Times, 1982).

### 5. Yong Vui Kong v Public Prosecutor[31]

The Singapore Court of Appeal in this case of 2015,[32] said that judicial caning does not amount to torture under the United Nations Convention against Torture if it is practised in a properly regulated manner.

It was held that caning does not amount to an act of torture under international conventions. Additionally, it was held that even if the corporal punishment of caning amounted to an act of torture, it would not apply to the domestic laws of Singapore if it were inconsistent with the international conventions.

The definition of torture according to the United Nations Convention against Torture under Article 1(1) to judicial caning is: "Any act

[31] [2012] SGCA 23
[32] [2015] SGCA 11

by which severe pain or suffering, whether physical or mental; intentionally inflicted on a person; for the purpose of punishing him for an act he has committed; when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity; and that does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions" (*United Nation Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984). Singapore noticed that the elements 'intention', 'purpose', and 'public official' cannot be disputed and thus, judicial caning is unlawful according to international standards. Consequently, the Singapore Court of Appeal shifted the basis of the case on the reasoning of another element, that is, 'severity'.

The court made a distinction between torture and cruel acts, inhuman and degrading treatment. Regarding this distinction, the court ruled that for domestic laws to prohibit judicial procedures, it must not be equivalent to torture, cruel, inhuman, and degrading treatment. The Court of Appeal defended judicial caning by pointing out that the purpose of punishment is related to the execution of corporal punishment as prescribed by law and that corporal punishment is executed or implemented in accordance with legal requirements and regulations.

The court additionally pointed out that although the punishment of caning causes considerable pain and torture, it does not constitute torture because the severity and indiscriminateness found in other cases[33] were different.

## RESTORATION VS RETRIBUTION: THE INTERNATIONAL POSITION

> The second option is to jail them. Some of the illegal immigrants would love it…, they were quite happy to live the rest of their lives being stateless, unemployed, but in clover. So, you want to jail them?
>
> *- BG Lee Hsien Loong, Parliamentary Debate, Immigration (Amendment) Bill*

[33] *Tyrer v The United Kingdom* App no. 5856/72 (ECTHR, 25 April 1978); *Caesar v Trinidad and Tobago* (Series C, no. 123, Judgment of 11 March 2005) Inter-American Court of Human Rights.

In certain countries, the use of imprisonment as a deterrent is considered effective, which is why this issue was brought up in Parliamentary debates. The Safety Index (Institute for Economics & Peace, 2019; Getzoff, 2019; World Population Review, 2021) indicates that developed countries like Norway, Denmark, Switzerland, and Iceland are in the lead without using any form of corporal punishment indicator. Norway, for example, has adopted a gentler and kinder approach, as evidenced by the fact that a person who confessed to the July 22 massacre is facing only 30 years in prison, which is far less than expected for this heinous crime (Adams, 2010). In Switzerland, prisons place a greater emphasis on reintegration than on punishment. Individuals who have strong ties to their communities are more responsible and less likely to commit crimes. Iceland is a country in which there are almost no violent crimes. According to research, there is no class system and that 97 percent of the population identify themselves as middle class, a country with equal educational opportunities.

Despite the fact that these developed countries obtained the highest level of Safety Index without using caning, a number of countries with well-functioning corporal punishment systems and low crime rates also achieved the highest level of the index.

The low crime rate in Japan has been linked to a strong cultural affinity for negativity and non-violence, as well as the fact that anger and aggression are considered shameful in Japanese society, according to studies (Thompson, 2016).

Several other countries, like Qatar and the United Arab Emirates, have extremely low crime rates and also use flogging as a form of punishment. Caning is inflicted as a form of corporal punishment in both Singapore and Brunei, and both have a high safety score (*Crime Comparison between Singapore and Brunei*, 2021).

The U.S. State Department, while sharing information on the frequency of caning in Brunei, reported around 184 offenders being caned between January and October 2009; 80 offenders in 2014 and by September 2015, more than three times as many people were caned as in 2014 (Bureau of Democracy, Human Rights, and Labor, 2010a; 2014; 2015). The modus operandi of legal caning in Brunei seems to resemble that in Singapore more than that in Malaysia. It is reported that the Brunei Prison Department organised educational seminars and visits for students to educate them about the crimes and held

some demonstrations during the visit (Kon, 2004; Rina PHA, 2004; Stephen, 1998; Tanjong, 2003).

## INTERNATIONAL LAW

The oldest convention in existence that protects individuals from torture, cruelty, inhuman and degrading punishment is the Universal Declaration of Human Rights. It was first adopted in 1948. Subsequently, the United Nations ratified the Convention for the Protection of Human Rights and Fundamental Freedoms 1950, and the International Convention on Civil and Political Rights 1966. Both treaties of 1950 and 1966 contain provisions specifically relating to the prohibition of cruel or torturous punishment.

Singapore is not a signatory to any of the international treaties and/or conventions that protect people against cruel and inhuman punishments.

The United Nations General Assembly adopted the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment in 1984. There was a strong international acceptance due to which this convention gained global recognition as a Customary International Law. Though Singapore did not sign this convention, after attaining the state of Customary International Law, it not only binds the signatories but also binds other nations, irrespective of the fact that they signed the treaty or not. It is also included under the heading of '*General Principles of Law*' since this convention is widely practised and included in the Constitution of various nations. This convention defined torture as severe pain or suffering, which excludes pain and suffering due to legal sanctions. The practice of caning in Singapore is an act of torture because it does inflict severe pain and suffering, but it is legally or lawfully sanctioned in Singapore. Even though the practice of caning violates human rights, it cannot be brought under the purview of International Law since it is sanctioned in Singapore. The legislature of Singapore considers caning as a valid punishment. Furthermore, the exemptions and guidelines provided by the Singapore Criminal Code reveal the careful set of rules to safeguard the citizens, such as:

- Only healthy males between the ages of 16 and 50 can be sentenced to whipping; the sentence for all others may have an increase up to 12 months added to their sentences.[34]

[34] Section 325(1-2), CPC (Singapore).

- Regardless of how many crimes an individual is convicted of, the maximum number of strokes that can be incurred is 24 for adults and 10 for adolescents or juveniles.[35]
- There is a medical staff available who chooses whether the punishment proceeds or stops relying upon the offender's state.
- The whip or cane should be 120 centimetres in length, no more than 1.27 centimetres in diameter, moistened and flexible to forestall fraying.
- The individual operating the caning should be prepared to instigate significant amounts of pain and use all the power he can apply.

## ASEAN ON CANING

In May 2017, ASEAN (2017) published a brief, "*Progress towards prohibiting all corporal punishment of children in ASEAN member states*", which highlighted that it is crucial for all ASEAN member states to preclude all brutal punishment towards children. This brief is mainly intended to recognise the countries practising corporal punishment in any form and points out opportunities for legal reform and progress towards the prohibition of such punishments. It further suggested immediate actions required to achieve a full prohibition of such punishments.

The corporal punishment of children largely symbolises the inferiority of children's social status that is inconsistent with the perspective of children as human beings and guarantors of basic human rights. As a result, reforming national legislation to prohibit corporal punishment lays a solid foundation for eliminating its use and transforming children's lives.

The main contention is that the experience of this kind of corporal punishment, such as whipping, from an early age can lead to deterioration of mental health in childhood and adulthood. Increased child aggression and anti-social conduct, as well as an increased risk of committing, experiencing, and tolerating violence as an adult, are all linked to corporal punishment. It has a negative impact on family bonds. As opposed to instilling good behaviour in children, it reinforces the contrary, whereby using violence to resolve conflicts

[35] Section 325(6), CPC (Singapore).

is acceptable (ASEAN, 2017; Global Initiative to End All Corporal Punishment of Children, 2016).

Most importantly, the brief identifies specific immediate actions that must be taken to achieve complete prohibition and opportunities for drafting and introducing prohibiting legislation. According to the brief, Malaysia needs "drafting and introduction of legislation prohibiting corporal punishment, repeal of legal defences for its use in childrearing and of all provisions authorising caning/whipping". Following that, it stated for Singapore, "Drafting and introduction at the earliest opportunity of legislation prohibiting corporal punishment and repealing all legal defences and authorisations for corporal punishment".

In November 2015, the ASEAN Regional Plan of Action on the Elimination of Violence against Children was adopted. It recognises that corporal punishment predominates among the forms of violence experienced by children. The meaning of physical incorporates "all forms of corporal punishment" and is based on the definition that was adopted by the United Nations Committee on the Rights of the Child in its General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment".

Now the question is whether ASEAN can address or regulate caning as a form of punishment in its member states. It should be noted that there has been a shift in how ASEAN has functioned prior to and following the adoption of the ASEAN Charter (Mahaseth, 2019). Nevertheless, respect for sovereignty and the principle of non-interference remain the overriding frameworks of regional integration (Mahaseth, 2019). One of ASEAN's unique characteristics is the liberty to deal with domestic affairs without fear of intervention or criticism from the other member states, which has strengthened ASEAN and accelerated its progress.

## REASONS NOT TO CHANGE THE CANING LAWS

Singapore, in its defence, states that many of the older criminal justice systems do not completely comply with the rules and standards set by the international bodies and organisations. Additionally,

Singapore cannot change the corporal punishment of caning because it is deep-rooted in the cultural and religious practices of the country (Bahrampour, 1995, p. 1090). Furthermore, Singapore asserts that the practice that is adopted cannot be changed over time (Bahrampour, 1995). This is because society has grown accustomed to such punishments, rules, and customs of the country. Other nations may find caning as a punishment to be unacceptable, yet according to Singapore, the human rights treaties that address Western concerns cannot be suited to Singaporean society.

Singapore also argues that if the corporal punishment of caning is properly regulated, it is held to be valid and can be judicially administered. International Courts, too, have never ruled on the Singaporean practice of caning policies (Bahrampour, 1995, p. 1092). Singapore believes that it will domestically benefit from its decision of rejecting Western human rights standards (Bahrampour, 1995, p. 1090). The country is also of the opinion that by exercising such punishments, the crime rate will never increase. Singapore argues that if caning is cruel and inhuman and does not adhere to the human rights treaties and conventions, then the practice of capital punishment in some countries is also in violation of the international human rights treaties (Bahrampour, 1995).

The Government states that caning is reserved only for specific crimes and for the males who are medically fit in the age range of 18–50 years. Apart from that, the Government defends itself by saying that the area of inflicting the cane is nowhere near the offenders' organs (Wu, 2019). They are provided with padding for the protection of the nearest organ. It also argued that the buttocks provide the most protection from damages to the bone. Since the infliction of cane is not done in instalments, the Government mentions that by doing so, they limit the duration and extension of the suffering. It is a form of concession from their end (Wu, 2019). After the implementation of the punishment and before the execution, medical attention is provided to the offenders.

Singapore's first Prime Minister said that "[...] if (the offender) knows he is going to get three of the best, I think he will lose a great deal of enthusiasm, because there is little glory attached to the rather humiliating experience of having to be caned" (Farrell, 2019; *Caning in Singapore*, 2021).

There are instances where even the school-going children are subject to the punishment of caning. Even when Singapore is a member of the 'Convention on the Rights of the Child' and is obliged to take all necessary measures and steps to protect children from physical or mental violence, the country believes that judicious application of corporal punishment is in the best interest of the children.

## IMPACT OF CANING ON THE OFFENDERS

The corporal punishment of caning leaves a mark on the physical and mental state of the offender. The offender is never told when the punishment will be executed. In all these days, the guilty lives in a constant state of fear and mental stress. Apart from that, the offender cannot walk or even sit properly for the first few weeks after he is subject to the punishment of caning. Furthermore, the humiliation, fear, and suffering leave a permanent psychological scar on the offender. In 1974, the Singapore Director of Prisoners described the reaction of the offenders in the following lines:

> "Their struggles lessen as they become weaker. At the end of the caning, those who receive more than three lashes are usually in a state of shock. Many will collapse, but the medical officer and his team of assistants are on hand to revive them and to apply antiseptic to the caning wounds".

A report from the Singapore Bar Association said that:

> "The blows are applied with the full force of the jailer's arm. When the rattan hits the bare buttocks, the skin disintegrates, leaving a white line and then a flow of blood. Usually, the buttocks will be covered with blood after three strokes. More profuse bleeding may occur in the case of a larger number of strokes. An eyewitness described that after 24 strokes, the buttocks would be a 'bloody mess'. Men who were caned have variously described the pain they experienced as 'unbearable', 'excruciating', 'equivalent to getting hit by a lorry', 'having a hot iron placed on your buttocks', etc." (Farrell, 2019).

A recipient of 10 strokes said, "The pain was beyond description. If there is a word stronger than excruciating, that should be the word to describe it" (Farrell, 2019).

## CONCLUSION

Caning is considered a very effective punishment in Singapore (Reynolds, 2017). When compared to imprisonment, caning is an acceptable alternative since offenders are not forced to interact with other serious criminals in jail, and a sentence of corporal punishment does not rebuff the guilty party's family, who might somehow or another be deprived of his time and income.

In spite of the fact that it is hard to confine the impact of caning on the crime rate in Singapore, its seriousness and humiliating factors do help to avoid crime in general (Reynolds, 2017). Singapore is also one of the countries with the lowest crime rate, and it uses caning as punishment. A report by the U.S. State Department pointed out that 2,203 people were canned in 2012, indicating that its use is relatively widespread. From 1987 to 2007, the number of canings in Singapore increased from 602 to 6,404. Nevertheless, it gradually decreased to 1,257 in 2006 and has declined or fluctuated slightly since then (Bureau of Democracy, Human Rights, and Labor, 2011). In addition, recipients want to avoid being fined a second time, which helps reduce Singapore's recidivism rate (Bureau of Democracy, Human Rights, and Labor, 2016).

Compared with Section 377A of the Penal Code, there is no public protest or disagreement over caning. There is, in fact, little sympathy for individuals who are being caned. Caning is a legal provision that the majority of Singaporeans support (Ping, 2015a). As previously discussed, the purpose of caning is to inflict pain. For a few days or weeks after caning, those who have undergone it reported excruciating pain and inability to sit or lie down on their buttocks. Caning leaves a permanent mark on their buttocks as a result of the punishment. This has a long-term teaching purpose, as they will always be reminded not to perpetuate the same offence in the future. Furthermore, as the punishment is subject to several procedural safeguards that distinguish it from 'torture', it should not be abolished and should continue to be imposed on offenders.

Security, in all of its forms, is a treasure that takes decades to develop and can all too easily be shattered by negligence or irresponsible modifications. As a result, unnecessary fiddling should be avoided. At the same time, a willingness to shift with the times can help to avoid intellectual rigidity, which can endanger Singaporean society's long-term viability as a dynamic and evolving culture. Maintaining Singapore's outstanding public safety while also progressively eliminating the use of physically harmful and ultimately lethal types of punishment (such as caning) would be a difficult task to accomplish. Through this paper, the authors intend to initiate a public dialogue that will be beneficial to succeeding generations.

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